

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
AND SJC VENTURES HOLDING
COMPANY, LLC, D/B/A SJC
VENTURES, LLC, A DELAWARE
LIMITED LIABILITY COMPANY,

Appellants

vs.

CBC PARTNERS I, LLC, A FOREIGN
LIMITED LIABILITY COMPANY;
AND 5148 SPANISH HEIGHTS, LLC,
A NEVADA LIMITED LIABILITY
COMPANY,

Respondents.

Supreme Court Case No. 83407

Electronically Filed
Feb 09 2022 04:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

APPELLANTS' APPENDIX VOLUME I

DATE	DESCRIPTION	VOLUME	PAGES
9/3/2013	Amended Order from April 4, 2013 Hearing, in <i>Vion Operations LLC v. Jay L. Bloom, et al</i> (Case No. A-11- 646131-C)	I	PA0009-0016

12/24/2020	Declaration of Alan Hallberg in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	I	PA0170-0172
8/12/2021	Declaration of Jay Bloom	III	PA0702-0703
12/24/2020	Declaration of Kenneth M. Antos in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0173-0178
10/11/2017	Deed of Sale of Property to SHAC	I	PA0049
4/27/2020	Defendant CBC Partners I, LLC's Answer to Complaint; and Counterclaim	I	PA0055-0078
12/24/2020	Defendants/Counterclaimaints' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0146-0169
8/6/2021	Defendants' Status Report on Compliance with the Court's Orders in <i>TGC/Farkas Funding, LLC v. First 100, LLC et al</i> (Case No. A-20-822273-C)	III	PA0657-0688
5/6/2020	Demand for Jury Trial	I	PA0079-0080
8/13/2021	Email from Candace Carlyon Dated August 13, 2021	III	PA0705-0707
8/12/2021	Email from Larry Bertsch Dated August 12, 2021	III	PA0704
4/6/2021	Findings of Fact and Conclusions of Law	II	PA0327-0347

4/7/2021	Findings of Fact, Conclusions of Law, & Order Regarding Evidentiary Hearing in <i>TGC/Farkas Funding, LLC v. First 100, LLC et al</i> (Case No. A-20-822273-C)	II	PA0348-0385
5/15/2020	First Amended Complaint	I	PA0081-0100
10/7/2010	Grant, Bargain Sale Deed to Antos Trust	I	PA0005-0008
4/5/2007	Grant, Bargain, Sale Deed	I	PA0001-0004
8/15/2017	Lease Between SHAC and SJC Ventures	I	PA0017-0048
6/24/2021	Motion for Appointment of Receiver	II/III	PA0414-0605
1/5/2021	Notice of Entry of Order	I	PA0208-0215
8/11/2021	Notice of Entry of Order (Appointing Receiver)	III	PA0694-0701
4/20/2021	Notice of Entry of Order (FFCL)	II	PA0386-0409
7/8/2021	Opposition to Defendants' Renewed Motion for Appointment of Non-Neutral Receiver	III	PA0606-0649
08/10/2021	Order Appointing Receiver	III	PA0689-0693
5/26/2021	Order Granting in Part and Denying in Part Motion for Sanctions for Violation of Automatic Stay of Bankruptcy Code Section 362(a) and Related Relief	II	PA410-0413
12/14/2020	Plaintiff's Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0117-0145
1/1/2021	Plaintiff's Reply in Support of Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0179-0207
4/1/2020	Rent Payments to SHAC	I	PA0050-0054

7/28/2021	Status Report Regarding Lifting of Bankruptcy Stay	III	PA0650-0656
1/12/2021	Stipulation Regarding Legal Issues to be Decided by the Court at Bifurcated Trial Commencing February 1, 2021	I	PA0221-0222
5/26/2020	Summons to 5148 Spanish Heights, LLC	I	PA0101-0104
5/26/2020	Summons to CBC Partners I, LLC	I	PA0109-0112
5/26/2020	Summons to CBC Partners, LLC	I	PA0105-0108
5/26/2020	Summons to Dacia, LLC	I	PA0113-0116
1/5/2021	Temporary Restraining Order	I	PA0216-0220
3/15/2021	Transcript of Proceedings – Preliminary Injunction Hearing and Trial – Day 4, Volume II	II	PA0229-0326
2/3/2021	Voluntary Petition for Non-Individuals Filing for Bankruptcy	I	PA0223-0228
12/15/2020	Exhibits in Support of Plaintiffs’ Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	IV/V	PA0708-1018
8/18/21	Notice of Appeal	V	PA1019-1161

CERTIFICATE OF SERVICE

I certify that on the 9th day of February 2022, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – V** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

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

DATED this 9th day of February 2022.

/s/ Brandon Lopipero

An Employee of MAIER GUTIERREZ & ASSOCITES

9 - 1

20070416-0002478

Fee: \$16.00 RPTT: \$9,180.00
N/C Fee: \$0.00

04/16/2007 14:06:03
T20070065215

Requestor:
CHICAGO TITLE

Debbie Conway KAH
Clark County Recorder Pgs: 4

APN: 163-29-615-007
Affix R.P.T.T. \$9,180.00

**WHEN RECORDED MAIL TO and
MAIL TAX STATEMENT TO:**

KENNETH M. ANTOS AND SHELIA M.
NEUMANN-ANTOS
4968 Mountain Foliage Drive
Las Vegas, NV 89148

19

ESCROW NO: 07000087-018-SC

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

Rhodes Design and Development Corporation, a Nevada corporation

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

KENNETH M. ANTOS AND SHELIA M. NEUMANN-ANTOS, HUSBAND AND WIFE AS
JOINT TENANTS

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

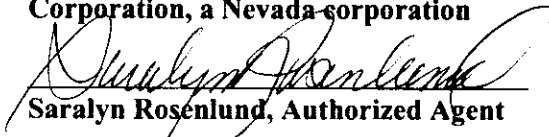
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

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

Witness my/our hand(s) this 5 day of April, 2007.

**Rhodes Design and Development
Corporation, a Nevada corporation**


Saralyn Rosenlund, Authorized Agent



ESCROW NO: 07000087-018-SC

STATE OF NEVADA

COUNTY OF CLARK

On this 5th April 2007 appeared before me, a Notary Public,
Saralyn Rosenlund, authorized agent of Rhodes Design and Development Corporation, personally
known or proven to me to be the person whose name is subscribed to the above instrument, who
acknowledged that she executed the instrument for the purposes therein contained.



Notary Public

My commission expires: 3.16.09

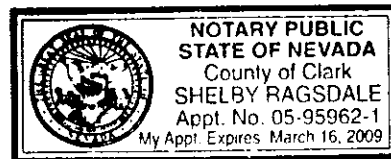


EXHIBIT A

Lot Seven (7) in Block Five (5) of SPANISH HILLS ESTATES UNIT 5A, as shown by map thereof on file in Book 107 of Plats, Page 58 in the Office of the County Recorder of Clark County, Nevada.



**State of Nevada
Declaration of Value**

1. Assessor's Parcel Number(s)

a) 163-29-615-007

b)

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Documentation/Instrument #: _____

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property: \$ 1,800,000.00

Deed in Lieu of Foreclosure Only (value of property): (-0-)

Transfer Tax Value: \$ 1,800,000.00

Real Property Transfer Tax Due: \$ 9,180.00

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____%

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

Signature [Signature] Capacity _____ Grantor
Signature [Signature] Capacity _____ Grantee

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Rhodes Design and Development Corporation

Address: 4730 S. Ft. Apache #300

City: Las Vegas

State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: SHEILA M. NEWMAN - ANTO'S

Address: 4965 MTN. FOLIAGE DR.

City: LAS VEGAS

State: NV Zip: 89148

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

Print Name: Chicago Title

Address: 9500 W. Flamingo Rd., Ste. 104

City/State/Zip: Las Vegas, NV 89147

Escrow #: 07000087-018



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

Escrow #10-05-0444-KMD

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

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

GRANT, BARGAIN, SALE DEED

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

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

SUBJECT TO:

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

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

IN WITNESS WHEREOF, this instrument has been executed this 7 day of October, 2010.

Kenneth M. Antos

Kenneth M. Antos

Sheila M. Neumann-Antos

State of NEVADA }
County of Clark } ss:

This instrument was acknowledged before me
on

10/7/10

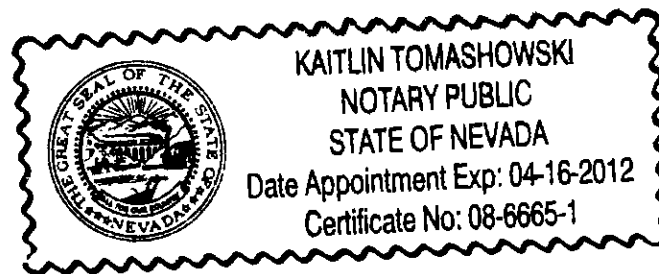
by Kenneth M. Antos and Sheila M. Neumann-Antos

Kaitlin Tomashowski
NOTARY PUBLIC

My Commission

Expires:

4/16/12



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

EXHIBIT "A"

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

1. Assessor Parcel Number(s)

- a) 163-29-615-007
- b) _____
- c) _____
- d) _____

2. Type of Property:
- | | |
|--|--|
| a. <input type="checkbox"/> Vacant Land | b. <input checked="" type="checkbox"/> Sgl. Fam. Residence |
| c. <input type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex |
| e. <input type="checkbox"/> Apt. Bldg. | f. <input type="checkbox"/> Comm'l/Ind'l |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home |
| <input type="checkbox"/> Other | |

- 3 a. Total Value/Sales Price of Property
- b. Deed in Lieu of Foreclosure Only (value of property)
- c. Transfer Tax Value:
- d. Real Property Transfer Tax Due

a. Transfer Tax Exemption, per NRS 375.090, Section: #7

- b. Explain Reason for Exemption: Transfer without consideration to a trust

5. Partial Interest: Percentage being transferred: 100 %

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

Signature: _____ Capacity: GRANTOR/SELLER

Signature: D. Milton Capacity: AGENT

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Kenneth M. Antos
Shelia M. Neumann-Antos

Print Name: Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007, and any amendments thereto

Address:	5148 Spanish Heights Drive	
City:	Las Vegas	
State:	NV	Zip: 89148

Address:	5148 Spanish Heights Drive		
City:	Las Vegas		
State:	NV	Zip:	89148

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

Print Name:	Nevada Title Company	Esc. #:	10-05-0444-KMD
Address:	2500 N. Buffalo Drive, Suite 150		
City:	Las Vegas	State:	NV
		Zip:	89128

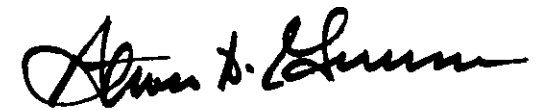
(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Book: _____ Page: _____

Date of Recording: _____

Notes:

[Signature]



CLERK OF THE COURT

AMOR

Anthony A. Zmaila(NV Bar No. 2319

Email: tony@aaznevada.com

Peter J. Goatz (NV Bar No. 11577)

Email: peter@aaznevada.com

ANTHONY A. ZMAILA LIMITED PLLC

265 East Warm Springs Rd., Suite 100

Las Vegas, Nevada 89119

Telephone: (702) 614-8800

Facsimile: (702) 614-8700

Attorneys for Larry L. Bertsch, CPA & Associates, LLP, Special Master

DISTRICT COURT

CLARK COUNTY, NEVADA

VION OPERATIONS, LLC, a Delaware
limited liability company; and
STRATEGIC FUNDING SOURCE, INC.,
a New York corporation,

Plaintiffs,

v.

JAY L. BLOOM, an individual;
CAROLYN S. FARKAS, an individual;
EAGLE GROUP HOLDINGS, LLC, a
Nevada limited liability company; A.D.D.
PRODUCTIONS, LLC, a Nevada limited
liability company; ORDER 66
ENTERTAINMENT, LLC, a Nevada
limited liability company; DOES I
through X; and ROE CORPORATIONS I
through X,

Defendants.

JAY L. BLOOM, an individual;
CAROLYN S. FARKAS, an individual;
EAGLE GROUP HOLDINGS, LLC, a
Nevada limited liability company;
ORDER 66 ENTERTAINMENT, LLC, a
Nevada limited liability company,

Counter-claimants,

v.

VION OPERATIONS, LLC, a Delaware
limited liability company; and
STRATEGIC FUNDING SOURCE, INC.,
a New York corporation,

Counter-defendants.

Case No. A-11-646131-C
Dept. XXVI

**AMENDED ORDER FROM APRIL 4, 2013
HEARING**

Date of Hearing: April 4, 2013
Time of Hearing: 10:00am

1 JAY L. BLOOM, an individual;
2 CAROLYN S. FARKAS, an individual;
3 EAGLE GROUP HOLDINGS, LLC, a
4 Nevada limited liability company;
5 ORDER 66 ENTERTAINMENT, LLC, a
6 Nevada limited liability company,

7 Third-Party Plaintiffs,

8 v.

9 LOUIS VENTRE, an individual;
10 ANDREW REISER, an individual;
11 STRATEGIC FUNDING SOURCE, INC.,
12 a New York corporation; STRATEGIC
13 CAPITAL MANAGEMENT, LLC, a New
14 York limited liability company; STACEY
15 SCHACTER, an individual; BARBARA
16 ANDERSON, an individual; DOES I
17 through X; and ROE CORPORATIONS I
18 through X,

19 Third-Party Defendants.

20 KEITH BURHDOFF, an individual;
21 CLIFF STOUT, an individual; MARK
22 HELLNER, an individual; JAMES
23 KLODT, an individual; JESSICA
24 GUYER, an individual; JOE
25 RANDAZZO, an individual; KEITH
26 COOPER, an individual; KRIS
27 THONDAPU, an individual; L.S.
28 MARLOW TRUST, JOHN C.
MORGANDO and APRIL MORGANDO
as Trustees; MORGANDO FAMILY
TRUST, JOHN PETER MORGANDO as
Trustee; RON LEWIS, an individual;
TRAVIS CUBLEY, an individual; JOHN
CHRIS MORGANDO, an individual;
GLENDA TUTTLE, an individual;
ALBERT RAMIREZ, an individual;
HOWARD PUTERMAN, an individual;
WARREN BEST, an individual; SUSAN
BEST, an individual; LARRY
DEMATTEO, an individual; PATRICK
O'LAUGLIN, an individual; SANDY
O'LAUGLIN, an individual; KEN
KEFALAS, an individual; TERRY
BOMBARD, an individual; TERRY
KROLL, an individual; BULLER
FAMILY HOLDINGS, LLC, a Nevada
limited liability company; GLEN
TUTTLE, an individual; DAVID
ZACHARIAS, an individual; ZBROS
INVESTMENTS, a California

1 corporation; RON TULAK, an individual;
2 JOSEPH GEORGIANO, an individual;
3 BARRY LEWISOHN, an individual;
4 VINNY MANNINO, an individual;
5 SANDRO CARNIVALE, an individual;
6 MICHAEL REGAN, an individual; TIM
7 ALLEN, an individual;
8 LINDENMUTH & ASSOCIATES, INC.,
9 a Texas corporation; CARLOS
10 CARDENAS, an individual; and
11 BENSON RISEMAN, an individual,

Intervening Plaintiffs,

v.

9 VION OPERATIONS LLC, a Nevada
10 limited liability company; MHR FUND
11 MANAGEMENT, LLC, a Delaware
12 limited liability company; BARBARA
13 ANDERSON, an individual; STACEY
14 SCHACTER, an individual; DOES I
15 through X; and ROE CORPORATIONS I
16 through X, inclusive,

Intervening Defendants.

15 This matter came before the Court on Special Master Larry L. Bertsch's ("Special
16 Master") (ii) Special Master's "Fourth Joint Application for Allowance of Fees and
17 Costs of Special Master and Special Master's Counsel for the Period February 13, 2012
18 through December 31, 2012 and Motion to Re-Allocate Payment of Special Master's
19 Compensation and to Reduce Outstanding Unpaid Compensation to Judgment"
20 ("Fourth Application"); and (ii) Jay Bloom, Carolyn Farkas, Eagle Group Holdings,
21 LLC, A.D.D. Productions, LLC and Order 66 Entertainment, LLC (collectively
22 "Defendants") "Defendants, Counterclaimants, and Third-Party Plaintiffs' Opposition
23 to Special Master's Motion to Re-Allocate Payment of Special Master's Compensation
24 and Opposition to Fourth Joint Application for Fees and Costs of Special Master and
25 Counter-Motion for Return of Fees."

26 Special Master and Defendants gave appropriate notice of their respective motions.

27 Pursuant to *Stipulation and Order to Consolidate Hearings* entered on March 4,
28 2013, the parties established a modified briefing schedule and agreed to have Special

1 Master's Motion, Fourth Application, and Motion to Disqualify heard along with other
2 related motions on April 3, 2013.

3 On March 12, 2013, Intervening Plaintiffs filed "Intervening Plaintiffs' Joinder to
4 Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's
5 Reports from the Record and for Monetary Sanctions."

6 On March 18, 2013, Jay Bloom, Carolyn Farkas, Eagle Group Holdings, LLC,
7 A.D.D. Productions, LLC and Order 66 Entertainment, LLC (collectively "Defendants")
8 filed "Defendants, Counterclaimants, and Third-Party Plaintiffs' Opposition to Special
9 Master's Motion to Re-Allocate Payment of Special Master's Compensation and
10 Opposition to Fourth Joint Application for Fees and Costs of Special Master and
11 Counter-Motion for Return of Fees;" Special Master filed "Special Master's Opposition
12 to Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's
13 Reports from the Record and for Monetary Sanctions" and Vion Operations, LLC filed
14 "Plaintiff's Opposition to Defendants' Motion to Disqualify Larry Bertsch As Special
15 Master, Strike the Special Master's Reports From The Record and For Monetary
16 Sanctions."

17 On March 21, 2013, Vion Operations, LLC filed "Plaintiff's Opposition to
18 Defendants' Counter-Motion for Return of Fees and Request for Sanctions."

19 On March 27, 2013, Special Master filed "Special Master's Omnibus Reply in
20 Support of Fourth Joint Application for Allowance of Fees and Costs of Special Master
21 and Special Master's Counsel for the Period February 13, 2012 through December 31,
22 2012 and Motion to Re-Allocate Payment of Special Master's Compensation and to
23 Reduce Outstanding Unpaid Compensation to Judgment and Motion for Order:
24 (1) Accepting Special Master's Final Report; and (2) Discharging Special Master"
25 Defendants filed "Defendants/Third Party Plaintiffs/Counter-Claimant's Reply to
26 Special Master's Opposition to Motion to Disqualify Larry Bertsch as Special Master,
27 Strike the Special Master's Reports from the Record and for Monetary Sanctions."
28

1 On April 4, 2013, the Court conducted a hearing on the Special Master's Motion, the
2 Fourth Application and Motion to Disqualify . Anthony A. Zmaila, Esq. and Peter J.
3 Goatz, Esq. appeared for Special Master, who was also present; Todd M. Touton, Esq.,
4 Robert Hernquist, Esq., and Christopher Mathews, Esq. appeared for Vion Operations,
5 LLC; and Joseph A. Gutierrez, Esq. and Jeffrey R. Albregts, Esq. appeared on behalf of
6 Defendants and Intervening Plaintiffs. Jay L. Bloom was also present.

7 The Court read and considered the papers and pleadings on file in connection with
8 Special Master's Motion, the Fourth Application, the Motion to Disqualify, and counter-
9 motions related thereto, and considered the arguments of counsel.

10 The Court makes the following findings and conclusions:

11 A disclosure of Special Master's prior attorney-client relationship with Lionel
12 Sawyer & Collins was not made to the parties until August 29, 2012. Defendants failed
13 to take any action to prevent Special Master from issuing a final report prior to
14 October 18, 2012 when Special Master filed "Final Report of Special Master." On
15 October 18, 2012, Defendants sought disqualification of Lionel Sawyer & Collins.
16 Because Defendants failed to timely object prior to the issuing the Final Report of
17 Special Master, Defendants objections to the Court accepting Special Master's final
18 report and their objections to discharging Special Master are overruled. *Venetian*
19 *Casino Resort, LLC v. Dist. Ct.*, 118 Nev. 124, 41 P.3d 327, 330 (2002).

20 The Court also noted the fact that NRCP 53 does not contain the same language as
21 FRCP 53(a)(2).

22 The Court finds applicable to Special Master NCJC 2.11(C), which requires Special
23 Master to disclose certain relationships and business dealings. Based on NCJC 2.11(C),
24 Special Master should have made a disclosure of his prior attorney-client relationship
25 with Lionel Sawyer & Collins. The Court does not find that non-disclosure of such
26 relationship constitutes grounds for disqualification. NRCP 53(a)(2); *See Ivey v. Dist.*
27 *Ct.*, 129 Nev. Adv. Op. 16 (2013); *Venetian Casino Resort, LLC v. Dist. Ct.*, 118 Nev.
28 124, 41 P.3d 327 (2002). Special Master is a fair, impartial, unbiased and highly skilled

1 forensic accountant, and the matters in this case to which the Court made its reference
2 are in his area of expertise. The reference to Special Master in this case was proper.

3 The Court does not reach the issue of whether the relationship between Special
4 Master and Lionel Sawyer & Collins created an impermissible conflict in this case
5 requiring Special Master's recusal because the alleged conflict no longer existed at the
6 point that Defendants raised the issue before the Court. As such, Defendants' Motion to
7 Disqualify, and Intervening Plaintiffs' Joinder thereto, are denied.

8 With respect to approval of Final Report of Special Master, the Court finds that the
9 failure of Special Master to disclose the prior attorney-client does not render the Final
10 Report of Special Master invalid or erroneous. The Court finds that no party raised a
11 formal objection to Special Master's report, but that the parties various other filings
12 can be considered as an objection to the report. The Court, therefore, accepts the report
13 as written. The Court does not adopt the Final Report of Special Master as findings of
14 fact or conclusions of law. The Court will make determinations of fact and law at the
15 trial on the merits in this case. As such, the Court, in accepting the Final Report of
16 Special Master, did not conduct an analysis as to whether the findings were clearly
17 erroneous nor a de novo review of the conclusions. Any party may use the Final Report
18 of Special Master as such party sees fit. The Court's acceptance of the Final Report of
19 Special Master does not limit or impair in any way any party's ability to challenge the
20 report at trial.

21 The Court finds that Special Master has complied in all respects with the *Order*
22 entered on October 19, 2011. Special Master's duties in this matter are complete;
23 subject to those final items contained in this Order. Therefore, it is proper for Special
24 Master to be discharged upon the completion of those final items contained in this
25 Order, and the resolution and payment of Special Master's compensation.

26 Further, because of Special Master's failure to disclose, coupled with Defendants
27 attempt to disqualify Lionel Sawyer & Collins, the Court finds that Defendants should
28 not be responsible for Special Master's compensation from October 18, 2012 forward.

1 With respect the previously entered orders regarding Special Master's compensation,
2 *Order Granting Joint Application (First) for Allowance of Fees and Costs of Special*
3 *Master and Special Master's Counsel for the Period September 28, 2011 through*
4 *October 31, 2011* entered on January 6, 2012; *Order Granting Joint Application*
5 *(Second) for Allowance of Fees and Costs of Special Master and Special Master's*
6 *Counsel for the Period November 1, 2011 through November 30, 2011* entered on
7 January 13, 2012; and *Order Granting Joint Application (Third) For Allowance of Fees*
8 *and Costs of Special Master and Special Master's Counsel for the Period December 1,*
9 *2011 Through February 12, 2012* entered on April 25, 2012, those orders remain in full
10 force and effect.

11 Finally, based on the rulings contained in this Order, the parties shall supplement
12 the record with respect to their positions regarding the following matters:

13 (a) Fourth Joint Application for Allowance of Fees and Costs of Special Master and
14 Special Master's Counsel for the Period February 13, 2012 through December 31, 2012
15 and Motion to Re-Allocate Payment of Special Master's Compensation and to Reduce
16 Outstanding Unpaid Compensation to Judgment;

17 (b) Defendants' Countermotion for Return of Fees and Request for Sanctions; and

18 (c) Whether any additional relief should be granted with respect to the Final Report
19 of Special Master.

20 Good cause appearing,

21 **IT IS ORDERED** that Special Master's Motion for Order: (1) Accepting Special
22 Master's Final Report; and (2) Discharging Special Master is granted in part. The
23 Court accepts Special Master's final report, but does not adopt such report as findings
24 of fact or conclusions of law. The Court's acceptance of the Final Report of Special
25 Master does not limit or impair in any way any party's ability to challenge the report at
26 trial.

27 **IT IS FURTHER ORDERED** that the Special Master is otherwise discharged
28 from his duties in this case subject to those final matters outlined in this Order, and

1 the resolution and payment of Special Master's compensation. Nothing in this Order
2 shall be construed to limit or impair Special Master's ability to be awarded
3 compensation or to enforce any order.

4 **IT IS FURTHER ORDERED** that Defendants' Motion to Disqualify Larry Bertsch
5 as Special Master, Strike the Special Master's Reports from the Record and for
6 Monetary Sanctions is denied.

7 **IT IS FURTHER ORDERED** that the parties shall file and serve supplements
8 with respect to: (a) Fourth Joint Application for Allowance of Fees and Costs of Special
9 Master and Special Master's Counsel for the Period February 13, 2012 through
10 December 31, 2012 and Motion to Re-Allocate Payment of Special Master's
11 Compensation and to Reduce Outstanding Unpaid Compensation to Judgment;
12 (b) Defendants' Countermotion for Return of Fees and Request for Sanctions; and
13 (c) whether any additional relief should be granted with respect to the Final Report of
14 Special Master on or before May 2, 2013. Any oppositions, responses, or statements to
15 the supplemental filings shall be filed and served no later than May 16, 2013. Replies
16 shall be filed and served no later than May 24, 2013. A hearing on these matters shall
17 occur on May 31, 2013 at 10:00am.

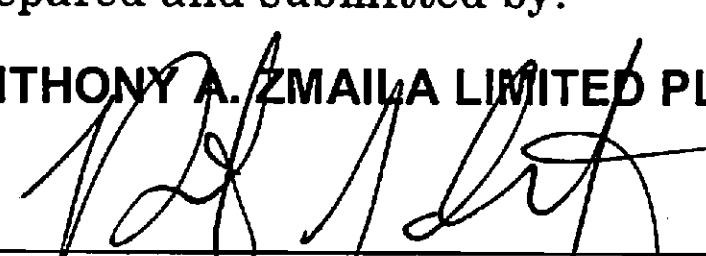
18 **IT IS FURTHER ORDERED** that this Order is a nunc pro tunc order correcting
19 the prior *Order From April 4, 2013 Hearing* entered on May 13, 2013.

20 Dated this 27th day of August, 2013.

21
22 
DISTRICT COURT JUDGE 

23 Prepared and submitted by:

24 **ANTHONY A. ZMAILA LIMITED PLLC**

25 
Anthony A. Zmaila (NV Bar No. 2319)
26 Peter J. Goatz (NV Bar No. 11577)
27 265 East Warm Springs Road, Suite 100
28 Las Vegas, Nevada 89119

Attorneys for Larry L. Bertsch, Special Master

5148 Spanish Heights Dr.

Las Vegas, Nevada

LANDLORD

Spanish Heights Acquisition Company, LLC,
a Nevada limited liability company

TENANT

SJC Ventures, LLC
a Delaware limited liability company

REAL PROPERTY LEASE

THIS LEASE is made as of August 15, 2017, by and between Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("Landlord"), and SJC Ventures, LLC, a Delaware limited liability company ("Tenant") (the foregoing parties are collectively the "Parties" and each is a "Party").

ARTICLE I INTRODUCTORY PROVISIONS

1.1 Defined Terms. Capitalized terms used in this Lease and not otherwise defined shall have the meanings set forth or cross-referenced in Exhibit "1".

1.2 APPROVAL OF CBCI- The parties recognize that the execution this Real Property Lease is a condition to the Forbearance Agreement between CBC Partners I, LLC, and the Landlord, Tenant, and other parties. Accordingly, this Lease Agreement is subject to the written consent of CBCI ("CBCI's Consent"), in the form which is attached to Exhibit "2." The terms and conditions of CBCI's Consent, and the Forbearance Agreement shall supersede any provisions of this Lease that are inconsistent with, or contrary to, the Consent Agreement.

1.3 Basic Lease Provisions. The following are certain basic lease provisions that are part of and are referred to in subsequent provisions of this Lease:

- (a) Term:
 - (i) two (2) years commencing on the Rent Commencement Date and expiring on the Term Expiration Date, unless this Lease is extended as provided herein or is earlier terminated by Law or as otherwise provided herein.
 - (ii) Tenant shall be afforded, at Tenants sole option, two additional consecutive lease extensions consisting of a two years term for each of the two extensions, as may be exercised by Tenant.
- (b) Estimated Premises Delivery Date:
August 15, 2013
- (c) Rent Commencement Date:
The first day of the month following the Premises Delivery Date.
- (d) Base Rent:
Per schedule set forth below. The monthly Base Rent shall be abated during certain months as indicated:

Initial Term Monthly Base Rent:

<u>Lease Month</u>	<u>Monthly Base Rent</u>
1-3	\$0.00
3-24	\$4,375

(e) Tenant's Name:
SJC Ventures, LLC

(f) Permitted Use:

The Premises may be occupied and used by the Tenant and its assigned solely for those lawful purposes allowed pursuant to Statute, Ordinance and CC&Rs for the community.

(g) Notice Addresses:
Tenant: SJC VENTURES, LLC
5148 Spanish Heights Dr.,
Las Vegas, Nevada 89148

With copies to:

Landlord: SPANISH HEIGHTS
ACQUISITION COMPANY, LLC
5148 Spanish Heights Dr.,
Las Vegas, Nevada 89148

With copies to:

A COPY OF ANY NOTICES SHALL ALSO BE PROVIDED
TO CBCI IN ACCORDANCE WITH THE CONSENT
AGREEMENT.

Payments to:

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

(h) First Installment of Monthly Base Rent and Security Deposit:

Within 90 days of execution and delivery of this Lease, Tenant shall pay no less than the first year of the Monthly Base Rent of \$4,375.00 which installment shall be applied to the Monthly Base Rent for the third (3rd) through twelfth (12th) full calendar months of the Term. Monthly Base Rent for any partial calendar month at the beginning of the Term shall not be billable.

(i) Guarantor:

Tenant to provide a guarantee against its distributions resultant from its interest in 1st One Hundred Holdings, LLC. and any proceeds realized therefrom under such company's collections against its judgments in the Nevada State Clark County Eighth Judicial District Court Actions, cases numbered A-16-738970-C and A-17-753459-C.

1.3 Additional Provisions. The following provisions shall apply notwithstanding anything in this Lease to the contrary:

(a) Tenant Compliance with CC&Rs: Tenant shall comply with all CC&R obligations of unit owners and residents, as set forth in the Associations Governing Documents and Covenants Conditions and Restriction.

Should there be any compliance issue, Tenant shall be responsible to cure any such violation cited, and either defend or pay an fines associated with such violations asserted.

(d) Premises Delivery Condition: Landlord shall deliver the Premises in as is where is condition.

1.4 Modified Gross Lease. This Lease is a modified gross lease.

1.5 Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

EXHIBIT "1" - Definitions

EXHIBIT "2" - CBCI'S Consent to Lease.

ARTICLE II
PREMISES

2.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, subject to (a) the terms and conditions of this Lease, (b) all matters of record, and (c) all Community Association Governing Documents and Covenants Conditions and Restrictions.

ARTICLE III
TERM

3.1 Initial Term. The term of this Lease shall commence on the Rent Commencement Date and, unless this Lease extended as provided in Section 3.5 or is earlier terminated by Law or as elsewhere provided herein, shall expire at midnight on the "Term Expiration Date" which shall be the date at the end of the number of Lease Years stated in Section 1.2(d) (such term, as the same may be extended under Section 3.5, is referred to herein as the "Term").

3.2 Rent Commencement Date.

(a) As used in this Lease, the term "Rent Commencement Date" shall mean the date specified in Section 1.2(c).

3.3 Confirmation of Term. At any time following the Rent Commencement Date, Landlord and Tenant shall, within fifteen (15) days following the request of either Party, execute a written confirmation of the Rent Commencement Date and the Term Expiration Date.

3.4 Commencement of Tenant Obligations. From the date Landlord delivers possession of the Premises to Tenant until the Rent Commencement Date, Tenant shall observe and perform all obligations of Tenant hereunder (other than its obligations to pay Base Rent and Additional Charges) as if the term of this Lease began when possession of the Premises was so delivered to Tenant.

3.5 Extension of Term. Tenant is hereby granted an option to extend the term of this Lease, hereinafter referred to as the "Original Lease", for the additional consecutive periods set forth in Section 1.2(d), if any. Each such option shall be effectively exercised only if (a) Tenant notifies Landlord, in writing, no less than one (1) months nor more than six (6) months prior to the commencement of the applicable extension period, of Tenant's intention to exercise such option, and (b) Tenant, at the time of such notice and as of the commencement of such extension period, is not in default of this Lease. If Tenant fails to effectively exercise any such option, then such option, and any other future options to extend the term of this Lease, shall thereupon terminate. The terms and conditions of each extension period shall be the same as the terms and conditions of the Original Lease except that: (a) Tenant shall have no further right of extension after the expiration of the last extension period, and (b) the Base Rent payable during such extension period shall be calculated in accordance with Section 1.2(d).

3.6 Surrender Upon Lease Termination. Upon the expiration or earlier termination of this Lease, Tenant shall deliver and surrender to Landlord possession of the Premises in broom-clean

condition and otherwise in the state of condition and repair as Tenant is required to maintain the Premises hereunder.

3.7 Holding Over. If Tenant holds possession of the Premises after the expiration or earlier termination of this Lease, then Landlord may, in its sole and absolute discretion, treat such possession as an unauthorized holdover and as either a tenancy at sufferance or a month-to-month tenancy, upon the same terms and conditions as are hereinafter set forth, except that the monthly Base Rent shall be one hundred percent (100%) of the monthly Base Rent payable by Tenant immediately prior to such termination (prorated on a daily basis if such tenancy is treated by Landlord as a tenancy at sufferance). Nothing herein shall be construed to limit Landlord's right to obtain possession of the Premises upon termination of this Lease by unlawful detainer proceedings or otherwise if Landlord does not exercise its option to treat the continued possession by Tenant as a month-to-month tenancy, or to pursue any other remedy provided for in this Lease or available at law or in equity.

ARTICLE IV RENT

4.1 Base Rent.

(a) Tenant hereby covenants and agrees to pay to Landlord, without deduction or set-off and without notice or demand, as "Base Rent", the amount(s) set forth in Section 1.2(d), said amount(s) to be due and payable in monthly installments, in advance, on the Rent Commencement Date and on the first day of each and every calendar month thereafter. Monthly Base Rent for any partial calendar month shall be prorated based on the actual number of days in such month. A 30-day grace period shall exist on all rent due dates.

(b) Tenant shall pay the adjusted Base Rent as calculated pursuant to Section 1.2(d) commencing with the first month of the Lease Year affected by the adjustment. However, pending the determination of the adjusted Base Rent, Tenant shall continue to pay Base Rent in the same amount as the Base Rent for the Lease Year immediately preceding the Lease Year affected by the adjustment. When the adjusted Base Rent has been determined, Tenant, concurrently with the next monthly Base Rent payment due and payable after the furnishing by Landlord to Tenant of the computation of the adjusted Base Rent, in addition to the adjusted Base Rent for such month, shall pay Landlord a sum equal to the amount of the increase in the Base Rent due for each of the previous months in the Lease Year affected by the adjustment.

4.2 Manner of Payment. All Rent and other amounts that Tenant is required to pay to Landlord hereunder shall be paid in lawful currency of the United States of America at the address set forth in Section 1.2(d) or such other place as Landlord may, from time to time, designate in writing.

4.3 Late Charges. Notwithstanding anything in this Lease to the contrary, if Tenant fails to pay any Rent or other amount that Tenant is required to pay to Landlord hereunder within thirty (30) days

following the due date thereof, then Tenant shall pay to Landlord upon demand a late charge equal to two percent (2%) of the amount due per month from the due date thereof.

4.4 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of an amount less than the amount of any payment of Rent or other amount herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent or other amount, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent or other amount be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or other amount or pursue any other remedy provided for in this Lease or available at law or in equity.

ARTICLE V ADDITIONAL CHARGES

5.1 Status of Charges. Tenant shall additionally pay to Landlord, as part of the Rent, the amounts described in this Article VIII (collectively, the "Additional Charges").

5.2 Operating Costs.

(a) Tenant shall pay to Landlord Operating Costs. Tenant's share of the Premises Operating Costs shall be paid by Tenant to Landlord in equal monthly installments, in advance, without deduction or set-off and without notice or demand, on the first day of each calendar month during the Term in an amount equal to one-twelfth (1/12) of Tenant's share of the Premises Operating Costs as estimated by Landlord for the then current Landlord's Fiscal Year. The amount due for any partial Landlord's Fiscal Year shall be prorated based on the actual number of days in such year, and in any event, shall not exceed 10% of the base rent as specified in 1.2(d) above during the initial Lease Term. During any optional term, the 10% cap referenced in the preceding sentence will apply only to increases over the total Premises Operating Costs paid by Tenant in the final year of the initial Term.

(b) Within ninety (90) days after the end of each Landlord's Fiscal Year, Landlord shall furnish Tenant with a written statement in reasonable detail of the actual Operating Costs and the amount of Tenant's share thereof for such Landlord's Fiscal Year. If Tenant's share of the actual Operating Costs for such Landlord's Fiscal Year exceeds the aggregate of Tenant's monthly payments with respect thereto, then Tenant shall pay to Landlord any deficiency within thirty (30) days after Tenant's receipt of such statement from Landlord. If the aggregate of Tenant's monthly payments with respect thereto exceeds Tenant's share of the actual Operating Costs for such Landlord's Fiscal Year, then any surplus paid by Tenant shall be credited against the next installment of Rent due (except at the end of the Term, in which case Landlord shall pay such surplus to Tenant within thirty (30) days after Landlord's determination thereof). No failure of Landlord to provide such statement within the time prescribed shall relieve Tenant of its obligations hereunder. The obligations of Landlord and Tenant to make the foregoing adjustment shall survive the expiration or earlier termination of this Lease.

(c) As used herein, "Property Operating Costs" means all costs paid or incurred by Landlord in owning, operating, managing, maintaining, repairing, replacing, enhancing, securing, protecting and insuring the building, other improvements and spaces within the property, including,

without limitation: (i) costs of maintaining, repairing and replacing the roofs, structural portions and exteriors of the buildings in the Premises, (ii) costs of repainting the buildings and other improvements to the property, (iii) costs of electricity, water, gas, sewer and other utility services, (iv) costs of lighting, cleaning, heating, air-conditioning and otherwise cooling the premises, (v) costs of all maintenance and repairs necessary to preserve and maintain the utility and appearance of the premises, (vi) landscaping costs and costs of seasonal and other similar decorations for the premises, (vii) costs of installing, maintaining and repairing security systems, fire protection systems, lighting and utility systems, and storm drainage systems, (viii) trash, dirt, debris and other waste removal costs, (ix) pest extermination and control costs, (x) costs of supplies, materials, tools and equipment used in the operation, maintenance and repair of the premises, (xi) assessments paid or incurred by Landlord with respect to the premises under the Governing Documents or the CC&Rs, (xii) the reasonable costs of payroll, payroll taxes and employee benefits of all management personnel, including, managers, security and maintenance personnel, secretaries and bookkeepers, (xiii) reasonable consulting, accounting and legal fees and costs, (xiv) costs of purchasing and maintaining in full force all insurance that Landlord is required to maintain hereunder or that Landlord deems necessary or appropriate with respect to the premises, (xv) costs of services, if any, furnished by Landlord for the use of all tenants of the premises, including, without limitation, parcel pickup and delivery services, and (xvi) costs of improvements not part of initial premises construction which are (A) made to comply with Laws or insurance requirements not in force at the time of such initial construction, (B) undertaken for the protection of the health and safety of tenants, residents and other occupants of the premises and their agents, employees, customers and invitees, or (C) made for the purpose of reducing Premises Operating Costs.

5.3 Real Property Taxes.

(a) Tenant acknowledges that the Premises, its leasehold improvements and the underlying realty will be separately assessed for tax purposes. Tenant shall pay to Landlord as Tenant's share of the Real Property Taxes the portion of the Real Property Taxes set forth in Section 1.2(h). Tenant's share of Real Property Taxes shall be paid by Tenant to Landlord in equal monthly installments, in arrears, without deduction or set-off and without notice or demand, on the first day of each calendar month following the Term in an amount equal to one-twelfth (1/12) of Tenant's share of the Real Property Taxes as estimated by Landlord for the then current Landlord's Fiscal Year. The amount due for any partial Landlord's Fiscal Year shall be prorated based on the actual number of days in such year.

(b) Within ninety (90) days after Landlord's payment of the final installment of Real Property Taxes for each Landlord's Fiscal Year, Landlord shall furnish Tenant with a written statement in reasonable detail showing the actual amount of the Real Property Taxes and the amount of Tenant's share thereof for such Landlord's Fiscal Year. If Tenant's share of the actual Real Property Taxes for such Landlord's Fiscal Year exceeds the aggregate of Tenant's monthly payments with respect thereto, then Tenant shall pay to Landlord any deficiency within thirty (30) days after Tenant's receipt of such statement from Landlord. If the aggregate of Tenant's monthly payments with respect thereto exceeds Tenant's share of the actual Real Property Taxes for such Landlord's Fiscal Year, then any surplus paid by Tenant shall be credited against the next installment of Rent due (except at the end of the Term, in which case Landlord shall pay such surplus to Tenant within thirty (30) days after Landlord's determination thereof). No failure of Landlord to provide such statement within the time prescribed shall relieve Tenant of its obligations hereunder. The obligations of Landlord and Tenant to make the foregoing adjustment shall survive the expiration or earlier termination of this Lease.

(c) As used herein, "Real Property Taxes" means all taxes, assessments, levies, fees

and other governmental charges, general and special, ordinary and extraordinary, including, but not limited to, assessments for off-site public improvements for the benefit of the premises, which are laid, assessed, levied or otherwise imposed upon the premises or any part thereof and which are payable at any time during the Term, and all gross receipts taxes, rent taxes, business taxes and occupancy taxes, and shall include all of Landlord's reasonable administrative costs and all costs, including, without limitation, reasonable attorney fees, incurred by Landlord in contesting or negotiating any Premises Real Property Tax with any governmental authority, excepting only franchise, estate, inheritance, succession, capital levy, transfer, net income and excess profits taxes imposed upon Landlord.

(d) The Rent to be paid under this Lease shall be paid to Landlord absolutely and without deduction for taxes of any nature whatsoever. Landlord and Tenant recognize and acknowledge that there may be changes in the current real property tax system and that there may be imposed new forms of taxes, assessments, levies, fees or other governmental charges, or there may be an increase in certain existing taxes, assessments, levies, fees or other governmental charges placed on, or levied in connection with the ownership, leasing, occupancy or operation of, the Premises. All such new or increased taxes, assessments, levies, fees or other governmental charges which are imposed or increased as a result of or arising out of any changes in the structure of the real property tax system or any limitations on the real property taxes which can be assessed on real property including, but not limited to, any and all taxes, assessments, levies, fees and other governmental charges imposed due to the existence of this Lease (including any surcharge on the income directly derived by Landlord therefrom) or for the purpose of funding special assessment districts of the type funded by real property taxes, shall also be included within the meaning of "Premises Real Property Taxes". With respect to any general or special assessment which may be levied against or upon the Premises and which under the Laws then in force may be evidenced by improvement or other bonds, or may be paid in periodic installments, there shall be included within the meaning of "Real Property Taxes" with respect to any Landlord's Fiscal Year only the amount currently payable on such bond for such Landlord's Fiscal Year, or the periodic installment for such Landlord's Fiscal Year.

(e) Tenant shall be responsible for payment of any type of tax, excise or assessment (regardless of label or whether in the form of a rental tax, gross receipts tax, sales tax, business or occupation tax, use assessment, privilege tax, franchise tax, or otherwise, except any tax, excise or assessment which in substance is a net income or franchise tax that is based solely on Landlord's net income) which is laid, assessed, levied or otherwise imposed at any time by any governmental authority upon or against the Premises, the use or occupancy of the Premises, the Rent payable by Tenant to Landlord, or otherwise with respect to the landlord-tenant relationship hereunder. Tenant shall pay the full amount of such tax, excise or assessment directly to the appropriate governmental authority, unless the applicable law expressly imposes solely on Landlord the duty to pay or collect such tax, excise or assessment, in which case Tenant shall pay the full amount of such tax, excise or assessment as part of the Rent due and payable under this Lease to Landlord within thirty (30) days following receipt of Landlord's billing therefor. Notwithstanding that the applicable Law may impose on Landlord the duty to pay or collect such tax, excise or assessment, it is understood and agreed that Tenant shall nevertheless be obligated to pay such tax, excise or assessment and Landlord shall be indemnified against and held harmless from the same by Tenant. If (i) Tenant fails to timely pay such tax, excise or assessment and Landlord pays the same, or (ii) Landlord elects in its sole and absolute discretion to pay the same in advance, then Tenant shall promptly reimburse Landlord for the amount thereof as part of the Rent next due and payable under this Lease. The provisions of this paragraph shall also apply to any such tax, excise or assessment which may at any time replace or supplement any tax, excise or assessment described herein.

ARTICLE VI SECURITY DEPOSIT

6.1 Security Deposit. Within 90 days of the Tenant's execution and submission of this Lease, Tenant shall deposit with Landlord and thereafter during the Term shall maintain on deposit with Landlord, without interest, the sum set forth in Section 1.2(d) as security deposit for the full, prompt and faithful performance by Tenant of all of its obligations hereunder. The Parties agree that it is the intent of the Parties that (a) such deposit or any portion thereof may be applied by Landlord to the initial obligations of the Tenant under this Agreement and/or the curing of any default that may exist, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and at the end of the first year, Tenant shall pay to Landlord upon demand the amount so applied which shall be added to the security deposit so that the same will be restored to its original amount, (b) Landlord shall not be obligated to hold the security deposit as separate funds, but may commingle it with other funds, (c) if Tenant performs all of the terms, covenants and conditions of this Lease on its part to be kept and performed, then the security deposit, or any then remaining balance thereof, shall be returned to Tenant, without interest, within sixty (60) days after the expiration of the Term, and (d) should the Premises be transferred by Landlord, the security deposit or any balance thereof may be turned over to Landlord's successor or transferee, and if the security deposit is turned over to such successor or transferee, Tenant agrees to look solely to such successor or transferee with respect to any required return of the security deposit.

ARTICLE VII UTILITIES AND OTHER SERVICES

7.1 Utilities. Landlord will provide at points available to the Premises (through conduits, shafts, ducts or otherwise) the facilities necessary to enable Tenant to obtain for the Premises electricity, water, gas, sewer, cable and telephone service. Landlord, at its sole cost and expense, shall be responsible for installing and constructing all equipment, lines, improvements and alterations necessary to pull or otherwise bring such utilities from such points to the Premises. Landlord shall be solely responsible for, and shall promptly and timely pay, all costs (including, without limitation, connection and service charges) of all electricity, water, gas, sewer, telephone, and other utilities and services consumed or used at the Premises directly to the utility or service provider or to Landlord, as Landlord may direct, on the basis, where applicable, of separate meters and otherwise on such basis as Landlord reasonably designates. Landlord shall also pay all costs of installing meters or sub-meters, to the extent available, for such utilities and services. With respect to costs for utilities and services billed directly by Landlord, Landlord shall not charge Tenant at a rate in excess of the rate the utility and service providers would otherwise charge Tenant if billed directly ("Additional Charges").

7.2 Premises HVAC. Landlord, shall maintain all equipment, alterations and improvements necessary to provide HVAC for the premises. Tenant shall ensure that all Premises HVAC equipment is installed, operated and maintained in a manner that prevents roof leaks, damage or noise due to vibrations or improper installation, operation or maintenance.

7.3 Interruption of Service. Landlord shall not be liable to Tenant in damages or otherwise if

any one or more of such utilities or services used or consumed at the Premises is interrupted or terminated because of (a) necessary repairs, maintenance, replacements, improvements or alterations, (b) the failure or inability of any provider of any such utility or service to provide such utility or service to the Premises, (c) any Law, or (d) any other cause beyond Landlord's reasonable control. No such interruption or termination of utilities or services shall relieve Tenant from any of its obligations under this Lease.

7.4 Trash. Tenant shall dispose of all garbage, refuse, trash and other waste in the kind of containers, in the areas and otherwise in the manner reasonably directed by Landlord. If Tenant requires the services of a trash compactor or any special waste processing, it agrees to arrange for and coordinate such services through Landlord. Should Landlord implement a recycling program, Tenant agrees to follow all procedures designated by Landlord in compliance therewith.

7.5 Services. Tenant acknowledges that Landlord has entered into or may in the future enter into agreements with service providers (collectively, "Service Providers") for pest control, garbage removal and disposal, recycling, telecommunications services (including, without limitation, telephone, cable, internet, data, wireless and other communications services) and other services to provide services to the premises and its tenants for the purpose of achieving uniformity of services, favorable pricing and/or limiting the number of service providers working in or providing services to the Premises and its tenants. Landlord may, at its sole discretion, assume the sole responsibility of contracting with such Service Providers, and Tenant shall then be responsible for, and shall promptly and timely pay, all costs for such common services consumed or used at the Premises by Tenant, by making payment in advance either directly to the Common Service Provider or to Landlord, as determined by Landlord, on the basis Landlord reasonably designates. Landlord shall not charge Tenant at a rate in excess of the rate the Service Providers would otherwise charge Tenant directly (except that Landlord may include a reasonable administrative charge in such costs). In the event Landlord delegates any such service responsibilities directly to Tenant, Tenant agrees to contract with such Service Providers and to abide by the terms of Landlord's agreements with such Service Providers, provided that the amounts which are to be paid to such Service Providers by Tenant, and the quality of product and level of service to be provided by such Service Providers to Tenant, shall at all times be competitive in the Las Vegas metropolitan area. Upon request by Landlord, Tenant shall provide a copy of all documentation evidencing regular and proper conduct of all such services delegated to Tenant.

ARTICLE VIII MAINTENANCE

8.1 Maintenance by Landlord.

(a) Landlord shall keep and maintain the facilities described in the first sentence of Section 12.1, the roof, structural portions, interior and exterior of the Premises, in good and tenantable condition and repair during the Term; provided, however, that if the need for any such repair is attributable to or results from any violation of this Lease by Tenant or any act, omission, negligence or misconduct of Tenant, its agents, employees or contractors, then in such case Tenant shall reimburse Landlord on demand for all costs and expenses incurred by Landlord with respect to such repairs.

(b) For purposes of this Article VIII, neither the structural portions of the Premises

nor the exterior of the Premises shall be deemed to include the plate or other glass, window cases or frames, doors or door frames of the Premises.

(c) Landlord shall not be liable to Tenant for any failure by Landlord to make any repairs that Landlord is required to make hereunder unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence such repairs within a reasonable period of time following Landlord's receipt of Tenant's written notification or to thereafter diligently pursue such repairs to completion.

8.2 Maintenance by Tenant. Tenant, at its sole cost and expense, shall keep and maintain in good condition and repair the plate and other glass, window cases and frames, doors and door frames of the Premises; all equipment, lines, improvements and alterations for electricity, water, gas, sewer, HVAC, and other utilities and services which serve the Premises exclusively, whether located within or outside of the Premises; the interior of the Premises; all equipment, fixtures, alterations and improvements located in or exclusively serving the Premises; and all other portions of the Premises other than those that Landlord is expressly required to maintain under Section 13.1. All repairs and replacements made by Tenant under this Section 13.2 shall be in quality and class equal to the original work or item, and shall be performed in a good and workmanlike manner, in compliance with all applicable Laws, and at such times and in such manners as Landlord may reasonably designate to minimize any interference with the operation of the Premises. Tenant shall indemnify Landlord for expenses incurred by Landlord as a result of Tenant's failure to satisfy its maintenance requirements.

8.3 Casualty and Condemnation. This Article VIII shall not apply to damage caused by a fire or other casualty, or by condemnation. The relative obligations of Landlord and Tenant with respect to the repair of such damage shall instead be governed by the provisions of Article XIX or Article XX, as applicable.

ARTICLE IX CHANGES TO PREMISES

9.1 Alternations and Remodeling.

(a) Tenant, at its sole cost and expense, shall have the right, during the Term, to make such interior installations, improvements and other alterations in or to the Premises as Tenant may deem necessary or desirable for its use of the Premises; provided, however, that Landlord's prior written consent shall be required for (i) any installation, improvement or other alteration that requires a building permit under any applicable Law, (ii) any changes in the appearance of the Premises from any Common Area, (iii) any change to or affecting the structure of the Premises or the Building, and (iv) any material change to or affecting the electrical, water, gas, sewer, HVAC or any other mechanical system of the Premises, the Building or the Premises. Tenant shall not make any installation, improvement or other alteration in or to any other portion of the Premises (including, without limitation, the exterior walls or roof of the Premises), or make any penetration through the floor, exterior wall, grey shell ceiling or roof of the Premises, without Landlord's prior written consent. No consent of Landlord to any installation, improvement or other alteration shall create any responsibility or liability on the part of Landlord for their design, sufficiency or compliance with any Laws. In connection with any installation, improvement or other alteration in or to the Premises by Tenant, Landlord may require Tenant, at Tenant's sole cost and expense, to furnish to Landlord a payment and performance bond naming Landlord as beneficiary from a

surety reasonably satisfactory to Landlord, or other security reasonably satisfactory to Landlord, to assure diligent and faithful payment for and performance thereof. Tenant's compliance with NRS 108.2403 shall satisfy the performance bond requirements contained in the preceding sentence. If any installation, improvement or other alteration made by Tenant impacts the structure or any mechanical system of the Premises, the Building or the Premises, or if Tenant otherwise has the same prepared, then Tenant shall deliver "as-built" plans to Landlord promptly upon completion thereof.

(b) All installations, improvements and other alterations in or to the Premises made by Tenant shall be made promptly, in a good and workmanlike manner, in accordance with all applicable Laws, using contractors approved by Landlord in writing, and at such times and in such manners as Landlord may reasonably designate to minimize any interference with the operation of the Premises.

ARTICLE X LIENS

10.1 Liens. Tenant shall use reasonable efforts to prevent any mechanic's, materialman's or other lien directly attributable to the Tenant's actions from being filed against the Premises, the Building or the Premises as a result of work, labor, services or materials performed for or furnished to Tenant. If any such lien is filed, then Tenant shall (a) cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction or otherwise within thirty (30) days of Tenant's receipt of notice of such filing, subject to Tenant's right to contest the claim of such lien as provided below in this Article XV, and (b) defend (using counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord against and from all legal action, damages, loss, liability and other expenses (including reasonable attorney fees) arising from or out of such lien. If Tenant desires to contest any claim of any such lien, then Tenant, at its sole cost and expense, may do so upon furnishing Landlord with security reasonably acceptable to Landlord in the amount of at least one hundred fifty percent (150%) of the amount of such claim, plus estimated costs and interest. If a final judgment establishing the validity of such claim, or any part thereof, is entered, then Tenant shall pay and satisfy the same at within fifteen (15) days of such entry.

10.2 Litigation liens. Landlord shall endeavor to clear all third party liens, resultant from judgments, against the subject premises, through the initiation of a Quiet Title action.

ARTICLE XI OWNERSHIP OF TENANT IMPROVEMENTS AND PERSONAL PROPERTY

11.1 Tenant Improvements. Subject to Section 11.2, all installations, improvements and other alterations made by Tenant in or to the Premises, including, without limitation, HVAC equipment, water heaters, plumbing fixtures, lighting fixtures, wall coverings and floor finishes, shall become the property of Landlord upon completion and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Lease without any obligation on the part of Landlord to compensate Tenant for the same.

11.2 Tenant Personal Property. All fixtures installed by Tenant on or in the Premises ("Tenant

Personal Property") shall be and remain the property of Tenant and shall be removable at any time, including upon the expiration or earlier termination of this Lease. Tenant shall promptly repair any damage to the Premises caused by the removal of any Tenant Personal Property. Any Tenant Personal Property not removed from the Premises by Tenant upon the expiration or within fifteen (15) days after any earlier termination of this Lease may be construed by Landlord as abandoned by Tenant. Alternatively, Landlord may order Tenant to remove such Tenant Personal Property from the Premises or have the same removed at Tenant's expense. All costs associated with the installation and removal of Tenant Personal Property, inclusive of damage repair expenses, shall be the sole responsibility of Tenant.

11.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, levies, fees and other governmental charges which are laid, assessed, levied or otherwise imposed upon Tenant's business operations, leasehold improvements, trade fixtures, equipment and other personal property at the Premises.

ARTICLE XII RIGHTS OF LANDLORD

12.1 Landlord's Right to Access and Make Repairs. Landlord, solely upon notice to and consent by the Tenant (except in the case of an emergency in which case no such notice shall be required), shall have the right to enter the Premises to inspect the Premises, to make repairs to the Premises that Landlord is required to make hereunder, to perform any other obligation of Landlord hereunder, and to make repairs to the Building, during normal business hours and at any other time the Premises is open for business (and at any time in the case of an emergency). If Tenant is not in compliance with any maintenance or repair obligation of Tenant under this Lease, then Landlord shall have the right to immediately in the case of an emergency, and otherwise upon five (5) days notice (unless Tenant commences curing such noncompliance within such five (5) day period and thereafter diligently pursues such curing to completion), enter upon the Premises to remedy said noncompliance at Tenant's expense (payable as additional rent within thirty (30) days following receipt of Landlord's billing). In connection with any exercise of its rights under this Section 12.1, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business, but shall not be liable for any interference caused thereby.

12.2 Landlord's Right to Make Payments on Behalf of Tenant. Landlord has a right to make payments on behalf of Tenant where Tenant defaults in its payments or obligations under the terms of this Lease and fails to make such payments or perform such obligations within five (5) days of Landlord's notice to Tenant of such default. Said payments by Landlord shall be considered as additional rent and be due and payable within thirty (30) days following receipt of Landlord's billing.

ARTICLE XIII INDEMNITY AND INSURANCE

13.1 Mutual Indemnification.

(a) Subject to Section 13.4, Tenant shall defend (by counsel reasonably acceptable to

Landlord), indemnify and hold harmless Landlord against and from legal action, damages, loss, liability and any other expense (including reasonable attorney fees) in connection with loss of life, bodily or personal injury or property damage arising from or out of all acts, failures, omissions or negligence of Tenant, its agents, employees or contractors which occur in the Premises, or other parts of the Premises, unless and to the extent such legal action, damages, loss, liability or other expense (including reasonable attorney fees) results from any act, omission or neglect of Landlord, its agents, contractors, employees or Persons claiming through it.

(b) Subject to Section 13.4, Landlord shall defend (by counsel reasonably acceptable to Tenant), indemnify and hold harmless Tenant against and from legal action, damages, loss, liability and any other expense (including reasonable attorney fees) in connection with loss of life, bodily or personal injury or property damage, arising from or out of all acts, failures, omissions or negligence solely due to the conduct of Landlord, its agents, employees or contractors which occur in the Premises, Premises or other parts of the Premises, unless and to the extent such legal action, damages, loss, liability or other expense (including reasonable attorney fees) results from any act, omission or neglect of Tenant, its agents, contractors, employees or Persons claiming through it.

13.2 Tenant's Insurance.

(a) General Requirements. Tenant shall, from and after the date of delivery of the Premises from Landlord to Tenant and during the Term, carry and maintain with respect to the Premises the types of insurance set forth in Section 13.2(b), each of which shall be in the amount hereinafter specified (or in such other amount as Landlord may from time to time reasonably request) and in the form hereinafter provided for, and each of which shall be with an insurance company authorized to do business in the State of Nevada and rated A-/VIII or better in the most current edition of Best's Insurance Report. All policies of insurance required to be carried and maintained by Tenant hereunder (other than workers compensation policies of insurance) shall (i) name as additional insureds Landlord, each Secured Lender and such other Persons as Landlord specifies from time to time, (ii) contain a provision that Landlord and the other additional insureds, although named as insureds, shall nevertheless be entitled to recover under such policies for any loss occasioned to any of them by reason of the negligence or willful misconduct of Tenant, and (iii) contain a waiver of subrogation with regard to any claim against Landlord. All policies of such insurance shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord or any other Person may carry, and shall provide that Landlord be given written notice thirty (30) days prior to the expiration, material alteration, cancellation, non-renewal or replacement of the existing policies. Should Tenant fail to furnish said notice or obtain the policies as is provided in this Lease, and at the times herein provided, Landlord may obtain such insurance and the premiums on such insurance shall be deemed to be an Additional Charge to be paid by Tenant to Landlord upon demand. Tenant may maintain any of its required insurance coverages under umbrella or blanket policies of insurance covering the Premises and any other premises of Tenant, or any Affiliate of Tenant, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy.

(b) Required Insurance.

(i) Tenant shall carry and maintain commercial general liability insurance with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence. The policy for such insurance shall be written on an "occurrence" basis and shall include coverage for (A) personal injury claims including, without limitation, claims for bodily injury, death and property damage, (B)

contractual liability, with defense provided in addition to the policy limits for indemnitees of the named insured, (C) personal and advertising liability, including, without limitation, liability arising from intentional torts such as libel, slander, invasion of privacy, copyright infringement and unlawful detention, and (D) products and completed operations. Such policy shall provide for severability of interests, and shall not include a deductible in excess of \$25,000.00.

(ii) Tenant shall carry and maintain property insurance covering all leasehold improvements made by Tenant (including Tenant's Work), Tenant Personal Property and other personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof, without deduction for depreciation, providing protection against any peril included within the classification "all risks" insurance (including but not limited to coverage for water damage from all causes, including sprinkler damage, sewer discharge or backup, water line breakage, and overflow from Tenant's spaces). The policy for such insurance shall be endorsed with ISO endorsements specifying coverages for additional costs of contingent liability from the operation of building codes, increased costs of construction, debris removal and demolition costs. Such policy shall include coverage for all glass windows, doors and other glass fixtures and appurtenances at the Premises. The deductible under such policy shall not exceed Five Thousand Dollars (\$5,000.00) per occurrence. Landlord shall be named as a loss payee with respect to the coverage for Tenant improvements.

(c) Notice of Loss. Tenant shall promptly notify Landlord of any damage to Persons or property that occurs at the Premises from fire, any other casualty or serious injury.

13.3 Landlord's Insurance.

(a) General Requirements. Landlord shall, from and after the date of delivery of the Premises from Landlord to Tenant and during the Term, carry and maintain the types of insurance set forth in Section 13.3(b), each of which shall be in the amount hereinafter specified and in the form hereinafter provided for, and each of which shall be with an insurance company authorized to do business in the State of Nevada and rated A-/VIII or better in the most current edition of Best's Insurance Report. Landlord may maintain any of its required insurance coverages under umbrella or blanket policies of insurance covering the Building and any other premises of Landlord, or any Affiliate of Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy. All premiums for insurance maintained by Landlord pursuant to this Section 13.3 shall be a part of the Premises Operating Costs.

(b) Required Insurance. Landlord shall carry and maintain (i) general liability insurance with respect to the Premises with such limits as Landlord may reasonably determine, and (ii) property insurance covering the Building (excluding Tenant's Work, Tenant Personal Property, all other property required to be covered by Tenant's insurance under Section 13(b)(ii), and all property required to be covered by the property insurance of other tenants or occupants of the Building) in such amount as Landlord may reasonably determine, but in no event less than the amount required any Secured Lender.

13.4 Waiver of Subrogation. Notwithstanding anything to the contrary contained elsewhere in this Lease, neither Party shall be liable to the other Party, or to any insurance company insuring the other Party by way of subrogated rights or otherwise, for any loss or damage which is covered by any insurance carried, or required to be carried, by Tenant under Section 13.2(b), or any insurance carried, or required to be carried, by Landlord under Section 13.3(b).

13.5 Limitations on Landlord's Liabilities. Landlord shall not be responsible or liable to Tenant, or those claiming by, through or under Tenant, for any loss or damage to their person or property resulting from (a) the acts or omissions of Persons occupying space adjoining or adjacent to the Premises or connected to the Premises, or occupying any other space within the Premises, (b) the acts or omissions of any other Persons (except as otherwise expressly provided in Section 13.1(b)), or (c) events such as the breaking or falling of electrical cables and wires; or the breaking, bursting, stoppage or leaking of water, gas, sewer, or steam pipes or equipment.

ARTICLE XIV CASUALTY

14.1 Landlord's Obligation to Repair and Reconstruct.

(a) If the Premises shall be partially damaged by fire or other casualty but are not thereby rendered unsuitable for the purposes contemplated herein, Landlord shall cause the Premises to be repaired, subject to Section 14.1(c) and Section 14.2, and the Base Rent and Additional Charges shall not be abated. If by reason of such occurrence the Premises shall be rendered unsuitable for the purposes contemplated herein only in part, Landlord shall cause the Premises to be repaired, subject to Section 14.1(c) and Section 14.2, and the Base Rent and Additional Charges shall be abated proportionately as to the portion of the Premises rendered unsuitable for the purposes contemplated herein from the date of such occurrence until the earlier to occur of ninety (90) days after Landlord's restoration work has been substantially completed or the date the Premises so repaired has reopened for business.

(b) If the Premises shall be rendered wholly unsuitable for the purposes contemplated herein by reason of such occurrence, Landlord shall cause the Premises to be repaired, subject to Section 14.1(c) and Section 14.2, and the Base Rent and Additional Charges shall be abated from the date of such occurrence until the earlier to occur of ninety (90) days after Landlord's restoration work has been substantially completed or the date the Premises so repaired has reopened for business.

(c) If Landlord is required or elects to repair or reconstruct the Premises under the provisions of this Article XIV, its obligation shall be limited to that work with respect to the Premises which was Landlord's obligation to perform for Tenant at the commencement date of this Lease. Upon Landlord's completion of the work required to be performed by Landlord under this Section 14.1, other than details of construction which do not materially interfere with the performance of the work to be performed by Tenant under this Section 14.1, Tenant, at Tenant's expense, shall promptly perform all repairs and restoration not required to be done by Landlord and shall promptly re-fixture and reconstruct the Premises and recommence business in all parts thereof.

(d) Tenant shall not be entitled to any compensation or damages, other than stated herein, from Landlord for the loss of the use of the whole or any part of the Premises or damage to Tenant Personal Property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

14.2 Option to Terminate. Landlord may elect to terminate this Lease by giving to Tenant notice of such election within ninety (90) days after the occurrence of any of the events below. If notice is given, this Lease shall terminate as of the date of such notice and Base Rent and Additional Charges shall be adjusted as of the date of such termination.

(a) the Premises are rendered wholly untenable, or damaged as a result of any cause which is not covered by Landlord's actual insurance or Landlord's required insurance under Section 13.3(b),

(b) the Premises are damaged or destroyed to the extent of twenty-five percent (25%) or more of the cost of replacement during the second-to-last Lease Year of the Term,

(c) the Premises are materially damaged or destroyed in whole or in part during the last Lease Year of the Term, or

(d) the Premises is damaged to the extent of ten percent (10%) or more of the cost of replacement, However, Landlord shall not terminate this Lease solely pursuant to this clause.

Notwithstanding the foregoing provisions, if Landlord terminates this Lease solely pursuant to clause (b) or clause (c) of this Section 14.2, and if at the time Tenant receives notice of such termination any option of Tenant to extend the term of this Lease under Section 6.5 may still be validly exercised, then Tenant may nullify Landlord's termination notice, and require Landlord to repair the Premises in accordance with Section 14.1, by exercising such option by giving Landlord written notice of such exercise within thirty (30) days after Tenant's receipt of Landlord's notice of termination. Tenant hereby waives any statutory rights of termination which may arise out of partial or total destruction of the Premises which Landlord is obligated to restore.

14.3 Demolition of Premises. If the Premises is so substantially damaged that it is reasonably necessary, in Landlord's reasonable judgment, to demolish a portion of the Premises, including the Premises, for the purpose of reconstruction, Landlord may demolish the Premises, in which event Tenant's Base Rent and Additional Charges shall be abated from the date of the casualty until the earlier to occur of ninety (90) days after Landlord's restoration work has been substantially completed or the date the Premises so restored has reopened for business.

ARTICLE XV CONDEMNATION

15.1 Condemnation. If the whole or substantially the whole of the Premises or the Premises shall be taken for any public or quasi-public use, by right of eminent domain or otherwise, or shall be voluntarily sold or conveyed in lieu of condemnation (but under threat of condemnation), then this Lease shall terminate as of the date when physical possession of the Premises or the Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Premises is so taken, sold or conveyed, then Landlord (whether or not the Premises are affected thereby) may terminate this Lease by giving written notice thereof to Tenant prior to the date when physical possession of such portion of the Premises is taken by the condemning authority if such taking, sale or conveyance substantially impairs access to the Premises or the usefulness of the Premises as a mixed-use development, in which event this Lease shall terminate as of the date when physical possession of such portion of the Premises is taken by

the condemning authority. If less than the whole or substantially the whole of the Premises or the Premises is so taken, sold or conveyed, then either Landlord or Tenant may terminate this Lease by giving written notice thereof to the other party prior to the date when physical possession of such portion of the Premises or the Premises is taken by the condemning authority if such taking, sale or conveyance substantially impairs access to the Premises or the usefulness of the Premises for the purposes herein granted to Tenant, in which event this Lease shall terminate as of the date when physical possession of such portion of the Premises or the Premises is taken by the condemning authority. If this Lease is not so terminated upon any such taking, sale or conveyance, then (a) Landlord shall, to the extent Landlord deems feasible, restore the Premises and the Premises to substantially their former condition, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Premises and the Premises, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for such taking, sale or conveyance, and (b) if any portion of the Premises is so taken, sold or conveyed, the Base Rent and Additional Charges shall be equitably reduced based on the manner the same are calculated hereunder (i.e., whether they are calculated on a square foot or fixed rate basis). All compensation awarded for any such taking, sale or conveyance of the fee and the leasehold, or any part thereof, shall belong to and be the property of Landlord. Tenant hereby assigns to Landlord all right, title and interest of Tenant in and to any award made for leasehold damages and/or diminution in the value of Tenant's leasehold estate. Tenant shall have the right to claim such compensation as may be separately awarded or allocated by reason of the cost or loss to which Tenant may incur in removing Tenant's fixtures, leasehold improvements and equipment from the Premises. Compensation as used in this Article XX shall mean any award given to Landlord for such taking, sale or conveyance in excess of, and free and clear of, all prior claims of the holders of any mortgages, deeds of trust or other security interests. No such taking, sale or conveyance shall operate as or be deemed an eviction of Tenant or a breach of Landlord's covenant of quiet enjoyment. Tenant hereby waives any statutory rights of termination which may arise by reason of any such partial taking, sale or conveyance of the Premises.

ARTICLE XVI
SUBORDINATION AND ATTORNMENT BY TENANT

16.1 Subordination of Lease. This Lease and the estate of Tenant hereunder shall be subject and subordinate to any ground lease, deed of trust, mortgage lien, or any reciprocal easement agreement or other operating agreement which now encumbers or which at any time hereafter may encumber the Premises (such ground lease, deed of trust, mortgage lien, or reciprocal easement agreement or other operating agreement, and any replacement, renewal, modification, consolidation or extension thereof, being hereinafter referred to as an "Encumbrance"). Any Encumbrance shall be prior and paramount to this Lease and to the right of Tenant hereunder and all Persons claiming through and under Tenant, or otherwise, in the Premises. Tenant's acknowledgment and agreement of subordination provided for in this Section 21.1 shall be self-operative and no further instrument of subordination shall be required. However, Tenant, on Tenant's behalf, and on behalf of all Persons claiming through and under Tenant, covenants and agrees that, from time to time at the request of Landlord or the holder of any Encumbrance, Tenant will execute and deliver any necessary or proper instruments or certificates reasonably necessary to acknowledge or confirm the priority of the Encumbrance over this Lease and the subordination of this Lease thereto or to evidence Tenant's consent to any Encumbrance. Notwithstanding the foregoing, any holder of an Encumbrance may elect to the extent possible that this Lease shall have priority over such Encumbrance and, upon notification of such election by the holder of such Encumbrance, this Lease shall

be deemed to have priority over such Encumbrance, whether this Lease is dated prior to or subsequent to the date of such Encumbrance.

16.2 Attornment by Tenant. Tenant agrees that if the holder of any Encumbrance or any Person claiming under said Encumbrance shall succeed to the interest of Landlord in this Lease, then Tenant shall recognize and attorn to said holder as Landlord under the terms of this Lease. Tenant agrees that it will, upon the request of Landlord, execute, acknowledge and deliver any and all instruments necessary or reasonably requested by Landlord or its lender to give effect or notice of such attornment and failure of Tenant to execute any such document or instrument upon demand shall constitute a default by Tenant under the terms of this Lease.

ARTICLE XVII ASSIGNMENT AND SUBLETTING

17.1 Landlord's Consent Required.

(a) Tenant shall not mortgage, pledge, encumber, franchise, assign or in any manner transfer this Lease, voluntarily or involuntarily, by operation of law or otherwise, nor sublet all or any part of the Premises for the conduct of any business by any unrelated third Person who does not maintain a relationship with Tenant, or for any purpose other than is herein authorized without Landlord's prior written consent, which shall not be unreasonable withheld.

(b) If Tenant is a "closely-held" entity (meaning a corporation which is not listed on a national securities exchange as defined in the Securities Exchange Act of 1934, as amended, a partnership, a limited liability company, or any other type of business entity that is not a corporation), a change in the "control" of Tenant or in the "control" of any entity that directly or indirectly "controls" Tenant ("control" meaning the ownership or control of fifty percent (50%) or more of the voting or ownership interests of an entity or, if such entity is a partnership, the general partner of such entity) without Landlord's prior written consent shall constitute an attempted assignment in violation of this Lease and shall at Landlord's election: (i) be deemed to be a default under this Lease, (ii) be deemed to be an offer of return of the Premises to Landlord pursuant to Section 22.3, or (iii) be deemed to be null and void and of no effect.

(c) Any consent by Landlord to any assignment or subletting, or other operation by a concessionaire, or licensee, shall not constitute a waiver of the necessity for such consent under any subsequent assignment or subletting or operation by a concessionaire or licensee.

(d) Reference anywhere else in this Lease to an assignee or subtenant shall not be considered as a consent by Landlord to such assignment or subletting nor as a waiver against the same except as specifically permitted in this Section 22.1.

(e) Notwithstanding the foregoing provisions, Tenant shall have the right to assign or otherwise transfer this Lease or sublease the Premises (in whole or in part), to its parent or to a wholly owned subsidiary or to an entity which is wholly owned by the same entity which wholly owns Tenant or to a related third party, provided, however, that (i) Tenant shall also remain primarily liable for all obligations under this Lease, (ii) the transferee shall, prior to the effective date of the transfer, deliver to

Landlord, instruments evidencing such transfer and its agreement to assume and be bound by all the terms, conditions and covenants of this Lease to be performed by Tenant, all in form acceptable to Landlord, (iii) Tenant shall not be in default under this Lease and (iv) Tenant's right to make such transfer is expressly conditioned on, and shall remain in effect only as long as the transferee maintains its relationship as parent or wholly owned subsidiary of Tenant or wholly owned subsidiary of Tenant's parent.

(f) If Landlord approves a sublease or assignment other than a sublease or assignment made pursuant to subsection 17.1(e) of this Lease, 50% of any profits generated from said sublease/assignment shall be paid by Tenant to Landlord as they are generated.

17.2 Insolvency Proceedings. If an assignment of the Premises is caused by operation of law due to Tenant's voluntary or involuntary insolvency proceedings under bankruptcy law, said assignment shall be subject to any and all provisions of the Bankruptcy Code as amended at the time of said assignment.

17.3 Return of Premises by Tenant. Prior to or simultaneously with any request by Tenant for consent as required in this Article XVII to assign this Lease or sublet the whole or substantially the whole of the Premises, Tenant shall, by written notice and without charge of any kind, offer the return of the Premises to Landlord herein. Landlord, within thirty (30) days of receipt of said written notice, shall have the option to accept the Premises without further liability upon Tenant as to the terms of this Lease ; provided, however, that if Landlord elects to accept the Premises, then Tenant may, by written notice to Landlord within thirty (30) days of Landlord's notice to Tenant of such election by Landlord, rescind such offer and continue to lease the Premises on the terms and conditions set forth herein.

17.4 Acceptance of Rent by Landlord. If this Lease be assigned, or if the Premises, or any part thereof, be subleased or occupied by anybody other than Tenant with or without Landlord's consent, Landlord may collect from assignee, subtenant or occupant, any Rent or other charges payable by Tenant under this Lease and apply the amount collected to the Rent herein reserved, but such collection by Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of this assignee, subtenant or occupant, as a tenant of the Premises.

17.5 No Release of Tenant's Liability. No assignment or subletting or any other transfer by Tenant, either with or without Landlord's consent, required or otherwise, during the Term shall release Tenant from any liability under the terms of this Lease nor shall Tenant be relieved of the obligation of performing any of the terms, covenants and conditions of this Lease.

17.6 Legal Fees. In each instance where Landlord's consent to an assignment or subletting is requested by Tenant, Tenant acknowledges and agrees that Landlord shall not be deemed to be acting unreasonably if Landlord, as one of its conditions to the granting of such consent, should require Tenant to pay the reasonable attorney's fees incurred by Landlord for outside counsel, if any, or counsel for Landlord's lender if such lender's consent should be required, in the preparing, reviewing, negotiating and/or processing of documentation in connection with the requested assignment or subletting irrespective of whether or not consent is given to such assignment or subletting.

ARTICLE XVIII
DEFAULT

18.1 Events of Default. Each of the following shall be considered an "Event of Default" and shall give rise to and entitle Landlord to the remedies provided for in Section 23.2, as well as any and all other remedies, whether at law or in equity, provided for or otherwise available to Landlord or as otherwise provided for in this Lease:

(a) Tenant shall default in the payment of any Rent or charges, or in the payment of any other sums of money required to be paid by Tenant to Landlord under this Lease, or as reimbursement to Landlord for sums paid by Landlord on behalf of Tenant in the performance of the covenants of this Lease, and said default is not cured within ten (10) days after receipt of written notice thereof from Landlord.

(c) Tenant should vacate or abandon the Premises or shall fail to operate its business on the days and hours required, or fails to continuously occupy the Premises.

(d) Tenant shall default in the performance of any other covenants, terms, conditions, provisions, rules and regulations of this Lease and such default is not cured within one hundred eighty (180) days after written notice thereof given by Landlord, excepting such defaults that cannot be cured completely within such one hundred eighty (180) day period providing Tenant, within said one hundred eighty (180) day period, commences the curing thereof and continues thereafter with all due diligence to cause such curing to proceed to completion.

(e) There is commenced any case in bankruptcy against the original named Tenant, any assignee or subtenant of the original named Tenant, any then occupant of the Premises.

(f) The sale of Tenant's interest in the Premises under attachment, execution or similar legal process.

(f) Any other Event of Default designated elsewhere herein occurs.

All cure periods provided in this Lease shall run concurrently with any periods provided by law.

18.2 Remedies and Damages.

(a) If any Event of Default occurs, Landlord may, at its option and in addition to any and all other rights or remedies provided Landlord in this Lease or at law or equity, immediately, or at any time thereafter, and without demand or notice (except as provided herein):

(i) without waiving the Event of Default, apply all or part of the security deposit, if any, to cure the Event of Default and Tenant shall upon demand after the expiration of the term restore the security deposit to its original amount;

(ii) without waiving such Event of Default, apply thereto any overpayment of Rent to curing the Event of Default in lieu of refunding or crediting the same to Tenant;

(iii) if the Event of Default pertains to work or other obligations (other than

the payment of Rent) to be performed by Tenant, without waiving such Event of Default, enter upon the Premises and perform such work or other obligation, or cause such work or other obligation to be performed, for the account of Tenant; and Tenant shall upon demand pay to Landlord the cost of performing such work or other obligation.

18.3 Rights of Redemption. Landlord expressly acknowledges any and all of Tenant's rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation, by Tenant, of any of the covenants or conditions of this Lease, or otherwise.

18.4 Default by Landlord. If Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Landlord's part to be kept or performed, Tenant, prior to exercising any right or remedy Tenant may have against Landlord on account of such default, shall give written notice to Landlord and, if Tenant has been notified of the name and notice address of such lender, Landlord's lender of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default complained of in the notice provided for by this Section 23.6 is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within said thirty (30) day period (or Landlord's lender in a longer reasonable time) shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed to completion.

18.5 Attorneys' Fees & Costs of Enforcement. In the event of a dispute among the parties that results in the filing of a court action seeking enforcement of the terms of this Lease, the prevailing party shall be entitled to all reasonable costs, attorney fees (including allocable in-house counsel costs) and related expenses incurred, whether or not the matter is taken to final judgment.

ARTICLE XIX NOTICES

19.1 Notices to Tenant and Landlord. Any and all notices and demands by or from Landlord to Tenant, or by or from Tenant to Landlord, required or desired to be given hereunder shall be in writing and shall be validly given if sent by any of the following methods which provides a written delivery confirmation receipt: i) served personally; ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested; iii) delivered by a nationally recognized next day delivery courier service, or; iv) transmitted by facsimile with a copy sent the same day via US first class mail postage prepaid. All notices shall be effective upon receipt. However, if such notice or demand be served by registered or certified mail or by courier service in the manner provided, service shall be conclusively deemed given the first Business Day delivery is attempted whether or not it actually occurs. Notices shall be addressed in accordance with Section 1.2(k). Either party may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

19.2 Notices to Mortgagee. Tenant shall give each Landlord's mortgagee (each a "Landlord Mortgagee") written notice of any alleged default which could give rise to Tenant's termination of this Lease or expenditure of money on behalf of Landlord provided Landlord has given Tenant a notice advising Tenant of the name and address of such Landlord Mortgagee. Such Landlord Mortgagee shall also be given an appropriate time to cure such default including the opportunity to obtain possession of Landlord's interest, if necessary, to cure the default.

ARTICLE XX MISCELLANEOUS

20.1 Force Majeure. Whenever a day is appointed herein on which, or a period of time is appointed in which, a Party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such Party is prevented from the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operations, sabotage, unforeseen governmental regulations or control, fire or other casualty, unforeseen inability to obtain materials, fuel or energy, weather or other acts of God, or other causes beyond such Party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse any Party from the prompt payment of any money that such Party is required to pay hereunder.

20.2 Time of the Essence. Subject to Section 20.1, time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

20.3 Brokers. Tenant and Landlord each warrants to the other that it has had no dealings with any broker or agent in connection with this Lease. Subject to the foregoing, Tenant and Landlord covenant and agree to pay, hold harmless and indemnify the other from and against any and all costs, expenses or liability for any compensation, commissions and charges claimed by any broker or agent alleging to have dealt with the indemnifying party with respect to this Lease or the negotiation hereof (including, without limitation, the cost of legal fees in connection therewith).

20.4 Recordation. This Lease may be recorded by Tenant. Tenant may also record a memorandum or short form of this Lease,

20.5 Exculpation. If Landlord shall fail to perform any term, covenant or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon the execution of such judgment and levy thereon against the right, title and interest of Landlord in the Premises and out of rent or other income from the Premises receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Premises. Neither Landlord, nor any of its members, partners, venturers, shareholders, officers, directors or Affiliates shall be liable for any deficiency.

20.6 Perpetuities. If for any reason the Rent Commencement Date has not occurred within three (3) years of the date hereof, this Lease shall thereupon terminate and be of no further force or effect (except with respect to matters that arose before such termination).

20.7 Estoppel Certificates. Tenant agrees at any time, upon not less than ten (10) days prior written request by Landlord, to execute, acknowledge and deliver to Landlord a written statement certifying that this Lease is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force as modified and stating the modifications), the dates to which the Rent have been paid in pursuant to this Lease and such other certification concerning this Lease as may be reasonably requested by Landlord. Tenant further agrees that such statement may be relied upon by any mortgagee or prospective purchaser of the fee or assignee of any mortgage on the fee of the Premises.

20.8 Consents. Where in this Lease, or in any rules and regulations imposed by Landlord hereunder, Landlord's or Tenant's consent or approval is required and is not expressly permitted to be withheld in Landlord's or Tenant's sole discretion, such consent or approval shall not be permitted to be unreasonably withheld, conditioned or delayed. Tenant shall pay all costs and expenses (including reasonable attorney fees) that may be incurred by Landlord in processing, documenting or administering any request by Tenant for any consent or approval of Landlord required under this Lease. The grant by Landlord of any consent or approval hereunder shall in no way result in the incurrence by Landlord of any liability related to the subject matter of such consent or approval.

20.9 No Partnership. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, a partnership, a joint venture or any other association between Landlord and Tenant. Neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the Parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

20.10 Effective Date of Lease. The submission of this Lease for examination or execution does not constitute a reservation of or option for the Premises; and this Lease becomes effective as a lease only upon execution and delivery thereof by both Parties.

20.11 Costs of Performing Obligations. Except as otherwise expressly provided herein, each Party shall perform its obligations hereunder at its sole cost and expense and without any right to receive any reimbursement therefore from the other Party.

20.12 Drafting. This Lease shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of its language.

20.13 Covenants. Whenever in this Lease any words of obligation or duty are used in connection with either Party, such words shall have the same force and effect as though framed in the form of express covenants on the part of such Party.

20.14 Captions. The captions appearing at the commencement of the articles and sections hereof, and as the title to the exhibits attached hereto, are descriptive only and for convenience in reference to this Lease, and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

20.15 Limitation Language. In this Lease, the use of words such as "including" or "such as" shall not be deemed to limit the generality of the term, covenant or condition to which they have reference, whether or not non-limiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other

items or matters that could reasonably fall within the broadest possible scope of such general term, covenant or condition.

20.16 Pronouns. Masculine and feminine pronouns shall be substituted for the neuter and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitutions.

20.17 Partial Invalidity. If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby. In lieu of such invalid, void or unenforceable term, covenant or condition, there shall be added to this Lease a term, covenant or condition that is valid, not void and enforceable and that most closely approximates the intent of such invalid, void or unenforceable term, covenant or condition as may be possible.

20.18 Entire Agreement. This Lease sets forth the entire understanding and agreement between the Parties, and supersedes all previous communications, negotiations and agreements (including, without limitation, letters of intent), whether written or oral, with respect to the subject matter hereof. No addition to or modification of this Lease shall be binding on any Party unless reduced to writing and duly executed and delivered by the Parties. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that unless otherwise expressly set forth herein, neither Landlord nor any of its agents, representatives or employees has made any agreement with Tenant, or any covenant, promise, representation or warranty to Tenant, with respect to any of the following: (a) exclusive rights to sell goods or services within the Premises, (b) limitations on or restrictions against competing businesses within the Premises, (c) the future opening of other businesses within the Premises, (d) the type or quality of existing or prospective tenants located or to be located within the Premises, (e) work to be performed by Landlord in improving the Premises, (f) contributions by Landlord towards Tenant's leasehold improvement costs, (g) the annual amounts of Tenant's share of Premises Operating Costs or Tenant's share of Real Property Taxes during the Term, or (h) promotion or advertising of Tenant's business or Tenant's products or services.

20.19 Remedies Cumulative. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

20.20 Waiver. Landlord and Tenant shall have the right at all times to enforce the terms, covenants and conditions of this Lease in strict accordance with the terms thereof, notwithstanding any conduct or custom on the part of Landlord or Tenant in refraining from so doing at any time or times. No failure by Landlord or Tenant to insist upon the strict performance of any term, covenant or condition of this Lease or to exercise any right or remedy available for a breach thereof, and no acceptance by Landlord of full or partial Rent during the continuance of any such breach by Tenant, shall constitute a waiver of any such breach or any such right or remedy. No term or condition of this Lease required to be performed by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. A waiver by Landlord in respect to any tenant of the Premises shall not constitute a waiver in favor of any other tenant. No waiver by Landlord or Tenant of the breach of any condition, covenant or provision of this Lease shall excuse a future breach of the same

condition, covenant or provision or of any other condition, covenant or provision of this Lease. After the service of any notice or commencement of any suit, or final judgment therein, Landlord may receive and collect any Rent due, and such collection or receipt shall not operate as a waiver of nor affect such notice, suit or judgment unless the collection by Landlord of such Rent fully settles the subject matter of such notice, suit or judgment.

20.21 Insolvency and Death. It is understood and agreed that neither this Lease, nor any interest herein or hereunder, nor any estate hereby created in favor of Tenant, shall pass by operation of law under any insolvency, bankruptcy, inheritance or other similar Law to any trustee, receiver, assignee for the benefit of creditors, heir, legatee, devisee or other Person.

20.22 Successors and Assigns. The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

20.23 Joint Liability. If Tenant now or hereafter shall consist of more than one Person, then all such Persons shall be jointly and severally liable as Tenant hereunder.

20.24 Transfer of Landlord's Interest. Landlord shall be liable under this Lease only while owner of the Premises. If Landlord should sell or otherwise transfer Landlord's interest in the Premises, then such purchaser or transferee shall be responsible for all of the covenants and undertakings thereafter accruing of Landlord. Tenant agrees that Landlord shall, after such sale or transfer of Landlord's interest, have no liability to Tenant under this Lease or any modification or amendment thereof, or extensions or renewals thereof, except for such liabilities which (a) might have accrued prior to the date of such sale or transfer of Landlord's interest to such purchaser or transferee, and (b) are not assumed by such purchaser or transferee.

20.25 Waiver of Jury Trial. The Parties shall and hereby do waive all rights to trial by jury in any action, proceeding or counterclaim brought by either of the Parties against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage.

20.26 Consents. No Party shall be deemed to have given any consent, approval or agreement required under this Lease unless and until such Party gives such consent, approval or agreement in writing.

20.27 Governing Law. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Any legal suit, action or proceeding against Landlord or Tenant arising out of or relating to this Lease shall be instituted in any federal or state court in Clark County, Nevada, and each Party waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and each Party hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

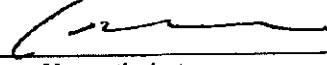
[Signature Page Follows]

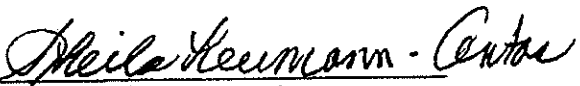
IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the day and year first written above.

LANDLORD:

Spanish Heights Acquisition Company, LLC, a
Nevada limited liability company

By: Member - ANTOS, KENNETH & SHEILA
LIV TR, KENNETH M ANTOS SHEILA M.
NEUMANN-ANTOS TRUST, Kenneth Antos and Sheila
Neumann-Antos as Trustees

By: 
Name: Kenneth Antos
Title: Trustee
Date: _____

By: 
Name: Sheila Neumann-Antos
Title: Trustee
Date: _____

TENANT:

SJC Ventures, LLC
a Nevada limited liability company

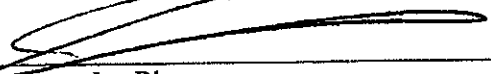
By: 
Name: Jay Bloom
Title: Manager
Date: _____

EXHIBIT "1"
DEFINITIONS

The following terms used in this Lease shall have the following meanings (unless otherwise expressly provided herein):

"Additional Charges" has the meaning given in Section 7.1.

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified Person. For purposes of this definition, the term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting interests, by contract or otherwise.

"Base Rent" has the meaning given in Section 1.2(d).

"Building" means the building now existing or to be constructed within the Premises at which the Premises is located.

"Business Day" means any day other than a Saturday, a Sunday or another day upon which banks in the State of Nevada are authorized or required to be closed.

"Service Providers" has the meaning given in Section 7.5.

"CPI-U" means the U.S. Department of Labor, Bureau of Labor Statistics, Consumers Price Index for all Urban Consumers, All Cities Average, Subgroup "all items" (base reference period 1982-84=100). If during the Term the U.S. Department of Labor, Bureau of Labor Statistics, ceases to publish a CPI-U, such other index or standard as will most nearly accomplish the aim and purpose of said CPI-U and the use thereof in this Lease shall be selected by Landlord in its reasonable discretion.

"Encumbrance" has the meaning given in Section 16.1.

"Event of Default" has the meaning given in Section 18.1.

"HVAC" means heating, ventilation and air conditioning.

"Landlord" has the meaning given in the preamble.

"Landlord Mortgage" has the meaning given in Section 19.2.

"Landlord's Fiscal Year" shall mean the calendar year or such other twelve (12) month period as Landlord may from time to time elect in its sole and absolute discretion.

"Laws" means all laws, statutes, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities as are in force from time to time.

"Lease" means this Lease, including all exhibits hereto, as the same may be amended from time to time.

"Lease Year" means each twelve (12) month period during the Term commencing on the day and month of the Rent Commencement Date; provided, however, that if the Rent Commencement Date is not the first day of a calendar month, then the first Lease Year shall commence on the Rent Commencement Date and end on the last day of the twelfth full calendar month thereafter and each subsequent Lease Year shall commence on the first day of the calendar month after the month of the Rent Commencement Date.

"Real Property Taxes" has the meaning given in Section 5.3(c).

"Original Lease" has the meaning given in Section 3.5.

"Parties" or "Party" has the meaning given in the preamble.

"Person" means any individual or any government entity, general partnership, limited partnership, joint venture, limited liability company, corporation, trust, cooperative, association or other similar organization.

"Premises" means that Real Property known as known as 5148 Spanish Heights Dr., Las Vegas, NV 89148, as the same may be reconfigured, expanded, reduced or otherwise modified from time to time in accordance herewith.

"Premises Real Property Taxes" has the meaning given in Section 5.3(c).

"Prevailing Party" has the meaning given in Section 18.5.

"Rent" means Base Rent and Additional Charges.

"Rent Commencement Date" has the meaning given in Section 6.2(a).

"Tenant" has the meaning given in the preamble.

"Tenant Personal Property" has the meaning given in Section 11.2.

"Term" has the meaning given in Section 1.2(a).

"Term Expiration Date" has the meaning given in Section 3.1.

"Premises" has the meaning given in Section 4.1.

"Premises Operating Costs" has the meaning given in Section 5.2(a).

EXHIBIT "2"

CONSENT TO LEASE

THIS CONSENT TO LEASE (the "Consent") is made and entered into this ____ day of _____ 20____, (the "Effective Date") by and between Spanish Heights Acquisition Company, LLC ("Owner") of 5184 Spanish Heights Drive, Las Vegas, NV, (the "Property") and SJC Ventures, LLC (the "Tenant"), and CBC Partners I, LLC (the "CBCI").

RECITALS:

WHEREAS, the Tenant and Owner have entered into the Lease attached hereto (the "Lease"), for the Property.

WHEREAS, the parties recognize that the execution this Lease is a condition to the Forbearance Agreement between CBC Partners I, LLC, and the Landlord, Tenant, and other parties. Further, this Lease is subject to the written consent of CBCI

WHEREAS, the CBCI hereby consents to such Assignment upon the terms and conditions contained hereunder:

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein, CBCI, Tenant and Owner Agree represent and agree as follows:

CBCI hereby consents to the Lease attached hereto, subject to the following conditions:

1. The Lease shall be subject and subordinate to the lien and effect of the Forbearance Agreement insofar as it affects the real and personal property or which the Property form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon.

2. In the event CBCI or any trustee for CBCI takes possession of the Property, as mortgagee-in-possession or otherwise, forecloses on the Property, sells the Property, or otherwise exercises its rights under the Forbearance Agreement, CBCI may terminate the Lease.

3. Although the foregoing provisions of this Agreement shall be self-operative, Tenant agrees to execute and deliver to CBCI such other instrument or instruments as CBCI or such other person shall from time to time request in order to confirm such provision.

5. Tenant hereby warrants and represents, covenants, and agrees to and with CBCI:

(a) not to alter or modify the Lease in any respect without prior written consent of CBCI;

(b) to deliver to CBCI at the address indicated above a duplicate of each notice of default delivered to Landlord at the same time as such notice is given to Landlord;

(d) not to seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to CBCI;

(e) not to pay any rent or other sums due or to become due under the Lease more than 30 days in advance of the date on which the same are due or to become due under the Lease;

(f) to certify promptly in writing to CBCI in connection with any proposed assignment of the Forbearance Agreement, whether or not any default on the part of Landlord then exists under the Lease; and

7. Any notices required to be sent to CBCI shall be sent to:

777 108th Ave NE Suite 1895
Bellevue, WA 98004

With a copy to:

The Law Office of Vernon Nelson
9480 S. Eastern Ave., Suite 252
Las Vegas, NV 89123

8. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Property is located.

IN WITNESS WHEREOF, CBCI, Tenant and Assignee have executed this Consent on the day and year first above written.

Spanish Heights Acquisition Company, LLC

BY: 

Its: Manager

Print
Name: Jay Blam

CBC Partners 1, LLC

BY: 

Its: President

Print
Name: John Otter

APN: 163-29-615-007

Return document and mail tax statements to:

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

DEED OF SALE

THIS INDENTURE WITNESSETH: That first party

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

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

SPANISH HEIGHTS ACQUISITION COMPANY, LLC

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

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

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

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

Subject to:

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

Grantor: **ANTOS, KENNETH & SHEILA LIV TR**

By:


Kenneth Antos, Trustee

By:


Sheila Neuman-Antos, Trustee

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was executed before me on October 11, 2017, by (print name) Kenneth Antos
and Sheila Neuman-Antos

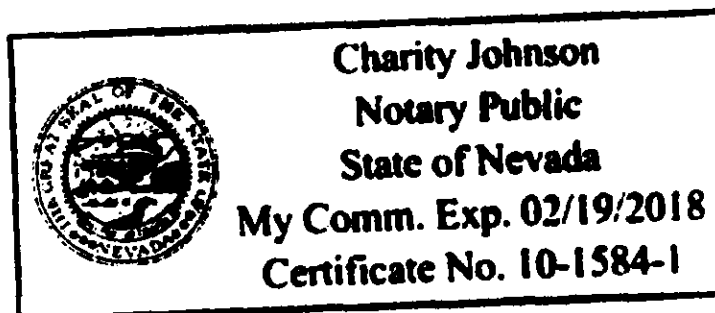

NOTARY PUBLIC

My Commission Expires:

2/19/18

My Certificate No.:

10-1584-1



Spanish Heights Acquisition Co: Account Activity Transaction Details

My Description: SJC Rent 4/1/20 - 12/31/20

Post date: 05/01/2020

Amount: 40,359.42

Type: Deposit

Description: Counter Credit

Merchant name: Counter Credit

Transaction category: Income: Deposits

WARNING: THIS DOCUMENT HAS SECURITY FEATURES IN THE PAPER

SJC VENTURES, LLC 702 330-8836 04/30/2020 Check No 1051

5148 SPANISH HEIGHTS DR, LAS VEGAS NV 89148 BANK OF AMERICA 94-72/1224

Pay to: SPANISH HEIGHTS ACQUISITION COMPANY, LLC
Forty Thousand Three Hundred and Fifty-Nine Dollars and Forty-Two Cents

Pay \$40,359.42

For: 5148 Spanish Heights 9 month SJC rent for 4/1/2020 - 12/31/2020

Authorized Signature

1051

Seq: 8
Batch: 347157
Date: 05/01/2020

PLEASE ENDORSE HERE

Endorsed To This Acct of The Union Bank of Puerto Rico Bank of America, N.A.

DO NOT WRITE, STAMP OR SIGN OVER THIS LINE

50000000 05/01/2020
RAT: 347157 CC: 3366666526

1051

SJC VENTURES, LLC

702-330-8836

04/30/2020

Check No 1051

5148 SPANISH HEIGHTS DR,
LAS VEGAS NV 89148BANK OF AMERICA
94-72/1224Pay to: SPANISH HEIGHTS AQUISITION COMPANY, LLC
Forty Thousand Three Hundred and Fifty-Nine Dollars and Forty-Two Cents

Pay \$ 40,359.42

For: 5148 Spanish Heights 9 month SJC rent for 4/1/2020 -
12/31/2020
Authorized signature

MP

1051

SJC VENTURES, LLC

702-330-8836

06/11/2020

Check No 1052

5148 SPANISH HEIGHTS DR,
LAS VEGAS NV 89148BANK OF AMERICA
94-72/1224Pay to: SPANISH HEIGHTS AQUISITION COMPANY, LLC
Forty Thousand Three Hundred and Fifty-Nine Dollars and Forty-Two Cents

Pay \$ 40,359.42

For: 5148 Spanish Heights 9 month SJC rent for 1/1/2021-9/30/2021

Authorized signature

1052

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC

702-330-8836

BANK OF AMERICA
94-72/1224

Check No 1053

5148 SPANISH HEIGHTS DR,
LAS VEGAS NV 89148

07/01/2020

Pay to: SPANISH HEIGHTS ACQUISITION COMPANY, LLC

Pay \$ 22,421.90

Twenty-Two Thousand Four Hundred and Twenty-One Dollars and Ninety Cents

For: 5148 Spanish Heights 5 month SJC rent
10/1/21-2/28/2022

Authorized signature

1053

Security Features

SJC VENTURES, LLC

702-330-8836

BANK OF AMERICA
94-72/1224

Check No 1054

5148 SPANISH HEIGHTS DR,
LAS VEGAS NV 89148

08/01/2020

Pay to: SPANISH HEIGHTS ACQUISITION COMPANY, LLC

Pay

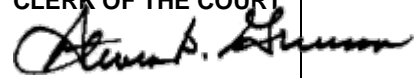
44,843.80

Forty-Four Thousand Eight Hundred and Forty-Three Dollars and Eighty Cents

For: 5148 Spanish Heights 10 months SJC rent for 3-1-22 -
12-31-22

Authorized signature

1054



Michael R. Mushkin, Esq.
Nevada Bar No. 2421
L. Joe Coppedge, Esq.
Nevada Bar No. 4954
MUSHKIN & COPPEDGE
6070 South Eastern Ave Ste 270
Las Vegas, NV 89119
Telephone: 702-454-3333
Facsimile: 702-386-4979
Michael@mccnvlaw.com
jcoppedge@mccnvlaw.com
Attorneys for Defendant and Third-Party Plaintiffs
5148 Spanish Heights, LLC and
CBC Partners I, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

Counterclaimants,

v.

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

Counterdefendants.

Case No. A-20-813439-B

Dept. No.: 11

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

and

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

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

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

6 **PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

1 contained therein.

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

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

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

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

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

15 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

7. Plaintiffs have failed to mitigate their damages.

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

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

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

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

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

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

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

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

12 WHEREFORE, Defendant prays for judgment as follows:

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

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

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

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

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

25 **JURISDICTION AND VENUE**

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

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

THE PARTIES

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

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

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

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

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

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

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

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

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

1 of the Doe Defendants when known.

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

8 **FACTUAL ALLEGATIONS RELATED TO ALL CLAIMS**

9 **The Initial Promissory Note**

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

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

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

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

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

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

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

6 **The Forbearance Agreement**

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

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

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

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

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

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

27 **The Pledge Agreement**

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

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

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

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

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

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

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

14 **SHAC’s Operating Agreement**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **Additional Facts**

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

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

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

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

1 Among the documentation requested was:

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

23 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

Unlawful Detainer NRS 40.250 – Against SJCV and Bloom

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

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

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

67. SJCv and Bloom continue to occupy the Property.

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

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

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

5 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

3 **FIFTH CLAIM FOR RELIEF**

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

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

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

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

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

14 81. Bloom signed the Pledge Agreement as manager.

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

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

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

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

26 **SIXTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

24 **SEVENTH CLAIM FOR RELIEF**

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

26 **SJCV, Holdings, and Bloom**

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

1 herein.

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

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

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

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

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

14 **EIGHTH CLAIM FOR RELIEF**

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

16 **SJCV, Holdings, and Bloom**

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

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

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

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

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

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

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

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

9 **NINTH CLAIM FOR RELIEF**

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

11 **SJCV, Holdings, and Bloom**

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

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

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

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

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

24 **TENTH CLAIM FOR RELIEF**

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

26 **SJCV, Holdings, and Bloom**

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

1 herein.

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

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

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

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

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

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

19 **ELEVENTH CLAIM FOR RELIEF**

20 **Unjust Enrichment – Against all Counterdefendants**

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

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

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

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

TWELFTH CLAIM FOR RELIEF

Declaratory Relief – Against all Counterdefendants

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

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

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

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

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

PRAYER

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

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

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

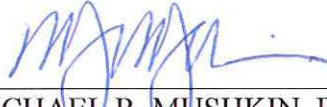
3. That this Court award Counterclaimants punitive damages from Counterdefendants in an amount sufficient to punish Counterdefendants and to make an example of Counterdefendants to deter similar conduct in the future; and

///

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

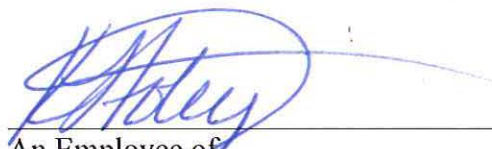
3 DATED this 27 day of April, 2020

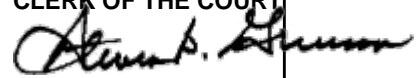
4 MUSHKIN & COPPEDGE

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

13 **CERTIFICATE OF SERVICE**

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

21 
22 An Employee of
23 MUSHKIN & COPPEDGE
24
25
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27
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Michael R. Mushkin, Esq.
Nevada Bar No. 2421
L. Joe Coppedge, Esq.
Nevada Bar No. 4954
MUSHKIN & COPPEDGE
6070 South Eastern Ave Ste 270
Las Vegas, NV 89119
Telephone: 702-454-3333
Facsimile: 702-386-4979
Michael@mccnvlaw.com
jcoppedge@mccnvlaw.com
Attorneys for Defendant and Third-Party Plaintiffs
5148 Spanish Heights, LLC and
CBC Partners I, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

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

Counterclaimants,

v.

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

Counterdefendants.


DEMAND FOR JURY TRIAL

1 **DEMAND FOR JURY TRIAL**

2 Defendant/Counterclaimants 5148 Spanish Heights, LLC, and CBC Partners I, LLC by
3 and through their attorney, Michael R. Mushkin, of the law firm of Mushkin & Coppedge,
4 pursuant to NRCP 38(b), demands a trial by a jury of all the issues in the above-captioned case.


5 DATED this 6th day of May, 2020

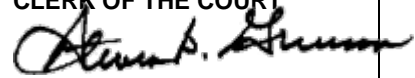
6 MUSHKIN & COPPEDGE

7
8 
9 MICHAEL R. MUSHKIN, ESQ.
10 Nevada Bar No. 2421
11 L. JOE COPPEDGE, ESQ.
12 Nevada Bar No. 4954
13 6070 South Eastern Ave Ste 270
14 Las Vegas, NV 89119

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that the foregoing **Demand for Jury Trial** was submitted electronically
16 for filing and/or service with the Eighth Judicial District Court on this 6th day of May, 2020.
17 Electronic service of the foregoing document shall be upon all parties listed on the Odyssey
18 eFileNV service contact list:

19
20 
21 An Employee of
22 MUSHKIN & COPPEDGE
23
24
25
26
27
28



ACOM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com

djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

FIRST AMENDED COMPLAINT

EXEMPT FROM ARBITRATION:

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

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

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

2 **PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

1 under the Note through March 31, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 damage to the property. (Emphasis added).

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

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

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

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

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

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

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

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

Partners; and

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

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

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

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

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

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

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

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

1 illegal.

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

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

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

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

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

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

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

24 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

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

20 **– Against CBC Partners I, LLC**

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

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

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

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

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

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

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

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

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

12 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

1 attorneys' fees and interest thereon.

2 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

24 **– Against All Defendants**

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

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

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

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

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

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

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

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

14 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

7 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

26 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

1 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

26 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

16 **TWELFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

9 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

24 10. For such injunctive relief as necessary;

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

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

27 ///

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13. For such other and further relief as the Court may deem just and proper.

DATED this 15th day of May, 2020.

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

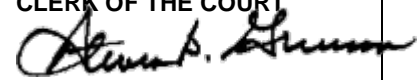
DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiffs



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

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

5148 SPANISH HEIGHTS, LLC

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

1 complaint.

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

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

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

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

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

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

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

Laurie Williams

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

Date

5/18/2020

9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

12 /s/ Joseph A. Gutierrez

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

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

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


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

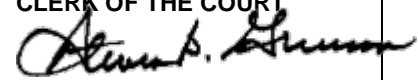
**Defendant 5148 SPANISH HEIGHTS, LLC, A NEVADA LIMITED LIABILITY COMPANY, BY
SERVING MICHAEL R. MUSHKIN, REGISTERED AGENT**

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

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

Executed: Thursday, May 21, 2020


TANNER TREWET
Registered Work Card R-2019-07712



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

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

CBC PARTNERS, LLC

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

1 complaint.

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

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

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

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

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

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

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

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

5/18/2020

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.

Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.

Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

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

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

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

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

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

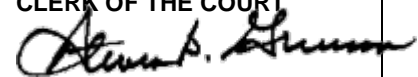
Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Thursday, May 21, 2020



TANNER TREWET

Registered Work Card R-2019-07712



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

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

CBC PARTNERS I, LLC

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

1 complaint.

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

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

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

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

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

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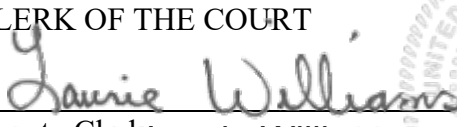
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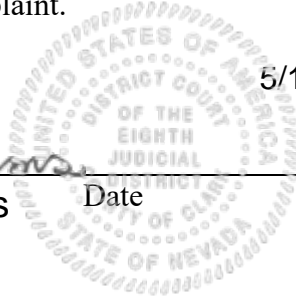
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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
2 members, commission members and legislators each have 45 days after service of this Summons
3 within which to file and Answer or other responsive pleading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

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

5/18/2020


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



9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

12 /s/ Joseph A. Gutierrez

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

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
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DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

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PROOF OF SERVICE

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

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SUMMONS; FIRST AMENDED COMPLAINT

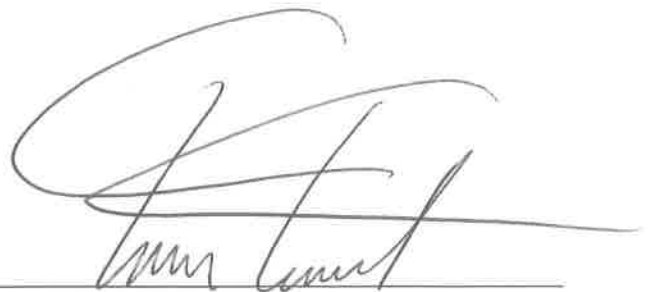
I served the same on **5/20/2020** at **11:04 AM** to:

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

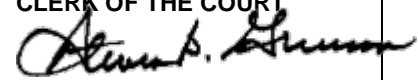
by leaving the copies with or in the presence of **TRACI BAEZ, LEGAL ASSISTANT**, at **6070 S
EASTERN AVE STE 270, LAS VEGAS, NV 89119**.

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

Executed: Thursday, May 21, 2020



TANNER TREWET
Registered Work Card R-2019-07712



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

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

DACIA, LLC

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

1 complaint.

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

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

7 (b) Serve a copy of your response upon the attorney whose name and address is
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9 2. Unless you respond, your default will be entered upon application of the plaintiffs and
10 failure to so respond will result in a judgment of default against you for the relief demanded in the
11 complaint, which could result in the taking of money or property or other relief requested in the
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13 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
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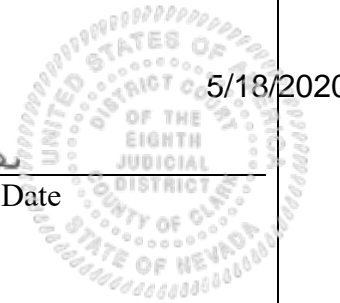
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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
2 members, commission members and legislators each have 45 days after service of this Summons
3 within which to file and Answer or other responsive pleading to the complaint.

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

Laurie Williams

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



9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

12 /s/ Joseph A. Gutierrez

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

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

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

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

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

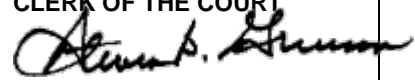
by leaving the copies with or in the presence of **TRACI BAEZ, LEGAL ASSISTANT FOR MICHAEL R. MUSHKIN**, at 6070 S EASTERN AVE STE 270, LAS VEGAS, NV 89119, pursuant to **NRS 14.020**.

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

Executed: Thursday, May 21, 2020



TANNER TREWET
Registered Work Card R-2019-07712



APP/MOT

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: ●XI

**PLAINTIFFS' RENEWED APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION ON AN
ORDER SHORTENING TIME**

[HEARING REQUESTED]

Date of Hearing: 01/11/2021

Time of Hearing: 9:00a.m.

Plaintiffs Spanish Heights Acquisition Company, LLC ("SHAC") and SJC Ventures Holding
Company, LLC, d/b/a SJC VENTURES, LLC ("SJC") ("Plaintiffs"), by and through their attorney of
record, MAIER GUTIERREZ & ASSOCIATES, hereby move this Court for a temporary restraining order,

1 and, after notice and a hearing, for a preliminary injunction on an order shortening time (the
2 “Motion”).

3 Ignoring the fact that the legitimacy of defendant CBC Partners I, LLC’s alleged third-position
4 “Deed of Trust” has been called into question (as it appears no actual owner of the property ever had
5 anything to do with the underlying commercial loan note that the supposed “Deed of Trust” is meant
6 to secure), along with CBC’s purported attempt to transfer its interest to 5148 Spanish Heights, LLC
7 after having already selected an alternative remedy, which put the defendant CBC in possession of
8 both the note and equity in the real property alleged to have secured such note, Defendants now have
9 caused an improper “Notice of Breach and Election to Sell Under Deed of Trust” to be recorded
10 against the Property and are once again attempting to rush through an improper foreclosure without a
11 basis instead of following Nevada law.

12 Plaintiffs hereby seek a temporary restraining order and a preliminary injunction against
13 Defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and 5148 SPANISH HEIGHTS, LLC
14 (“Defendants”) and their officers, agents, servants, employees, attorneys, and those persons in active
15 concert of participation with them, requiring the Defendants to rescind their improper Notice of
16 Default and Notice of Breach and Election to Sell and further enjoining Defendants from (1)
17 proceeding on any future Notices of Default and Notice of Breach and Election to Sell Under Deed
18 of Trust, which are not only nonsensical but blatantly violate Nevada law; (2) engaging in any further
19 foreclosure activities against the subject Property; and (3) attempting to foreclose on the Property
20 through an extinguished and contested purported interest, until after the hearing on Plaintiffs’ motion
21 for preliminary injunction.

22 **The Court previously denied this motion without prejudice and told Plaintiffs they could**
23 **re-file in the event of an impending sale. While a Notice of Sale has not been recorded in the**
24 **Property records as of the date of this filing, Spanish Heights Acquisition Company, LLC has**
25 **received correspondence in the mail claiming that a “foreclosure sale date has been recorded**
26 **and scheduled for 01/13/2021 on property located at 5148 SPANISH HEIGHTS DR. LAS**
27 **VEGAS, NV 89148-1422.” See Mot. at Exhibit 22. Therefore, Plaintiffs have reason to believe**
28 **that Defendants are attempting to conduct a foreclosure sale on January 13, 2021.**

This motion is made and based upon the following memorandum of points and authorities, the affidavits and exhibits attached hereto, and the papers and pleadings on file in this matter. An order restraining Defendants is attached hereto to this motion as **Exhibit 21**.

DATED this 14th day of December, 2020.

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiffs

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1 for Plaintiffs to quantify their ongoing harm through actual damages in the event this sale is allowed
2 to proceed. *Id.* Therefore the harm being caused to Plaintiffs through Defendants' wrongful actions
3 is irreparable, and can only be prevented through injunctive relief.

4 8. As set forth in the Bloom Decl., Defendant's actions are causing immediate and
5 irreparable harm to Plaintiffs that will exponentially increase unless Defendant is immediately
6 enjoined. *See id.*

7 9. During the normal course of time it will take for Plaintiffs to serve their motion for
8 preliminary injunction, for Defendant to respond thereto, and for the Court to conduct a hearing on
9 Plaintiffs' motion, Plaintiffs will sustain immediate irreparable injury. **Specifically, according to**
10 **correspondence sent to the Property, a foreclosure sale is scheduled for January 13, 2021. If**
11 **relief is not granted by then, Plaintiffs' residential Property will be overtaken by Defendants.**

12 10. Accordingly, it is imperative that Plaintiffs' application for a temporary restraining
13 order be heard on or before January 13, 2021, such that a temporary restraining order may be issued
14 immediately.

15 11. Moreover, if the temporary restraining order is granted, a motion for preliminary
16 injunction should be set for hearing at the earliest possible time.

17 12. If Plaintiffs' motion for preliminary injunction is heard in the ordinary course, the
18 temporary restraining order will expire prior to said hearing and the irreparable harm to Plaintiffs will
19 be permitted to continue.

20 13. Therefore, Plaintiff is requesting their motion for preliminary injunction be heard on
21 an OST at the Court's earliest convenience.

22 14. Based on the foregoing, the requirements of Nev. R. Civ. P. 65(b), NRS 33.010 and
23 EDCR 2.26 have been met and the circumstances described above constitute good cause for the Court
24 to justify shortening of time to hear Plaintiffs' application for temporary restraining order and motion
25 for preliminary injunction.

26 15. If the OST is granted, it will be promptly served by an acceptable method on all parties
27 pursuant to the requirements of EDCR 2.26, EDCR 7.26 and NRCP 5(b).

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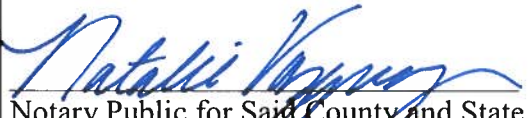
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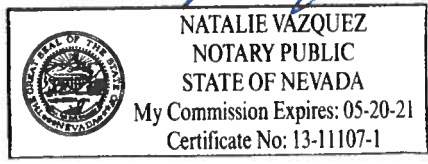
16. This affidavit is made in good faith and not for purposes of delay.

FURTHER AFFIANT SAYETH NAUGHT


DANIELLE J. BARRAZA, ESQ.

SUBSCRIBED and SWORN to before
me this 14th day of December, 2020.


Notary Public for Said County and State



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IT IS FURTHER ORDERED that an opposition, if the opposing party desires to file one, shall be filed and served by _____. A reply shall be filed and served by _____.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action involves the property located at 5148 Spanish Heights Drive, Las Vegas, Nevada
4 89148, with Assessor's Parcel Number 163-29-615-007 ("Property"). The Property is owned by
5 Plaintiff Spanish Heights Acquisition Company, LLC pursuant to a recorded deed, and leased by
6 Plaintiff SJC Ventures LLC pursuant to a valid lease agreement.

7 Desperate to avoid discovery at all costs and having this matter heard on its merits, Defendants
8 are once again attempting to violate Nevada law through an improper and hastily-constructed
9 foreclosure recordings with clear deficiencies. On September 15, 2020, Defendants caused a "Notice
10 of Breach and Election to Sell Under Deed of Trust" to be recorded in the property records. This
11 "Notice of Breach" references a "Deed of Trust" dated December 17, 2014, which is CBC Partners I,
12 LLC's alleged third-position "Deed of Trust."

13 Moreover, on **December 11, 2020, SHAC received correspondence in the mail claiming**
14 **that a foreclosure sale of the Property is scheduled for January 13, 2021. Exhibit 22.**

15 The obvious problem with that is it was recently revealed that the underlying note that the
16 third-position "Deed of Trust" is supposedly securing has nothing to do with any of the owners of the
17 Property, but was actually a commercial loan issued to the Antos' business entities, with a personal
18 guarantee from the Antos' individually, years after the Antos' transferred their individual ownership
19 of the property to a Trust (the Antos Trust). Such Antos Trust is neither a borrower nor lender under
20 the commercial loan and only issued the Deed of Trust years after the Note to which the Antos Trust
21 is not party was executed and further for no consideration. It has also been revealed that the Antos
22 Trust never actually signed off on the underlying promissory note.

23 As such, the Antos Trust never received any consideration for providing a Deed of Trust to
24 CBC Partners I, LLC., nearly two years after the commercial loan transaction that Defendants are now
25 seeking to masquerade as a third mortgage. Thus, there is an issue of fact as to whether the commercial
26 loan to a restaurant, as guaranteed by the Antos' individually, is actually a third position "Deed of
27 Trust" which is supposedly secured by non-party to the Note. There is an issue as to whether such a
28 Deed of Trust executed a non-party to a Note (the Antos Trust), where no consideration had been

1 provided, is even valid and enforceable.

2 Moreover, the “Notice of Breach” is based on an illegitimate “Notice of Default” dated July
3 2, 2020, which states that “**CBC Partners I, LLC**, at its option, without further demand, may evoke
4 the power of sale and any other remedies permitted by Nevada law.” CBC Partners I, LLC has already
5 testified that as of April 1, 2020 it had already sold its interest in the commercial loan to the Antos’
6 restaurant. As such, by July 2, 2020, when CBC Partners I, LLC had already taken the position that
7 it had no further interest in either the Note nor Property, it has no standing in any dispute regarding
8 the Property, as it sold all of its interest to defendant 5148 Spanish Heights, LLC. As such, the 5148
9 Spanish Heights, LLC “Notice of Breach” is based on a void and defective CBC Partners I, LLC
10 “Notice of Default” because CBC Partners I, LLC had no ability to issue a “Notice of Default” in July
11 2020, months after it testified that it divested itself of any interest in the commercial loan or equity in
12 the real property.

13 Further, even if somehow a commercial loan can mutate into a third-position “Deed of Trust”
14 for an unrelated party’s interest in real property and it is deemed valid, which is unlikely, the
15 Defendants are trying to exercise lien rights even though any alleged lien rights have been
16 extinguished as a result of Defendants purportedly obtaining a partial ownership interest in the
17 Property pursuant to the Merger Doctrine.

18 And lastly, the One Action Rule precludes foreclosure activity subsequent to the election of
19 an alternative remedy to attach alternative collateral pledged.

20 Thus, it is clear that absent the requested relief, Plaintiffs will suffer irreparable harm.

21 As such, the exigent circumstances present in this case require granting Plaintiffs’ application
22 for a temporary restraining order. Further, Plaintiffs possess a high probability of success on the
23 merits and will be irreparably harmed without such relief, thus a preliminary injunction should be
24 ordered until this case can be fully decided on the merits.

25 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

26 The original owners of the Property were Kenneth and Sheila Antos as joint tenants, with the
27 original deed recorded in April 2007. *See Exhibit 1*, First Grant, Bargain, Sale Deed.

28 On October 14, 2010, a new Grant, Bargain, Sale Deed was recorded, transferring the Property

1 to the Kenneth and Sheila Antos Living Trust dated April 26, 2007. *See Exhibit 2*, 10/14/2010 Grant,
2 Bargain, Sale Deed.

3 The underlying CBC Secured Promissory Note was issued in June 2012 (over 5 years after
4 Kenneth and Sheila Antos purchased the Property and nearly two years after they transferred the
5 property to the Kenneth & Sheila Antos Living Trust). *See Exhibit 3*, Secured Promissory Note.¹

6 The underlying Promissory Note had nothing to do with the Property but was actually a
7 \$300,000 commercial loan issued to KCI Investments, LLC, which is one of Kenneth Antos'
8 companies that was in the business of operating restaurants. Ex. 3. *See also, Exhibit 4*, Deposition
9 Transcript of Kenneth Antos at p. 54.

10 Q: Okay. And what company was CBC loaning that money to?

11 A: KCI Investments

12 Q: And what was KCI Investments in the business of doing?

13 A: Opening restaurants.

14 Q: Okay. Now, were there – so there was an underlying note, correct, between
15 CBC and KCI; is that correct?

16 A: Correct.

17 The Promissory Note is secured by a “Security Agreement” dated June 22, 2012, where the
18 security interest included KCI’s intellectual property, goods, tools, furnishings, furniture, equipment
19 and fixtures, accounts, deposit accounts, chattel paper, and receivables. Ex. 3 at PLTFS00931.
20 Notably, the Security Agreement does not include the subject real property owned by the Antos Trust,
21 non-party to the commercial loan.

22 Kenneth and Sheila Antos were personal guarantors on the underlying Promissory Note in
23 their individual capacity, but not in their capacity as trustees to the Antos Trust. **Exhibit 5**, Guaranty
24 and Acknowledgement and Agreement of Guarantors. *See also*, Ex. 4 at p. 61.

25 Q: Okay. Now what did you understand this guarantee to be?

26 A: Guaranteeing that 300,000.

27
28 ¹ Kenneth Antos verified the authenticity and legitimacy of the underlying note documents attached
herein during his deposition.

1 Q: Okay. And did you understand that this would be a personal guarantee, that
2 you and Sheila are personally guaranteeing this?

3 A: Yes.

4 The Promissory Note was modified several times due to KCI wanting further loan funds from
5 CBC Partners I, LLC. Ex. 4 at p. 66.

6 At some point, CBC Partners I, LLC obtained a “deed of trust” on the property that the Antos’
7 resided in but did not own, as the property was already transferred to the Antos Trust years before
8 CBC Partners I, LLC became involved as a lender to KCI. Ex. 4 at pp. 66-67.

9 Q Okay. So you’re saying that there were – there were numerous modifications
10 to this loan; correct?

11 A: Correct.

12 Q: Okay. And you’re saying that in one of the modifications, it got to the point
13 where CBC was demanding to also have a deed of trust on the property; is that
14 correct?

15 A: Correct.

16 Attached as **Exhibit 6** are numerous other loan modifications to the underlying Promissory
17 Note, none of which mention the Antos Trust, and none of which the Antos Trust executed. See Ex.
18 4 at p. 67.

19 Q: And then looking through these documents, do you have any recollection of the
20 – the trust signing off on any – on any of these modifications?

21 A: No.

22 On December 29, 2014, years after the commercial loan to KCI was made, a third position
23 “Deed of Trust” was recorded, in which the Antos Trust, again, a non-party to the commercial loan,
24 purported to provide a deed of trust to CBC Partners I, LLC. **Exhibit 7**, Deed of Trust. Subsequently
25 a First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing
26 was recorded in the Property records through the Clark County Recorder’s Office on December 19,
27 2016. See **Exhibit 8**, First Modification to Deed of Trust (collectively referred to as “Deed of Trust”).

28 The “Deed of Trust” specifically mentions that it is securing that Promissory Note dated June
22, 2012, as modified, that was executed “by KCI Investments, LLC, a Nevada limited liability
company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively,

1 “Borrower”). Ex. 7 at PLTFS00705. Kenneth and Sheila Antos signed this “Deed of Trust” on behalf
2 of the Antos Trust. Ex. 7 at PLTFS00723. In other words, the Antos Trust attempted to provide a
3 Deed of Trust to CBC Partners I, LLC in order to secure a Promissory Note that the Antos Trust never
4 executed or even guaranteed and with which it had no nexus whatsoever. Ex. 4 at p. 69.

5 Q: And did you ever have any legal counsel when you were signing off on all these
6 modifications of the note between KCI and CBC?

7 A: Other than CBC’s, no.

8 Q: Okay. And was CBC drafting all these modifications to the note?

9 A: As far as I can remember.

10 Q: Okay. And did you ever have a conversation with CBC about you and Sheila
11 Antos not being the owners of the property, the owners of record of the
12 property?

13 A: No.

14 Crucially, the Antos Trust did not receive any consideration whatsoever in exchange for
15 providing a “Deed of Trust” to CBC Partners I, LLC. Ex. 4 at p. 69.

16 Q: Now, do you have any recollection of the trust ever receiving any kind of
17 consideration in return for this Deed of Trust being signed?

18 A: Trust specifically, no I don’t.

19 The Antos Trust, as owner of the real property, was not a borrower on the underlying Note,
20 and the Antos Trust was not a guarantor on the underlying Note. Even further, the Antos Trust
21 testified that it had no business relationship whatsoever with CBC Partners I, LLC, making it highly
22 inappropriate for CBC Partners I, LLC to be attempting to get a “Deed of Trust” from the Antos Trust,
23 as there was no underlying promissory note in which the Antos Trust was involved. Ex. 4 at pp. 71-
24 72.

25 Q: Now, I just want to clarify for the record. So the Antos – the trust itself was
26 not the borrower on this commercial loan with CBC; is that correct?

27 A: That is correct.

28 Q: Okay. And the trust itself also was not a guarantor on the note; is that correct?

A: That is correct.

Q: Okay. And so what exactly did the trust get for signing that Deed of Trust for
the property?

1 ...

2 A: It got a, you know, continued good relationship with the Otters and with CBC.

3 Q: And I just want to clarify, there – isn't going to be any documentation showing
4 the trust getting any kind of monetary consideration; correct?

5 A: Not that I –

6 Q: Okay. All right. And so what kind of a relationship did the trust have with
7 CBC? Any kind of business relationship between the trust and CBC?

8 A: No.

9 As reflected on a Deed recorded on November 3, 2017, Plaintiff Spanish Heights Acquisition
10 Company, LLC owns the residential Property at issue. *See Exhibit 9*, Deed.

11 As documented by a real property lease, SJC Ventures LLC is the lawful tenant of the Property,
12 with Plaintiff Spanish Heights Acquisition Company, LLC being the lawful Landlord. *See Exhibit*
13 **10**, Lease Agreement.

14 Defendant CBC Partners I, LLC also purports to have secured certain remedies in the event of
15 a default on the Note through a Forbearance Agreement dated September 27, 2017, and an
16 Amendment to Forbearance Agreement dated December 1, 2019 (collectively the “Forbearance
17 Agreement”) which extended Spanish Heights Acquisition Company, LLC’s purported obligations
18 under the Note through March 31, 2020, and recognizes by CBC’s President, the SJC Lease
19 Agreement and subsequent extensions. *See Exhibit 11*, Forbearance Agreement; **Exhibit 12**,
20 Amendment to Forbearance Agreement.

21 One of the purported remedies under the Forbearance Agreement that Defendant CBC Partners
22 I, LLC claims to have is a right to exercise a pledged membership interest in Spanish Heights
23 Acquisition Company, LLC, through a separately-executed Pledge Agreement dated September 27,
24 2017. **Exhibit 13**, Pledge Agreement.

25 On March 29, 2020, Nevada Governor Sisolak issued Declaration of Emergency Directive
26 008, issued on March 29, 2020 in response to the coronavirus/COVID-19 pandemic, which states as
27 follows:

28 No lockout, notice to vacate, notice to pay or quit, eviction, foreclosure action, or other
proceeding involving residential or commercial real estate based upon a tenant or
mortgagee's default of any contractual obligations imposed by a rental agreement or

1 mortgage may be initiated under any provision of Nevada law effective March 29,
2 2020, at 11:59 p.m., until the state of emergency under the March 12, 2020 Declaration
3 of Emergency terminates, expires, or this Directive is rescinded by order of the
4 Governor.

5 ///

6 See State of Nevada, Executive Department, Declaration of Emergency Directive 008.²

7 Through correspondence dated April 1, 2020, defendant CBC Partners I, LLC elected to select
8 its claimed remedy by seeking to exercise its purported rights under the Pledge Agreement by having
9 the pledged collateral shares of Spanish Heights Acquisition Company, LLC transferred to CBC
10 Partners I, LLC's nominee and alter ego company, CBC Partners, LLC. That letter states that "on
11 April 15, 2020, CBC Partners I, LLC will exercise its rights under the Pledge Agreement by
12 transferring the pledged collateral to CBC Partners I, LLC's." See **Exhibit 14**, 4/1/2020
13 Correspondence.

14 Sometime after receiving the April 1, 2020 correspondence from defendant CBC Partners I,
15 LLC, representatives of the Kenneth & Sheila Antos Living Trust and Kenneth Ms. Antos Sheila M.
16 Neumann-Antos Trust assigned any right, title, interest, and membership interest they had in Spanish
17 Heights Acquisition Company, LLC to CBC Partners, LLC, thus effectuating defendant CBC Partners
18 I, LLC's remedy selection. **Exhibit 15**, Executed Assignment of Interest.

19 However, this "Assignment" makes no reference of the Antos Trust waiving off on the
20 Doctrine of Merger applying to this transaction. *Id.* Kenneth Antos testified that he did not speak
21 with anyone other than CBC Partners before signing the "Assignment." Ex. 4 at p. 33. It became
22 clear during Kenneth Antos' deposition that the Doctrine of Merger was not waived at the time the
23 Antos Trust tendered their equity in SHAC. Ex. 4 at p. 35; 41.

24 Q: Now, did anybody speak to you about the doctrine of merger before you had
25 signed off on this document?

26 A: I don't even know what a doctrine of merger is.

27 Q: Okay. So nobody had spoken to you about what it was and what it would mean;
28 correct?

² Available at http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-29_-_COVID-19_Declaration_of_Emergency_Directive_008/.

1 A: That's correct.

2 ...

3 Q: Okay. Well, let me ask you this: Do you have any specific personal recollection
4 of ever waiving off a doctrine of merger?

5 A: No.

6 Nevertheless, defendants CBC Partners I, LLC and its successor 5148 Spanish Heights, LLC
7 are claiming to be a part-owner of the Property, by means of its nominee and alter ego company CBC
8 Partners, LLC purportedly taking ownership of a partial membership interest in Spanish Heights
9 Acquisition Company, LLC. which owns the real property at the time it held the Note which it asserts
10 is secured by the very same real property, by way of its defective "Deed of Trust".

11 On April 3, 2020, even though it had just selected its remedy of attempting to become a partial
12 legal owner of the Property, in satisfaction of its commercial note alleged to have been so secured,
13 defendant CBC Partners I, LLC then attempted to select an additional equitable remedy by issuing a
14 Notice to Vacate to SJC Ventures LLC, which demanded that SJC Ventures LLC vacate the Property.
15 *See Exhibit 16*, Notice to Vacate.

16 As found by this Court, the April 3, 2020 Notice to Vacate was in contravention to Governor
17 Sisolak's March 29, 2020 Executive Directive placing a moratorium on all foreclosure and eviction
18 actions. Plaintiffs later learned that Defendants' counsel, Michael Mushkin, Esq., apparently went
19 rogue and issued the Notice to Vacate and subsequent April 8, 2020 correspondence without his own
20 client's knowledge or consent, as CBC Partners testified that it did not have notice of Mr. Mushkin's
21 actions on its behalf, nor did it have any standing to issue any Notice to Vacate since it allegedly sold
22 its note on April 1, 2020. *See Exhibit 17*, Transcript of Proceedings from May 14, 2020 at pp. 233-
23 234 (CBC Partners I, LLC's corporate representative admitting that CBC attempted to sell its note on
24 April 1, 2020 and that he never authorized the Notice to Vacate correspondence).

25 It therefore became apparent that CBC Partners I, LLC was attempting to exercise both legal
26 title (ownership of the Property) and equitable title (exercising foreclosure actions), in violation of the
27 Merger Doctrine.

28 The matter proceeded to an evidentiary hearing. During the preliminary injunction

1 proceedings, CBC Partners I, LLC's counsel argued that the foreclosure and eviction actions he was
2 advocating for (apparently without his client's consent) were acceptable under the Governor's
3 exemption to the moratorium on foreclosures and evictions, while simultaneously arguing it is not
4 pursuing foreclosure or eviction activity.

5 The Court ruled otherwise, determining that the Notice to Vacate violated the Governor's
6 Emergency Directive 008 and setting in place an injunction. *See* 5/29/2020 Order Granting Plaintiffs'
7 motion for preliminary injunction, *on file*.

8 Instead of cooperating in the discovery process, Defendants have sloppily tried to re-engage
9 in their illegal and improper foreclosure activities.

10 On or around July 2, 2020, three months after it sold its alleged Note, Defendants' counsel
11 sent Plaintiffs a "Notice of Default" claiming that the **CBC Partners** loan was in default (which is
12 disputed and has never been made a finding by this Court) and that "CBC Partners I, LLC, at its
13 option, without further demand, may evoke the power of sale and any other remedies permitted by
14 Nevada law." **Exhibit 18**, Notice of Default. Such July 2, 2020 Notice was issued during the
15 pendency of and is also in contravention to Governor Sisolak's March 29, 2020 Executive Directive
16 placing a moratorium on all foreclosure and eviction actions, specifically prohibiting "other
17 proceeding involving residential or commercial real estate based upon a tenant or mortgagee's default
18 of any contractual obligations imposed by a rental agreement or mortgage."

19 And again, the problem with that is CBC Partners I, LLC has already testified that it sold its
20 note in April 2020, so it had no standing to be issuing any "Notice of Default" correspondence in July
21 2020. *See* Ex. 17 at pp. 218-219 (CBC Partners testifying that it sold its note "the first couple days of
22 April [2020]" to 5148 Spanish Heights, LLC.). Thus, the underlying Notice of Default is void and
23 unenforceable.

24 Disregarding that, on September 15, 2020, defendant 5148 Spanish Heights, LLC moved
25 forward with causing a "Notice of Breach and Election to Sell Under Deed of Trust" to be recorded
26 against the Property. **Exhibit 19**, Notice of Breach. This Notice of Breach, issued without the
27 requisite Notice of Default by 5148 Spanish Heights, LLC, is based on the false narrative and
28 unfounded conclusion that there has been a breach of the obligations for which the Deed of Trust has

1 secured. *Id.*

2 To be clear, various communications from City National Bank (the holder of the first
3 mortgage on the Property) and Northern Trust Bank (the holder of the second mortgage on the
4 Property) indicate that on or around January 2020, CBC Partners I, LLC materially breached the
5 Forbearance Agreement by failing to continue to make payments to the first and second mortgagee.
6 *See, e.g. Exhibit 20*, PLTFS00261-Correspondence from Jonathan Ukeiley of Northern Trust Bank
7 stating that there are past due bills from “January, February, March and April 2020.” This CBC
8 breach of the Forbearance Agreement remains in breach to this day.

9 The Notice of Breach is replete with concerning misrepresentations, but most perplexing is
10 the representation by Michael Mushkin, on behalf of 5148 Spanish Heights, LLC that there was no
11 need to provide the borrower with each of the disclosures identified in NRS 107.500(1) because the
12 beneficiary (defined as 5148 Spanish Heights, LLC) “is a financial institution or lender, that, during
13 its immediately preceding annual reporting period, as established with its primary regulator, has
14 foreclosed on 100 or fewer real properties located in this State which constitute owner-occupied
15 housing, as defined by NRS 107.460.” *See Ex. 19* at p. 7.

16 There is no indication that defendant 5148 Spanish Heights, LLC is a financial institution or
17 lender. Thus, even if defendant 5148 Spanish Heights, LLC had the ability to issue a Notice of Breach
18 stemming from an invalid Notice of Default (which it does not), it appears that 5148 Spanish Heights,
19 LLC did not follow the correct protocol set forth in NRS 107 for providing certain disclosures in that
20 Notice of Breach, and Mr. Mushkin has made yet another false representation in the course of these
21 proceedings.

22 Then, on December 11, 2020, Plaintiffs received correspondence in the mail indicating that a
23 foreclosure sale date has been recorded and scheduled for January 13, 2021. *Ex. 22*. While it is not
24 clear from the property records that a Notice of Foreclosure Sale has actually been recorded, due to
25 the nature of this correspondence, Plaintiffs had no choice but to seek relief from the Court.

26 With all of these open questions, including: (1) whether the third-position “Deed of Trust” is
27 even a valid and enforceable document in light of the fact that the signatories to that document and
28 the original owners of the Property (the Antos Trust) had no involvement whatsoever in the underlying

1 Note that was issued to the Antos' business entities and never received any consideration for signing
2 off on the "Deed of Trust"; (2) whether the doctrine of merger and the One Action Rule should apply
3 in this case; (3) the issues surrounding the impropriety of the July 2020 Notice of Default that indicated
4 "CBC Partners" was exercising its options even though CBC Partners had already purportedly sold
5 its note by that point; and (4) the sloppy and improper drafting of the "Notice of Breach" which
6 appears to misrepresent that 5148 Spanish Heights, LLC is a financial institution or lender, which it
7 is not, the Court should order that Defendants be enjoined from proceeding on the Notice of Default
8 and Notice of Breach and from engaging in any further foreclosure activities regarding the Property
9 until after this case has been fully heard on its merits.

10 **III. LEGAL ANALYSIS**

11 **A. STANDARD OF REVIEW**

12 As the Nevada Supreme Court has explained, injunctions are issued to protect plaintiffs
13 from irreparable injury and to preserve the court's power to render a meaningful decision after a trial
14 on the merits. *See Ottenheimer v. Real Estate Division*, 91 Nev. 338, 535 P.2d 1284 (1975). The
15 decision whether to grant a preliminary injunction is within the sound discretion of the district court,
16 whose decision will not be disturbed on appeal absent an abuse of discretion. *Number One Rent-A-*
17 *Car v. Ramada Inns*, 94 Nev. 779, 781, 587 P.2d 1329, 1330 (1978).

18 Rule 33.010 of the NRS provides that an injunction may be granted "when it shall appear by
19 the complaint that the plaintiff is entitled to the requested relief, and such relief or any part thereof
20 consists in restraining the commission or continuance of the act complained of, either for a limited
21 period or perpetually." NRS 33.010(1). Thus, courts have held that "[a] preliminary injunction is
22 available if the applicant can show a likelihood of success on the merits and a reasonable probability
23 that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which
24 compensatory damages is an inadequate remedy." *Dangberg Holdings Nevada, LLC v. Douglas*
25 *County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). A court must also weigh the potential
26 hardships to the relative parties, and consider the public interest. *See Univ. & Cmty. Coll. Sys. of*
27 *Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

28 The purpose of a preliminary injunction is to preserve the status quo until a trial on the merits

1 can be held. *Ottenheimer v. Real Estate Div. of Nevada Dep't of Commerce*, 91 Nev. 338, 342, 535
2 P.2d 1284, 1285 (1975). Thus, even if the harmful act has been completed before the complaint is
3 filed, an injunction may be granted in order to restore the status quo. *Memory Gardens of Las Vegas,*
4 *Inc. v. Pet Ponderosa Mem'l Gardens, Inc.*, 88 Nev. 1, 4, 492 P.2d 123, 124 (1972). “Given this
5 limited purpose, and given the haste that is often necessary if those positions are to be preserved, a
6 preliminary injunction is customarily granted on the basis of procedures that are less formal and
7 evidence that is less complete than in a trial on the merits. A party thus is not required to prove his
8 case in full at a preliminary-injunction hearing.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101
9 S. Ct. 1830, 1834 (1981) (cited with approval by *Alliance for Am.'s Future v. State ex rel. Miller*,
10 56283, 2012 WL 642540 (Nev. Feb. 24, 2012)).

11 Likewise, an *ex parte* temporary restraining order “should be restricted to serving [its]
12 underlying purpose of preserving the status quo and preventing irreparable harm just so long as is
13 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto*
14 *Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439, 94 S. Ct. 1113, 1124 (1974). The
15 standard for a temporary restraining order is essentially the same as that for a preliminary injunction
16 without a likelihood of success on the merits. Nev. R. Civ. P. 65 provides that a court may issue an
17 *ex parte* temporary restraining order if (1) it clearly appears from specific facts shown by affidavit or
18 by the verified complaint that immediate and irreparable injury, loss or damage will result to the
19 applicant; and (2) the applicant’s attorney certified to the court in writing, the efforts, if any, which
20 have been made to give notice of the hearing. *See* Nev. R. Civ. P. 65(b).

21 As discussed in further detail below, Defendants’ conduct will cause substantial and
22 irreparable harm to Plaintiffs unless injunctive relief is granted immediately. Such relief should
23 remain in place throughout the pendency of this litigation, and Plaintiffs will likely succeed on the
24 merits of their claims. Furthermore, public policy and the balance of hardships weigh in favor of
25 Plaintiffs. Accordingly, Plaintiffs ask this Court to maintain the status quo and issue a temporary
26 restraining order and preliminary injunction against Defendants.

27 **B. PLAINTIFFS WILL LIKELY SUCCEED ON THE MERITS OF THEIR CLAIMS**

28 To grant a preliminary injunction, the court must “assess the plaintiff’s likelihood of success

1 on the merits, not whether the plaintiff has actually succeeded on the merits.” *Southern Oregon Barter*
2 *Fair v. Jackson County*, 372 F.3d 1128, 1136 (9th Cir. 2004). Moreover, “decisions on preliminary
3 injunctions are just that--preliminary--and must often be made hastily and on less than a full record.”
4 *Id.* Thus, “the possibility that the party obtaining a preliminary injunction may not win on the merits
5 at the trial is not determinative of the propriety or validity of the trial court's granting the preliminary
6 injunction.” *B.W. Photo Utilities v. Republic Molding Corp.*, 280 F.2d 806, 807 (9th Cir.1960).

7 Here, Plaintiffs can show a likelihood of success on the merits as to each of their claims for
8 declaratory relief. However, Plaintiffs need only show a likelihood of success on the merits for one
9 cause of action to qualify for injunctive relief.

10 **1. Plaintiffs Will Likely Succeed on All Declaratory Relief Actions as it Appears there**
11 **is No Valid Third-Position “Deed of Trust” at All**

12 Declaratory relief is available if: (1) a justiciable controversy exists between persons with
13 adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the
14 controversy, and (3) the issue is ripe for judicial determination. *Knittle v. Progressive Casualty Ins.*
15 *Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996).

16 Here, a justiciable controversy exists as to whether there even is a valid and enforceable third-
17 position “Deed of Trust” which goes to all of Plaintiffs’ declaratory relief claims. This issue is ripe
18 for judicial termination, as Defendants have insisted on moving forward with improper foreclosure
19 actions despite being previously enjoined from doing so by the Court after violating the Emergency
20 Executive Order during the global Covid-19 pandemic and despite the fact that these issues are all
21 topics of discovery in this litigation.

22 The depositions of the Antos’ were devastating for the Defendants’, as the truth regarding the
23 underlying Note (which was really just a commercial loan issued to the Antos’ business entities and
24 had nothing to do with the actual owner of the Property whatsoever) illuminated the lack of legitimacy
25 of the “Deed of Trust.”

26 It has now been determined that the purported third position “Deed of Trust” has serious
27 legitimacy issues, as it is apparently “securing” a promissory note for a commercial loan that was
28 issued to the Antos’ companies – not to the actual owner of the property, the Antos Trust. The Antos

1 Trust never actually signed off on the underlying promissory note in any capacity whatsoever, and
2 even more illuminating, the Antos Trust never received any consideration for providing a Deed of
3 Trust to CBC Partners I, LLC. *See* Ex. 4. Thus, there is an issue of fact as to whether the third position
4 “Deed of Trust” which is securing a commercial loan to the Antos’ companies and has nothing to do
5 with the owners of the Property, is even valid and enforceable.

6 This precludes the Defendants from acting on that “Deed of Trust,” which means Defendants
7 should be compelled to rescind the existing improper Notice of Default and Notice of Breach and
8 further be enjoined from issuing any more Notices of Default or Notices of Breach, and should be
9 enjoined from acting on the ones they improperly issued during the course of this litigation.

10 It appears that CBC Partners I, LLC learned of the Property that was owned by the Antos Trust
11 and demanded that the Antos Trust sign off on a Deed of Trust years after the commercial loan to the
12 Antos’ restaurant was made. Kenneth Antos has testified that the Antos Trust had no business
13 relationship whatsoever with CBC Partners I, LLC, and the Antos Trust certainly did not receive
14 anything in return for executing the Deed of Trust, thus making the document invalid for want of
15 consideration. *See* Ex. 4 at pp. 71-72.

16 **2. Defendant CBC Partners I, LLC Had No Standing to Issue a Notice of Default in July**
17 **2020**

18 It should not be ignored that underlying 5148 Spanish Heights, LLC’s Notice of Breach that
19 was recorded in September 2020 is a Notice of Default that was issued in July 2020 by CBC Partners
20 I, LLC. Ex. 15.

21 But CBC Partners I, LLC has insisted that it sold its Note to 5148 Spanish Heights, LLC in
22 April of 2020. Ex. 17 at pp. 218-219.

23 Thus, the 5148 Spanish Heights Notice of Breach relies on and references an invalid CBC
24 Partner’s I, LLC Notice of Default, as CBC Partners I, LLC had no authority or standing to issue a
25 Notice of Default in July 2020. Further, 5148 Spanish Heights, LLC never issued a Notice of Default
26 itself upon which it could base its defective and improper Notice of Breach.

27 This is important because per NRS 107.500, the beneficiary of the Deed of Trust is required
28 to mail a notice to the borrower specifically detailing:

- 1 (1) The total amount of payment necessary to cure the default and reinstate the residential
mortgage loan or to bring the residential mortgage loan into current status;
2 (2) The amount of the principal obligation under the residential mortgage loan;
3 (3) The date through which the borrower's obligation under the residential mortgage loan is
paid;
4 (4) The date of the last payment by the borrower;
5 (5) The current interest rate in effect for the residential mortgage loan, if the rate is effective
for at least 30 calendar days;
6 (6) The date on which the interest rate for the residential mortgage loan may next reset or
adjust, unless the rate changes more frequently than once every 30 calendar days;
7 (7) The amount of the prepayment fee charged under the residential mortgage loan, if any;
8 (8) A description of any late payment fee charged under the residential mortgage loan;
9 (9) A telephone number or electronic mail address that the borrower may use to obtain
information concerning the residential mortgage loan; and
10 (10) The names, addresses, telephone numbers and Internet website addresses of one or more
counseling agencies or programs approved by the United States Department of Housing and Urban
Development.

11
12 *See* NRS 107.500. As of April 2020, the claimed beneficiary of the supposed "third-position Deed of
13 Trust" is defendant 5148 Spanish Heights, LLC.

14 However, the "Notice of Default" issued in July 2020 does not mention 5148 Spanish Heights,
15 LLC at all, thus making it void. Ex. 18. This means that at no point in either the July 2020 Notice of
16 Default or the September 2020 Notice of Breach did any actual claimed beneficiary of the supposed
17 "third-position Deed of Trust" set forth the amount purportedly owed to cure the alleged default,
18 which is a clear breach of NRS 107.500.

19 Even more egregious, defendant 5148 Spanish Heights, LLC contended in its September 2020
20 "Notice of Breach" that it was not obligated to follow NRS 107.500 because it is purportedly a
21 "financial institution or lender," (Ex. 19 at p. 7) but in reality, 5148 Spanish Heights, LLC has not
22 loaned anything to Plaintiffs. In fact, as evidenced by the name itself, it is a special purpose entity
23 created specifically for this single transaction, and is in no way a lender, as misrepresented by Mr.
24 Mushkin. Nor is there any indication in the record that 5148 Spanish Heights, LLC is actually a
25 certified financial institution or lender. This appears to be a misrepresentation that 5148 Spanish
26 Heights, LLC made in a failed attempt to evade its requirements to follow NRS 107.500, which
27 naturally makes the "Notice of Breach" void and unenforceable.

28 ///

1 **3. Declaratory Relief as to the Extinguishment of the Note**

2 Here, a justiciable controversy exists as to whether the Merger Doctrine prevents CBC Partners
3 I, LLC from exercising equitable rights when it has already attempted to select its remedy of obtaining
4 legal title of the Property. As the record owner of the Property, plaintiff Spanish Heights Acquisition
5 Company, LLC has a protectable interest in the controversy, as does plaintiff SJC Ventures LLC, the
6 lawful tenant of the Property. This issue is ripe for judicial termination, as defendant CBC Partners
7 I, LLC claims to have obtained an assignment of interest from partial Spanish Heights Acquisition
8 Company, LLC owners (the Antos Trust). Ex. 8.

9 But the problem with that “Assignment” is it makes no reference of the Antos Trust waiving
10 off on the Doctrine of Merger applying to this transaction. *Id.* Kenneth Antos testified that he did not
11 speak with anyone other than CBC Partners before signing the “Assignment.” Ex. 4 at p. 33. Further,
12 Mr. Antos testified that the Doctrine of Merger was not waived at the time the Antos Trust tendered
13 their equity in SHAC. Ex. 4 at p. 35; 41.

14 Q: Now, did anybody speak to you about the doctrine of merger before you had
15 signed off on this document?

16 A: I don’t even know what a doctrine of merger is.

17 Q: Okay. So nobody had spoken to you about what it was and what it would mean;
18 correct?

19 A: That’s correct.

20 ...

21 **Q: Okay. Well, let me ask you this: Do you have any specific personal
22 recollection of ever waiving off a doctrine of merger?**

23 **A: No.**

24 The doctrine of merger in the context of real property specifically precludes CBC Partners, I,
25 LLC’s theory that it may hold a lien in (or sell its interest in) its own collateral to the detriment of the
26 other secured lenders, owners and to the tenant SJC Ventures. Nevada Courts, indeed Courts across
27 the country, have long held that when legal title (ownership of the property) and equitable title (lien
28 encumbering the property) is held by the same person, those interests merge, leaving only legal title.
See First National Bank v. Kreig, 32 P. 641 (Nev. 1893)(holding that when property conveyed to a

1 trustee by way of mortgage is deeded back to the original grantor with the consent of the beneficiaries,
2 their lien is lost.); *See also US. Leather, Inc. v. Mitchell Mfg Group, Inc.*, 276 F.3d 782, 2002 FED
3 App. 0003P (6 111 Cir., 2002)(holding that Michigan law indicates that when a holder of a real estate
4 mortgage becomes the owner of the fee, the mortgage and the fee are merged. Thus, the mortgage is
5 extinguished.); *See also Mid Kansas Federal Sav. and Loan Ass 'n of Wichita v. Dynamic*
6 *Development Corp.*, 167 Ariz. 122, 804 P.2d 1310 (1991)(holding when one person obtains both a
7 greater and a lesser interest in the same property and no intermediate interest exists in the property,
8 merger occurs and the lesser interest is extinguished).

9 This same concept of merger is squarely on point as to the actions of Defendants and should
10 be applied to this matter, as CBC Partners I, LLC cannot be both a borrower and a lender in the same
11 transaction, thus it had no ability to “transfer” its interest in the Note to 5148 Spanish Heights, LLC.
12 Defendant CBC Partners I, LLC has attempted to select its remedy of owning an interest in the
13 Property owner Spanish Heights Acquisition Company, LLC (whether or not the timing of that
14 remedy or the manner in which that remedy is being sought is proper), and it cannot now continue to
15 send “Notice of Default” correspondence like the letter issued in July 2020 – foreclosure actions that
16 CBC Partners I, LLC has waived by selecting an alternative remedy.

17 **4. Declaratory Relief as to the preclusion of Foreclosure as a Remedy under the One** 18 **Action Rule**

19 Nevada’s one-action rule (NRS 40.430(1)) states that:

20 there may be but one action for the recovery of any debt, or for the enforcement of
21 any right secured by a mortgage or other lien upon real estate.... In that action, the
22 judgment must be rendered for the amount found due the plaintiff, and the court, by
its decree or judgment, may direct a sale of the encumbered property, or such part
thereof as is necessary

23 NRS 40.430(1). The “purpose behind the one-action rule in Nevada is to prevent harassment of
24 debtors by creditors attempting double recovery by seeking a full money judgment against the debtor
25 and by seeking to recover the real property securing the debt.” *McDonald v. D.P. Alexander & Las*
26 *Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 751 (2005).

27 Here, on April 1, 2020, defendant CBC Partners I, LLC chose its remedy by electing to obtain
28 an ownership interest in Spanish Heights Acquisition Company, the owner of the real property. Ex.

1 8. It does not now get to seek a double recovery by trying initiate a foreclosure action on the Property.
2 Such conduct violates Nevada's one-action rule.

3 As such, Plaintiffs have demonstrated a likelihood of success as to its actions for declaratory
4 relief. Thus, a temporary restraining order and preliminary injunction are warranted against
5 Defendant.

6 **C. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IF AN INJUNCTION IS NOT ISSUED**

7 In the absence of immediate injunctive relief by this Court, Plaintiffs will suffer irreparable
8 harm for which no monetary damages are adequate. The Nevada Supreme Court has held that
9 "[g]enerally harm is 'irreparable' if it cannot adequately be remedied by compensatory damages."
10 *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 28, 183 P.2d 895, 901 (2008) (citing *Univ. Sys.*
11 *v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 87 (2004)). "[A]n injury is not fully
12 compensable by money damages if the nature of the plaintiffs' loss would make damages difficult to
13 calculate." *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

14 Nevada courts have repeatedly held that real property is unique and interference with real
15 property rights usually leads to irreparable harm. *See Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d
16 1029, 1030 (1987) "[R]eal property and its attributes are considered unique and loss of
17 real property rights generally results in irreparable harm." *See also, Leonard v. Stoebling*, 102 Nev.
18 543, 728 P.2d 1358 (1986) (view from home is unique asset; injunction issued to preserve view); *see*
19 *also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction
20 to stop foreclosure reversed because legal remedy inadequate).

21 As such, Plaintiffs would likely suffer irreparable injury if Defendants' conduct is permitted
22 to continue because allowing Defendants to continue their foreclosure conduct unfettered will result
23 in a potential loss of the Property as to owner Spanish Heights Acquisition Company, and, if
24 Defendants had their way, as to tenant and renter SJC Ventures.

25 As it would be nearly impossible for Plaintiffs to quantify the harm that Spanish Heights
26 Acquisition Company, LLC would suffer if divested of its ownership interest in real property and SJC
27 Ventures especially will endure as a result of losing access to the Property as a tenant through actual
28 damages, the harm is irreparable, and can only be prevented through injunctive relief. Thus, in order

1 to preserve this Court’s power to render a meaningful decision after a trial on the merits, this Court
2 should issue a temporary restraining order and preliminary injunction enjoining the Defendants’
3 conduct.

4 **D. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST WEIGH HEAVILY IN FAVOR**
5 **OF PLAINTIFFS**

6 “In considering preliminary injunctions, courts also weigh the potential hardships to the
7 relative parties and other, and the public interest. *Univ. & Cmty. Coll. Sys. of Nev.*, 120 Nev. at 721,
8 100 P.3d at 187 (citation omitted).

9 Here, the balance of harm in this case heavily favors Plaintiffs. Spanish Heights Acquisition
10 Company, LLC faces the potential loss of a real property interest, and SJC Ventures LLC faces the
11 loss of the real property that it currently leases, and with the knowledge and consent of the Defendants
12 has now prepaid rents through December 2024 to fund the SHAC obligations under the injunction.

13 Issuance of a preliminary injunction would prevent the Defendants from continuing their
14 wrongful foreclosure actions. In sum, a preliminary injunction would stop defendant CBC Partners I,
15 LLC from issuing void and unenforceable “Notices of Default” even though it has no standing to do
16 so, and would stop defendant 5148 Spanish Heights, LLC from causing “Notices of Breach” from
17 being recorded that rely on such void “Notices of Default” and that do not even follow the protocol
18 set forth in NRS 107.500. More importantly, a preliminary injunction will stop Defendants from
19 acting on a “Deed of Trust” that is in all likelihood is completely invalid due to lack of consideration
20 and the non-existence of an underlying Note to which the owner of the property is party, as required
21 to issue a valid Deed of Trust against.

22 Further, issuance of the injunction will merely maintain the status quo. “[T]he status quo is
23 the last uncontested status which preceded the pending controversy.” *Tanner Motor Livery, Ltd. v.*
24 *Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963), cert denied, 375 U.S. 821 (1963). Here, an injunction
25 would merely return the parties to the status quo that existed prior to the Defendants’ contested and
26 improper conduct.

27 Public policy also weighs in favor of not fast-tracking a foreclosure while there is an ongoing
28 global pandemic. There was simply no need for Defendants to illegally initiate foreclosure actions

1 while there are a plethora of disputed facts that the Court still needs to adjudicate, most importantly
2 the legitimacy of the third-position “Deed of Trust” itself in light of the fact that the Antos Trust never
3 received anything in return of execution of the “Deed of Trust.” And for which there is no underlying
4 Note to which the property owner is party that would be secured by such “Deed of Trust.”

5 Accordingly, the balance of hardships favor Plaintiffs, and the injunctive relief requested
6 herein should be granted.

7 **E. A BOND IS NOT WARRANTED**

8 Rule 65 requires “the giving of security by the applicant in such sum as the court deems proper,
9 for the payment of such costs and damages as may be incurred or suffered by any party who is found
10 to have been wrongfully enjoined or restrained.” Nev. R. Civ. P. 65(c).

11 Because Defendants will not suffer any cognizable harm as a result of the injunctive relief
12 requested, a bond is not appropriate. Even if it is later determined that the injunctive relief was
13 wrongful, Defendants would still not suffered any loss, other than perhaps attorney’s fees incurred in
14 opposing the motion. Common sense dictates that Plaintiffs should not have to put up a bond to enjoin
15 Defendants from attempting to foreclose on the Property through the means of an invalid third-
16 position “Deed of Trust.”

17 Accordingly, the Court should not require a bond to give effect to the injunctive relief
18 requested in this motion. If the Court determines that a bond is appropriate, a *de minimus* bond of the
19 \$1,000 already posted with the Court under the previous Order, together with the previous
20 performance requirements of Plaintiff should be ordered.

21 **IV. CONCLUSION**

22 Based on the foregoing, Plaintiffs request that the Court enter a temporary restraining order,
23 and, after notice and a hearing, a preliminary injunction requiring defendants to rescind their improper
24 Notice of Breach and Notice of Default and further enjoining Defendants from (1) proceeding on the
25 current Notices of Default and Notice of Breach and Election to Sell Under Deed of Trust, which are
26 not only nonsensical but blatantly violate Nevada law; (2) engaging in any further foreclosure
27 activities against the subject Property; and (3) attempting to foreclose on the Property through an
28 extinguished and contested purported interest, until after the hearing on Plaintiffs’ motion for

1 preliminary injunction.

2 The Court should order that the current Notices must be rescinded, and the Court should
3 consider sanctions against Defendants for forcing Plaintiffs to initiate this motion. The requested
4 injunctive relief is necessary to cure the immediate and irreparable harm being incurred by Plaintiffs.

5 A proposed temporary restraining order is attached hereto as **Exhibit 21**.

6 DATED this 14th day of December, 2020.

7
8 **MAIER GUTIERREZ & ASSOCIATES**

9 /s/ Danielle J. Barraza

10 JOSEPH A. GUTIERREZ, ESQ.
11 Nevada Bar No. 9046
12 DANIELLE J. BARRAZA, ESQ.
13 Nevada Bar No. 13822
14 8816 Spanish Ridge Avenue
15 Las Vegas, Nevada 89148
16 *Attorneys for Plaintiffs*
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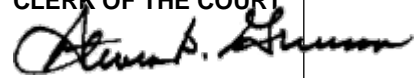
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, **PLAINTIFFS’ RENEWED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME** was electronically filed on the 14th day of December, 2020, 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:

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

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



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

*Attorneys for Defendant and
Counterclaimants*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

Hearing Date: January 4, 2021

Hearing Time: 9:00 am

**DEFENDANTS/COUNTERCLAIMANTS'
OPPOSITION TO PLAINTIFFS'
RENEWED APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION ON AN ORDER
SHORTENING TIME**

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC
3 PARTNERS I, LLC, a Washington limited
4 liability company,
5 Counterclaimants,
6 v.
7 SPANISH HEIGHTS ACQUISITION
8 COMPANY, LLC, a Nevada Limited Liability
9 Company; SJC VENTURES, LLC, a Delaware
10 limited liability company; SJC VENTURES
11 HOLDING COMPANY, LLC, a Delaware
12 limited liability company; JAY BLOOM,
individually and as Manager, DOE
DEFENDANTS 1-10; and ROE
DEFENDANTS 11-20,
Counterdefendants.

13 **DEFENDANTS/COUNTERCLAIMANTS' OPPOSITION TO PLAINTIFFS' RENEWED**
14 **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR**
15 **PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME**

16 Defendants/Counterclaimants, by and through their attorney, Michael R. Mushkin, of the
17 law firm of Mushkin & Coppedge, hereby submit their Opposition to Plaintiffs' Renewed
18 Application for Temporary Restraining Order and Motion for Preliminary Injunction on an
19 Order Shortening Time.

20 This Opposition is made and based upon the following Memorandum of Points and
21 Authorities, the papers, pleadings, and records on file herein, and any and all arguments that
22 may be allowed at the time of hearing of this motion.

23
24 **POINTS AND AUTHORITIES**

25 **I. Introduction**

26 This action involves a Secured Commercial Promissory Note, that through several
27 modifications and forbearances (the "Documents"), is now fully matured and secured by real
28 property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148 (the "Property").

1 Plaintiffs are attempting to evade payment of a fully matured debt by misrepresenting the
2 contents of the Documents and are advocating an interpretation of the Documents that is
3 entirely contrary to law. Moreover, throughout his deposition, Mr. Bloom on behalf of the
4 Plaintiffs, continually stated that the documents speak for themselves and specifically stated that
5 Plaintiffs were not arguing the authenticity of the documents, See Exhibit GG Deposition of Jay
6 Bloom Vol. 1 (“Bloom Deposition Vol. 1”) at 97:2-14 and Exhibit HH Deposition of Jay Bloom
7 Vol. 2 (“Bloom Deposition Vol. 2”) at 260:6-8. Plaintiff’s counsel also authenticated the
8 Documents during Mr. Antos deposition. See Exhibit NN, Deposition Transcript of Kenneth
9 Antos at 73:2-80:12

10 Plaintiffs’ mischaracterization of the Documents and Testimony represent a
11 disingenuous attempt to avoid their contractual obligations under the Documents. Plaintiffs have
12 always been aware of the events and Documents leading to the Property becoming security for
13 the Secured Promissory Note. As the history of the Documents is disclosed on Page 1 of the
14 Forbearance Agreement, the first document in a detailed transaction; including the Secured
15 Promissory Note, Pledge Agreement, and Security Agreement all as additional collateral
16 securing this Promissory Note. Plaintiffs Motion is an in attempt to avoid their contractual
17 obligations under the Documents.

18 Plaintiffs suggest that the Court simply ignore applicable law and the plain language of
19 the Documents, by posing theories without factual or legal support, including the Doctrine of
20 Merger and the One Action Rule. These arguments are demonstrative of either a fundamental
21 misunderstanding of basic legal concepts and real property law, or a transparent attempt to
22 confuse and mislead the Court with semantics. In either case, Plaintiffs arguments lack merit.

23 Plaintiffs completely ignore their contractual obligations to the Antos Parties. Plaintiffs
24 seek only the benefits of the contract Documents without the burden. Plaintiffs have paid
25 nothing to CBC Partners I, LLC, or its successor 5148 Spanish Heights, LLC, since March of
26 2020. Plaintiffs have paid nothing towards the obligations to the Antos parties, ever.

27 Additionally, Plaintiffs’ claims that the Notice of Default and Notice to Breach are
28 defective and improper by citing NRS 107.500. It is important to note that NRS 107.400 – NRS

1 107.560 is only required of **Owner-Occupied** housing; clearly not the case here.

3 **II. Facts and Procedural History**

4 1. This action involves real property located in Clark County, Nevada commonly
5 known as 5148 Spanish Heights Drive, Las Vegas, Nevada 89148 (the “Property”).

6 2. On or about October 14, 2010 Kenneth M. Antos and Sheila M. Neumann-Antos
7 transferred to Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
8 Shelia Antos Living Trust dated April 26, 2007 (“Antos”) real property located in Clark County,
9 Nevada commonly known as 5148 Spanish Heights Drive, Las Vegas, Nevada 89148 (the
10 “Property”). See Exhibit A, Grant, Bargain, Sale Deed.

11 3. On or about June 22, 2012, Antos with nonparties KCI Investments, LLC a
12 Nevada limited liability company (“KCI”) entered into a Secured Promissory Note with CBC
13 Partners I, LLC, a Washington limited liability company (“CBCI”). See Exhibit B, Secured
14 Promissory Note.

15 4. The June 22, 2012, Secured Promissory Note (the “Note”) was modified and
16 amended several times. See Exhibit C, First Second, Third, Fifth, Sixth, and Eighth
17 Modifications to Secured Promissory Note.

18 5. On November 13, 2013, a Fourth Modification to Secured Promissory Note
19 (“Fourth Modification”) was entered into. See Exhibit D.

20 6. Paragraph 4 of the Fourth Modification Amended Paragraph 6.12 of the Secured
21 Promissory Note as follows:

22 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
23 create, assume or permit to exist any debt secured by the real property
24 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148

25 Exhibit D, specifically Bates No 5148SH 00293

26 7. Along with the Fourth Modification, Antos provided a Security Agreement with
27 Respect to Interest in Settlement Agreement and Mutual Release. Exhibit E. This Security
28 Agreement not only granted a security interest in a Settlement Agreement but also set out

1 Representations, Warranties and Covenants of Antos:

2 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
3 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
4 any portion of the Collateral and (b) incur, create, assume or permit to
5 exist any debt secured by the real property located at 5148 Spanish
Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

6 Exhibit E, specifically Bates No 5148SH 000287.

7 8. KCI was ultimately acquired by Preferred Restaurant Brands, Inc. fka Dixie
8 Foods International, Inc. ("Dixie") and the Secured Promissory Note was assumed by Dixie,
9 with the Antos' continuing to guaranty the obligation.

10 9. On or about October 31, 2014, a Seventh Modification to Secured Promissory
11 Note and Waiver of Defaults ("Seventh Modification") was entered into. See Exhibit F, Seventh
12 Modification.

13 10. In addition, Paragraph 18(f) of the Seventh Modification set out a condition
14 precedent

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

19 Exhibit F, specifically Bates No 5148SH 000328, emphasis in original.

20 11. On or about December 17, 2014, Antos delivered to CBCI a Certificate of Trust
21 Existence and Authority. The Certificate of Trust Existence and Authority provides:

22 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a
23 "Trustee") acting on behalf of the Trust, are each authorized and
24 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

25 To execute and deliver a Deed of Trust, Assignment of Rents,
26 Security Agreement and Fixture Filing (the "Deed of Trust"), to
27 secure (i) obligations owing to Lender by KCI Investments, LLC, a
28 Nevada limited liability company, and Preferred Restaurant
Brands, Inc., a Florida corporation (individually and collectively,
"Borrower"), (ii) that certain Secured Promissory Note dated as of

1 June 22, 2012, in the maximum principal amount of \$3,250,000.00
2 (the "Note") executed by Borrower in favor of Lender, (iii) that
3 certain Guaranty dated June 22, 2012, executed by the Grantors as
4 individuals and not in their capacity as trustees, and (iv) the other
documents and instruments executed or delivered in connection
with the foregoing.

5 See Exhibit G. The Certificate of Trust Existence and Authority further provides,

6 **The Deed of Trust and Lender's provision of credit under the terms of**
7 **the Note will directly and indirectly benefit the Trust and its**
8 **beneficiaries.**

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

11 See Exhibit G, specifically 5148SH 000335 (emphasis added).

12 12. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
13 Agreement and Fixture Filing ("Deed of Trust") was recorded against the Property in the Clark
14 County Recorder's Office as Instrument No. 201412290002856, for the purpose of securing the
15 Note. See Exhibit H.

16 13. This Deed of Trust is subordinate to two (2) additional Deeds of Trust recorded
17 against the Property. The First Mortgage to City National is in the principal amount of
18 approximately \$3,240,000.00 with monthly payment of \$19,181.07. The Second Mortgage to
19 Northern Trust Bank is in the principal amount of approximately \$599,000.00 with monthly
20 payments of \$3,034.00.

21 14. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note
22 and Waiver of Defaults (Ninth Modification) was entered into. Paragraph 14(c) of the Ninth
23 Modification set out a condition precedent of

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

28 See Exhibit I at page 5148SH 000696.

1 15. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
2 Agreement and Fixture Filing was recorded in the Clark County Recorder's Office Instrument
3 No 201507220001146.

4 16. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
5 of Secured Promissory Note, in the amount of \$15,000.00, to Southridge Partners II, LP. See
6 Exhibit J Debt Purchase Agreement.

7 17. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
8 Agreement. See Exhibit K.

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

11 to join in and be bound to the terms of the Representations and Warranties
12 contained in Sections 4 and 7, and the General Release contained in
13 Section 8 of the Agreement applicable **as though the Trust were a**
14 **Credit Party**

15 See Exhibit K, specifically Bates No 5148SH 000506, emphasis added.

16 19. On or about December 2, 2016, a Tenth Modification to Secured Promissory
17 Note (Tenth Modification) was entered into. Paragraph 6(e) set out a condition precedent

18 Delivery to Lender of a duly executed First Modification to Deed of Trust,
19 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
20 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
21 Sheila Antos Living Trust dated April 26, 2007, and any amendments
22 thereto, as trustor, related to that certain Deed of Trust, Assignment of
23 Rents, Security Agreement and Fixture Filing made December 17, 2014,
24 and recorded in the Official Records of Clark County, Nevada on
25 December 29, 2014, as instrument number 20141229-0002856;

26 See Exhibit L at 5148SH 000746.

27 20. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
28 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder's
Office as Instrument No. 201612190002739. See Exhibit M.

 21. On or about July 21, 2017, Jay Bloom proposed to service the CBCI Note in
exchange for the ownership in the Property. Specifically, Mr. Bloom states:

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

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

5 As to the Seller, he:

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

8 See Exhibit N.

9 22. On or about September 27, 2017, Antos, Plaintiff Spanish Heights Acquisition
10 Company, LLC (“SHAC”) and Defendant SJC Ventures, LLC (“SJC”) entered into a
11 Forbearance Agreement of the Note, acknowledging default and affirming CBCI has fully
12 performed. See Exhibit O.

13 23. As part of the Forbearance Agreement Antos conveyed the Property to SHAC
14 (Exhibit O page 5148SH 000002) and SHAC leased the property to SJC (Exhibit O page
15 5148SH 000003).

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

19 25. Pursuant to the Forbearance Agreement, SJC affirmed all obligations due to
20 CBCI under the Amended Note and Modified Deed of Trust. See Exhibit O, page 5148SH
21 000005 paragraph 2.

22 26. Pursuant to the Forbearance Agreement, “CBCI is free to exercise all of its rights
23 and remedies under the Amended Note and Modified Deed of Trust...” See Exhibit O, page
24 5148SH 000007 paragraph 4.5. (emphasis added).

25 27. Pursuant to the Forbearance Agreement, The rights and remedies are cumulative
26 and not exclusive, and may be pursued at any time. See Exhibit O, page 5148SH 000023
27 paragraph 25.

28 28. As part of the Forbearance Agreement there were certain requirements of SHAC
attached as Exhibit B to the Forbearance Agreement, (Exhibit O pages 5148SH 000079-5148SH

1 000088). Among the certain requirements was the understanding that the First Lien holder
2 would pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to
3 prevent default, that SHAC would make certain repairs and improvements to the Property in
4 approximately the amount of \$100,000.00, SHAC would maintain the Property, and SHAC
5 would pay for a customary homeowner's insurance policy and all Homeowner's Association
6 dues (Exhibit O pages 5148SH 000082-5148SH 000083).

7 29. In addition to the certain requirements of the Forbearance Agreement there was
8 Additional Security to be provided by SHAC, SJCVC, and Other Parties. See Exhibit O pages
9 5148SH 000084-5148SH 000085, Paragraph 6

10 30. Among the additional security was a Pledge Agreement, pledging 100% of the
11 membership interest in SHAC. See Pledge Agreement Exhibit O pages 5148SH 000089-
12 5148SH 000097.

13 31. Pursuant to the Pledge Agreement, "Secured Party shall have the right, at any
14 time in Secured Party's discretion after a Non-Monetary Event of Default ... to transfer to or to
15 register in the name of Secured Party or any of Secured Party's nominees any or all of the
16 Pledged Collateral." See Exhibit O, 5148SH 000090 paragraph 3.

17 32. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
18 Antos) appointed the Secured Party (CBCI) as Pledgors' attorney-in-fact to execute any
19 instrument which Secured Party may deem necessary or advisable to accomplish the purposes
20 of the Pledge Agreement. See Exhibit O, 5148SH 000091 paragraph 9.

21 33. Among the additional required security was a Security Agreement wherein SJCVC
22 agreed to grant CBCI a Security Interest in a Judgment described as:

23 SJCVC represents that First 100, LLC and 1st One Hundred Holdings,
24 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
25 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
26 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
27 the 8th Judicial District Court for Clark County, Nevada (the "Judgment"),
28 SJCVC represents It holds a 24.912% Membership Interest in 1st One
Hundred Holdings, LLC. SJCVC represents and warrant that no party, other
than the Collection Professionals engaged to collect the Judgment, have a
priority to receive net Judgment proceeds attributable to SJCVC before

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

6 See Security Agreement Exhibit O pages 5148SH 000101-5148SH 000107.

7 34. In addition to the other consideration in the Forbearance Agreement, the Antos
8 Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
9 performance of all the obligations described in the Forbearance Agreement. See Exhibit O
10 5148SH 000119-5148SH 000121.

11 35. On or about December 1, 2019, CBCI, SHAC and SJCVC entered into an
12 Amendment to Forbearance Agreement, extending the date of the balloon payment to March 31,
13 2020. See Exhibit P.

14 36. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019, (Amendment to Forbearance Agreement) SJCVC continues to
16 acknowledge that they continue to pledge their stock in SHAC in as collateral for the
17 Forbearance Agreement. See Exhibit P, page 5148SH 000159 paragraph 19.

18 37. Pursuant to the Amendment to Forbearance Agreement, the Security Agreement
19 “shall remain in effect and the execution of this Amendment shall not be considered a waiver of
20 CBCI’s rights under the Security Agreement...” See Exhibit P page 5148SH 000156 paragraph
21 12.

22 38. Pursuant to the Amendment to Forbearance Agreement, any amendment must be
23 in writing. See Exhibit P, page 5148SH 000161 paragraph 3.

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

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

1 Exhibit Q.

2 41. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults
3 to SHAC and SJCVC. This Notice of Non-Monetary Default delineated the following defaults:

- 4 1. Evidence of homeowner's insurance coverage Pursuant to Paragraph
5 1(A)(6) of Amendment to Forbearance Agreement and Related
6 Agreements;
- 7 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
8 Forbearance Agreement;
- 9 3. Evidence of Bank of America account balance of \$150,000.00 pursuant
10 to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 11 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
12 counsel regarding the Judgment and Security Agreement pursuant to
13 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
14 Related Agreements;
- 15 5. Evidence of corporate authority for SJC Ventures and 1st One Hundred
16 Holdings pursuant to Paragraph 1(A)(13) of Amendment to
17 Forbearance Agreement and Related Agreements; and
- 18 6. Evidence of SJC Ventures filing of applications for mortgages to
19 refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of
20 Amendment to Forbearance Agreement and Related Agreements.

21 See Exhibit R.

22 42. On or about March 23, 2020, counsel for CBCI received a letter from counsel for
23 SHAC and Jay Bloom. This letter ignored the request for the outstanding documents and
24 defaults, stating there could be no default until March 31, 2020. Exhibit S.

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

28 44. As of March 31, 2020, the Note, real property taxes and homeowners'
association lien had not been paid.

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

46. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to

1 SHAC, SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by
2 transferring the pledged collateral to CBCI's nominee CBC Partners, LLC. See Exhibit Y.

3 47. On April 1, 2020, CBC Partners received the Assignment of Company and
4 Membership Interest of SHAC from Antos. See Exhibit Z.

5 48. On April 3, 2020, a Notice to Vacate was sent to SJCVC, this letter clearly
6 indicated that an accommodation would be made under these difficult times. See Exhibit AA.

7 49. On April 6, 2020, CBCI sold the Promissory Note and Amendments to 5148
8 Spanish Heights. See Exhibit BB. Note Purchase and Sale Agreement, Allonge, and Assignment
9 and Assumption Agreement.

10 50. As the Court is aware Plaintiffs' filed a Motion for Preliminary Injunction and an
11 Evidentiary Hearing was held on May 14, 2020, wherein the Court granted a Preliminary
12 Injunction on a limited basis that remained in effect until after expiration of the Governor's
13 Emergency Directive 008. See Exhibit CC Order Granting Plaintiffs' Motion for Preliminary
14 Injunction on a Limited Basis filed May 29, 2020.

15 51. During the May 14, 2020 Evidentiary Hearing, Jay Bloom, manager of SJCVC
16 which is manager of SHAC, admits that CBCI is a commercial lender that has a secured third
17 position lien holder on the Property. See May 14, 2020, Evidentiary Hearing Transcript 29:22-
18 25, filed May 28, 2020, attached hereto as Exhibit DD.

19 52. During the May 14, 2020 Evidentiary Hearing, Mr. Bloom additionally testified
20 that he could not remember who his attorney was for the preparation of the Forbearance
21 Agreements. Exhibit DD Evidentiary Hearing Transcript at 72:18-19 and 114:18-115:3

22 53. The Forbearance Agreement and related documents were undisputed and
23 admitted into evidence at the May 14, 2020, Evidentiary Hearing. See May 14, 2020,
24 Evidentiary Hearing Transcript 20:14-25, filed May 28, 2020, attached hereto as Exhibit DD.

25 54. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in
26 the Clark County Recorder's Office Instrument No 202005280002508. See Exhibit EE.

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

1 See Exhibit FF.

2 56. On November 4 and 5, 2020, Jay Bloom was deposed as the representative of
3 Plaintiffs. During Mr. Blooms testimony, he specifically stated that they were not arguing
4 authenticity of the documents. Deposition of Jay Bloom Vol 1. at 67:2-14 and Vol. 2 at 260:6-8
5 Exhibits GG and HH.

6 57. In addition, throughout Mr. Blooms testimony, he specifically states that the
7 “Documents speak for themselves.” See Exhibit GG Bloom Deposition Vol. 1 at 10:9, 40:23,
8 58:4, 83:18, 83:22-23, 86:22-23, 88:24-25, 94:16-17, 99:6-7, 101:8-9, 101:18-19, 102:24-25,
9 103:16-17 and Exhibit HH Bloom Deposition Vol. 2 at 181:20-21, 182:1-3, 182:13-16, 247:20-
10 22, 294:7-8, 325:20-21, 332:23-24.

11 58. Additionally, Mr. Bloom testified that he is the only authority for his legal
12 theories. See Exhibit HH Bloom Deposition Vol 2 at 272:18-22, 290:1-291:1, 297:6-19, 301:3-
13 10.

14 59. On December 15, 2020, Notice of Trustee’s Sale was recorded in the Clark
15 County Recorder’s Office Instrument No 20201215-0000746, See Exhibit II. The Sale is
16 currently set for January 5, 2021.

17 60. The balance due is approximately \$5,578,459.15 (\$2,935,001.14 for principal,
18 pre-forbearance and post-forbearance protection payments of \$1,326,744.55, interest and late
19 charges of \$1,315,105.24 and interest accrued at the rate of 20% in the amount of \$1,608.22 per
20 day from April 1, 2020).

21 22 **III. Summary of Argument**

23 Once again Plaintiffs’ misstate the documents and testimony put before this Court. The
24 Plaintiffs have not shown this Court facts or law to meet their burden. The Plaintiffs have not
25 demonstrated irreparable harm and cannot show the likelihood of success on the merits.

26 Plaintiffs come before this Court with unclean hands. Plaintiffs have exhausted not one
27 but two forbearance periods. Plaintiffs have failed to perform numerous obligations contracted
28 for and Plaintiffs have intentionally omitted critical parts of the facts and authority they rely

1 upon. The simple truth in this case is Plaintiff has failed to perform and as a result, the
2 Promissory Note and Deed of Trust are fully due and payable. Plaintiffs new defense is that the
3 Deed of Trust lacked consideration, that Plaintiffs was somehow tricked into this transaction.

4 Mr. Antos sold collateral that was security for the Note in 2014 and replaced the
5 collateral sold with a Deed of Trust on the Property. See Declaration of Kenneth Antos and
6 Alan Hallberg in Support of this Opposition filed contemporaneously herein. Also see Exhibit
7 JJ, Deposition Transcript of Alan Hallberg, NRC 30(b)(6) witness for CBCI at 22:21-23:13.
8 Plaintiffs have provided no material facts and no law to support their burden of showing a
9 likelihood of success on the merits.

10 11 **IV. Argument**

12 **A. Legal Standard**

13 The legal standard for granting injunctive relief is well established in Nevada. NRS
14 33.010 provides:

15 Cases in which injunction may be granted. An injunction may be
16 granted in the following cases:

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

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

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

26 Interpreting NRS 33.010, the legislative authority for injunctive relief, the Nevada
27 Supreme Court has held that "[a] preliminary injunction is available if an applicant can show a
28 likelihood of success on the merits and a reasonable probability that the non-moving party's

1 conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is
2 an inadequate remedy.” *Dangberg Holdings Nevada, LLC v. Douglas County*, 115 Nev. 129,
3 142, 978 P.2d 311, 319 (1999) (affirming order granting a preliminary injunction).

4 Plaintiffs have wholly failed to satisfy the pre-requisites for injunctive relief. Plaintiffs
5 Motion is wrought with misleading information. Plaintiffs must show specific facts in an
6 affidavit or verified complaint that show immediate and irreparable injury, loss, or damage.
7 Plaintiffs have failed in this threshold requirement.

8 **B. Plaintiffs cannot prevail on their claims for relief.**

9 In order to obtain injunctive relief, Plaintiffs must show a likelihood of success on the
10 merits. *Id.* As set forth below, Plaintiffs have absolutely no chance of prevailing in this matter.

11 It is clear by the documents that a Promissory Note secured by the Property exists.
12 “Where a document is clear and unambiguous on its face, the court must construe it from the
13 language therein.” *Southern Trust Mortgage Co., v. K & B Door Co., Inc.*, 104 Nev. 564, 568,
14 763 P. 2d 353, 355 (1988). A court has no power to create a new contract or new duties for the
15 parties, which they have not created or intended themselves. *Old Aztec Mine, Inc. v. Brown*, 97
16 Nev. 49, 52, 623 P.2d, 901, 983 (1981).

17 Indeed, it is well settled in Nevada that “[p]arties are free to contract, and the courts will
18 enforce their contracts if they are not unconscionable, illegal, or in violation of public policy.”
19 *Rivero v. Rivoero*, 125 Nev. 410, 429, 216 P.3d 213, 226-227 (2009) (citing *NAD, Inc. v. Dist*
20 *Ct.*, 115 Nev. 71, 77, 976 P.2d 994, 997 (1999) (explaining that “parties are free to contract in
21 any lawful matter”)). In fact, the Supreme Court of Nevada has specifically held:

22
23 It is not a proper function of the court to re-write or distort a
24 contract under the guise of judicial construction. **The law will not**
25 **make a better contract for the parties than they themselves**
26 **have seen fit to enter into, or alter it for the benefit of one**
party and to the detriment of the other. The judicial function
of a court of law is to enforce the contract as it is written.

27 *Pioneer Title Ins. & Trust Co. v. Cantrell*, 71 Nev. 243, 245-246, 286 P.2d 261, 263 (1955)
28 (internal citations omitted) (emphasis added).

1 As shown by the attached Exhibits it is clear that as a condition precedent to the Fourth,
2 Seventh, Ninth, and Tenth Modifications to the Secured Promissory Note, that a Deed of Trust
3 encumbering the Property was required. Plaintiffs have waived any defects, acknowledged the
4 encumbrance and agreed to pay **twice**. First, in the Forbearance Agreement (See Exhibit O,
5 page 5148SH 000005) and Second, in the Amended Forbearance Agreement (See Exhibit P,
6 page 5148SH 000155).

7 In addition, Plaintiffs have agreed in the Forbearance Agreements to pay the amounts in
8 question by separate promise to the Antos parties; see Exhibit O and Exhibit P. In truth and fact
9 SJCV owes the money to the Antos parties as consideration for their interest in SHAC. Exhibit
10 KK, Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC,
11 (the "Operating Agreement") specifically 5148SH 000546-5148SH 000547.

12 The Forbearance Agreements clearly set forth the underlying Secured Promissory Note.
13 Mr. Bloom, during his deposition, set forth the new defense to payment of the Note; he was
14 tricked into this deal, the Trust doesn't owe the money. See Exhibit HH Bloom Deposition Vol.
15 2 at 266:5-267:1. To add to the absurdity of his testimony, Mr. Bloom goes on to say that he is
16 the authority for this defense having learned about real estate law from his work experience. See
17 Exhibit HH Bloom Deposition Vol. 2 at 272:18-22, 290:11-291:1, 297:6-19, 301:3-10.

18 Defendants/Counterclaimants have provided this Court with authenticated Documents
19 and Declarations of the parties present at the time the documents were created. Plaintiffs do not
20 dispute the amount of the debt; they challenge the entirety of the obligation. CBCI, through Mr.
21 Hallberg, the holder and Mr. & Mrs. Antos, both individually and as Trustees of their revocable
22 living trust as makers confirm the original debt and the substitution of collateral. The Plaintiffs
23 have twice ratified this obligation and all amounts are due; the obligations to the Antos parties
24 remain unfulfilled.

25 **1. The Deed of Trust is Valid**

26 The initial Secured Promissory Note was modified several times. Throughout the
27 modifications, the collateral was changed with the Property ultimately becoming the collateral
28 for the Secured Promissory Note. It is important to note that Mr. Antos has never denied that the

1 Property was used as security in exchange for release of other collateral from CBC Partners I,
2 LLC. *See Declaration of Ken Antos.* In fact, Mr. and Mrs. Antos agree with CBC Partners I,
3 LLC, CBC Partners, LLC, and 5148 Spanish Heights, LLC, that Plaintiffs have failed to
4 perform and have no meritorious defense. See Deposition of Sheila Antos, Exhibit LL 11:8-15.

5 [s]o that we could facilitate the possibility that Mr. Bloom had been sitting
6 on this house. It was supposed to be done in two years. He was supposed
7 to -- he was so wonderful and told us all about his billion-dollar judgment
8 he got against someone, and he was going to purchase our home probably
or end up buying out CBC in two years and working with the other two
deeds of trust, first and second, to be able to purchase the home.

9 In addition, it is clear from Mr. Antos Deposition that the Antos' understood that CBCI
10 had a third position valid Deed of Trust.

11 A. I said that they already had a third position on the house which, when
12 added to the first and second, exceeded the value of the house. So
13 there was -- to me, there was no negative side here.

14 Deposition of Kenneth Antos Exhibit NN at 34:11-14

15 Q. Okay. Now, the -- what damages is the trust claiming for breach of
contract?

16 MR. MUSHKIN: To the extent it calls for a legal conclusion, we object.
You may certainly answer.

17 THE WITNESS: There is a whole list of things that Bloom was supposed
18 to do that have not been done.

BY MS. BARRAZA:

19 Q. So what -- how is the trust damaged and what damages is the trust
claiming specifically?

20 MR. MUSHKIN: Same objection.

21 THE WITNESS: I'm sitting on a piece of property that I shouldn't have
to. He was to close out this deal well over a year ago.

22 Exhibit NN at 38:9-22

23 Q. Okay. Are you familiar that the trust has asserted a claim against SJC
for alter ego?

24 A. Sounds logical.

25 Q. Okay. So what's your basis for that? What's the trust's basis for that
claim?

26 A. Just all the kinds of things that Mr. Bloom has perpetrated.

Q. Like what?

27 A. Hasn't paid for and hasn't closed, hasn't provided by the time frames
28 available to him for the pending of the forbearance. I want this house
done with.

1 Exhibit NN at 41:15-42:1

2 Q. All right. And I want to touch base -- it looks like, as we discussed,
3 this original note was from 2012, and then we discussed there's a deed
4 of trust that was recorded some two years later in 2014. So I'm trying
to understand, how did we get to the point of CBC having a deed of
trust and that being recorded two years after the -- the initial note?

5 A. Dollars.

(Court reporter interrupts.)

6 THE WITNESS: The amount of dollars increased to the point they did
not want to take the risk. So they wanted collateral.

7 Exhibit NN at 66:9-20

8 Q. Okay. So you're saying that there were -- there were numerous
9 modifications to this loan; correct?

10 A. Correct.

11 Q. Okay. And you're saying that in one of the modifications, it got to the
point where CBC was demanding to also have a deed of trust on the
property; is that correct?

12 A. Correct.

13 Exhibit NN at 66:22-67:4

14 Q. Okay. So you would agree that you signed off on this -- on this Deed
of Trust with CBC in your capacity as the trustee of the trust; correct?

15 A. Correct.

16 Q. Because the trust -- by this time, the trust was the -- the owner of
record of the property; correct?

17 A. That is correct.

18 Q. Okay. And so, you know, our question is why is the trust basically
signing off on a deed of trust for whatever -- the underlying note was
not issued to the trust? That's what we're trying to figure out.

19 MR. MUSHKIN: Objection. Calls for a legal conclusion. Answer if you
can, please.

20 THE WITNESS: I don't see any problem with it.

21 Exhibit NN at 68:12-69:1

22 As is evident from the testimony above, Mr. Antos believes the money is due. Each time
23 Plaintiffs' counsel seeks to have Mr. Antos address the legal issue of consideration Defense
24 counsel objects. Never does Plaintiffs' counsel address the substitution of collateral. Clearly Mr.
25 Antos did not make the connection between the legal term consideration and the practical
26 implication of substituting collateral.

27 **2. The Notice of Breach and Election to Sell is not Defective**

28 Plaintiffs completely rely upon NRS 107.500 to mislead the Court that a Notice of

1 Default was required. NRS 107.400 – NRS 107.560 was codified by Senate Bill No. 321 on
2 March 18, 2013, enacting the “Homeowner’s Bill of Rights;” NRS 107.500 is only required of
3 **Owner-Occupied** housing. The Property is owned by Spanish Heights Acquisition Company,
4 LLC and being leased to SJC Ventures, LLC. The Property is not owner occupied. Defendants
5 mailed the Notice of Default to Plaintiffs as a courtesy. The Promissory Note is fully matured,
6 and the monies are owed. The Notice of Breach and Election to Sell is not Defective.

7 The initial Notice shows the holder on the Secured Promissory Note and Deed of Trust
8 as recorded. The Notice of Breach and Election to Sell, recorded September 15, 2020, shows the
9 assignment of beneficiary, see Exhibit FF. NRS 107.080 sets forth the notice requirements that
10 were followed by 5148 Spanish Heights, LLC and Nevada Trust Deed Services. Plaintiff has
11 shown no defect or lack of adequate statutory notice.

12 3. The Doctrine of Merger Does Not Apply

13 The Doctrine of Merger offers no protection to Plaintiffs. The doctrine of merger
14 provides that “[w]henever a greater and a less estate coincide and meet in one and the same
15 person, without any intermediate estate, the less is immediately merged in the greater, and thus
16 annihilated.” 31 C.J.S. Estates § 153. Applying the merger doctrine to the mortgage context,
17 when the mortgagee acquires legal title to the subject property by way of foreclosure, the
18 mortgage lien merges with the legal title, and the lien is extinguished as a matter of law. *See*
19 *Citizens State Bank of New Castle v. Countrywide Home Loans, Inc.*, 949 N.E.2d 1195, 1197
20 (Ind. 2011). When one of the entities acquires both the mortgage lien and the legal title to the
21 property, the two interests are said to merge. *Id.* Specifically, the mortgage merges with the
22 legal title, and the mortgage lien is thereby extinguished. *Id.* The key factor in deciding whether
23 merger has occurred is determining what the parties, **primarily the mortgagee**, intended.
24 *Deutsche Bank Nat’l Trust Co. v. Mark Dill Plumbing Co.*, 908 N.E.2d 1273, 1274 (Ind. Ct.
25 App. 2009). (emphasis added). This Court should note that only the lien is extinguished. *Id.*

26 The Nevada Courts have held similarly as the Indiana Courts. In *Aladdin Heating Corp.*
27 *v. Trustees of Cent. States*, 93 Nev. 257, 563 P.2d 82 (1977). Appellants argued that the
28 respondents could not foreclose on their deed of trust because that deed had been extinguished

1 by merger when the respondents received the deed of sale. *Id.* at 261, 563 P.2d at 84-5. The
2 court held that a merger had not occurred for two reasons: (1) the parties did not intend for a
3 merger to take place, and (2) the interests said to merge were not coextensive and
4 commensurate. *Id.*, 563 P.2d at 85. Plaintiffs have made no showing of the applications of the
5 doctrine of merger in the case. Plaintiffs only allege that by taking a membership interest in the
6 LLC (that is the title holder) that a merger has occurred; an erroneous application.

7 In the instant matter, no interests have merged. As the Court is aware, the Property is
8 owned by Spanish Heights Acquisition Company, LLC, see Exhibit MM. The original members
9 of SHAC were the Antos parties and SJCVC, see Exhibit KK, SHAC's Operating Agreement.
10 After a Notice of default (Exhibit R), CBCI elected to exercise one of its remedies; namely its
11 rights under the Pledge Agreement and transfer the pledged collateral to CBCI's nominee CBC
12 Partners, LLC. Just as in the *Aladdin* case, there is no intent to merge and the interests are not
13 coextensive. *Id.*

14 In addition, the Documents in this case create a separate obligation on behalf of SJCVC to
15 the Antos parties. The only consideration paid by Plaintiffs SJCVC and Bloom for any interest
16 they hold in SHAC is the payment of the very debt they seek to enjoin. See Exhibit KK,
17 Operating Agreement of SHAC.

18 4. The One Action Rule Does Not Apply

19 Once again, the Plaintiffs are attempting to mislead the Court by erroneously stating that
20 NRS 40.430 applies in this matter. The one-action rule "does not excuse the underlying debt."
21 *Bonicamp v. Vazquez*, 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004). Instead, the one-action
22 rule prohibits a creditor from "first seeking the personal recovery and then attempting, in an
23 additional suit, to recover against the collateral." *Id.* at 383, 91 P.3d at 587. Thus, when suing a
24 debtor on a secured debt, a creditor may initially elect to proceed against the debtor or the
25 security. If the creditor sues the debtor personally on the debt, the debtor may then either assert
26 the one-action rule, forcing the creditor to proceed against the security first before seeking a
27 deficiency from the debtor, or decline to assert the one-action rule, accepting a personal
28 judgment and depriving the creditor of its ability to proceed against the security. NRS

1 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587 (2004); *Nev. Wholesale Lumber Co.*, 92
2 Nev. 24 at 30, 544 P.2d 1204 at 1208 (1976); *see also Kever v. Nicholas Beers Co.*, 96 Nev.
3 509 at 513, 611 P.2d 1079 at 1082 (1980) “The right to waive the security is the debtor’s, not
4 the creditor’s.”

5 In the instant matter, the “One-Action Rule” was specifically waived by the debtor. The
6 Deed of Trust ¶6.21(a) states:

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

13 Exhibit H, page 5148SH 000379.

14 Further, the Forbearance Agreement ¶25 gives the benefit of cumulative remedies.

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

20 Exhibit O, page 5148SH 000023.

21 In this case Plaintiffs have failed to plead facts sufficient to support their cause of action.
22 The mere recitation of a principal of law does not make a claim. The Plaintiffs cannot and have
23 not established facts or law to support the claim that somehow the One-Action rule bars
24 recovery under the defaulted Documents. This is a well-documented transaction that Plaintiff
25 steps into years after it was initiated. There are multiple remedies contracted for and the waiver
26 is consistent with the obligations of the transaction. Plaintiff seeks to excuse the underlying
27 debt; precisely what is prohibited by *Bonicamp, Id.*

1 **C. Plaintiffs have not suffered any harm caused by Defendants**

2 In this matter it is the Defendants/Counterclaimants that are suffering harm. Plaintiffs'
3 executed the Forbearance Agreement and the Amended Forbearance Agreement and agreed to
4 be bound by the Documents. The transfer of title to SHAC was consented to only after Plaintiff
5 negotiated and consented to the promises contained in the Forbearance Agreements. Plaintiffs
6 accepted the benefit of each agreement and Defendants, or its successors paid over \$1.3 million
7 in advance payments for the benefit of Plaintiffs. Plaintiffs have created the defaults and failed
8 to quiet title as required by the Forbearance Agreements and the Operating Agreement of
9 SHAC. See Exhibit O specifically 5148SH 000085 and Exhibit KK specifically 5148SH
10 000548.

11 The balance due from Plaintiffs is approximately \$5,578,459.15 (\$2,935,001.14 for
12 principal, pre-forbearance protection payments of \$1,326,744.55, interest and late charges of
13 \$1,315,105.24 and interest accrued at the rate of 20% in the amount of \$1,608.22 per day from
14 April 1, 2020, Exhibit V). Plaintiff has made no attempt to pay any of the debt. Money due does
15 not constitute irreparable harm. Defendants are harmed by the liens encumbering the property
16 that Plaintiffs contracted to remove. Defendants are harmed by the HOA lien that encumbers the
17 Property that Plaintiffs contracted to pay. Plaintiff has not demonstrated irreparable harm
18 caused by Defendants/Counterclaimants.

19 **D. Public Policy mandates that Plaintiffs' request for a preliminary injunction**
20 **be denied.**

21 Plaintiffs' motion fails at every turn. By filing the instant motion, Plaintiffs are
22 effectively asking this Court to assist in their illegal activities. Plaintiffs have failed to provide
23 this Court with competent evidence to demonstrate that they are likely to prevail or that they
24 will suffer irreparable harm should the motion not be granted. Moreover, public policy
25 mandates that Plaintiffs should pay for their obligations contracted for. Once again Plaintiffs
26 accept the benefit of the documents without paying for their obligations under the Documents.

27 ///

28

1 **E. If the court were somehow inclined to issue a Preliminary injunction, the**
2 **bond must be substantial.**

3 “NRCP 65(c) provides, in part, that ‘(n)o restraining order or preliminary injunction
4 shall issue except upon the giving of security by the applicant, . . .’” *Strickland v. Griz Corp.*, 92
5 Nev. 322, 323, 549 P.2d 1406, 1407 (1976) (citing NRCP 65). Nevada courts have long
6 considered the potential “inconvenience and loss to the opposing party,” when determining the
7 proper amount of a bond to secure a preliminary injunction. *Rhodes Mining Co. v. Belleville*
8 *Placer Mining Co.*, 106 P. 561, 563 (1910). In this case, Plaintiff acknowledge before the
9 execution of the Forbearance Agreements that there was a deficiency in collateral. See Exhibit
10 N. To now come before this Court and seek no bond is both violative of NRCP 65(c) and the
11 case law. Accordingly, Defendants would respectfully request the Court Order a \$5.78 million
12 to \$8.2 million bond from Plaintiffs.

13
14 **V. Conclusion**

15 The Plaintiff has now sought this Injunctive Relief for the third time. The facts have not
16 changed, and nothing learned through discovery can rescue the Plaintiffs. The debt is now due.
17 Each claim by the Plaintiff is unsupported by the written agreements. Plaintiffs representative
18 Mr. Bloom on the one hand wants this honorable Court to rely upon his legal expertise, while on
19 the other hand he cannot remember who is attorney was. We now know from Mr. Blooms own
20 writings that Mr. Gutierrez was his counsel throughout the process. We now know through
21 Blooms own testimony that he simply chooses to ignore his debt not only to CBC Partners I,
22 LLC/5148 Spanish Heights, LLC, but to the Antos parties as well. We now know that Bloom
23 and his counsel have been less than candid with this Court.

24 Plaintiffs did not pay the January – March 2020 payments to City National and Northern
25 Trust as Mr. Bloom testified. Plaintiffs did not timely pay City National and Northern Trust as
26 required by this Court. Mr. Bloom has misrepresented the ownership of SJC Ventures, LLC.
27 Mr. Bloom cannot remember the name of his lawyer in an \$8,000,000.00 transaction. Most
28 telling of all is the deposition of Mr. Bloom, which shows a complete disregard for the truth as

1 well as the deposition process. What is clear is a pattern of false statements, material omissions,
2 and fraudulent actions perpetrated by Mr. Bloom and the entities he controls.

3 The claims of the Plaintiffs are not proven. The statutory requirements for Injunctive
4 Relief have not been met by Plaintiffs. The Forbearance Agreement and Amended Forbearance
5 Agreement are clear and unambiguous, the debt is due. If this Court chooses to entertain the
6 request for injunction relief a significant bond must be set to protect Defendants.

7 DATED this 24th day of December, 2020

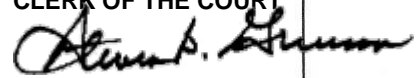
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9
10 /s/Michael R. Mushkin
11 MICHAEL R. MUSHKIN, ESQ.
12 Nevada Bar No. 2421
13 L. JOE COPPEDGE, ESQ.
14 Nevada Bar No. 4954
15 6070 South Eastern Ave Ste 270
16 Las Vegas, NV 89119

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that the foregoing **Defendants/Counterclaimants' Opposition To**
19 **Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for**
20 **Preliminary Injunction on an Order Shortening Time** was submitted electronically for filing
21 and/or service with the Eighth Judicial District Court on this 24th day of December, 2020.
22 Electronic service of the foregoing document shall be upon all parties listed on the Odyssey
23 eFileNV service contact list:

24
25 /s/K.L. Foley
26 An Employee of
27 MUSHKIN & COPPEDGE
28



1 Michael R. Mushkin, Esq.
2 Nevada Bar No. 2421
3 L. Joe Coppedge, Esq.
4 Nevada Bar No. 4954
5 MUSHKIN & COPPEDGE
6 6070 South Eastern Ave Ste 270
7 Las Vegas, NV 89119
8 Telephone: 702-454-3333
9 Facsimile: 702-386-4979
10 Michael@mccnvlaw.com
11 jcoppedge@mccnvlaw.com
12 *Attorneys for Defendant and*
13 *Counterclaimants*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

14 SPANISH HEIGHTS ACQUISITION
15 COMPANY, LLC, a Nevada Limited
16 Liability Company; SJC VENTURES
17 HOLDING COMPANY, LLC, d/b/a SJC
18 VENTURES, LLC, a Delaware Limited
19 Liability Company,

20 Plaintiffs,

21 v.

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

Defendants.

AND RELATED MATTERS

Case No. A-20-813439-B

Dept. No.: 11

Hearing Date: November 9, 2020

Hearing Time: 9:00 am

**DECLARATION OF ALAN HALLBERG
IN SUPPORT OF
DEFENDANTS/COUNTERCLAIMANTS'
OPPOSITION TO PLAINTIFFS'
RENEWED APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION ON ORDER
SHORTENING TIME**

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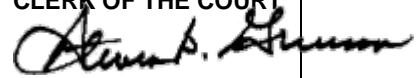
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/s/Karen L. Foley
An Employee of
MUSHKIN & COPPEDGE



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

AND RELATED MATERSON

Case No. A-20-813439-B

Dept. No.: 11

Hearing Date: January 4, 2021

Hearing Time: 9:00 am

**DECLARATION OF KENNETH M.
ANTOS IN SUPPORT OF
DEFENDANTS/COUNTERCLAIMANTS'
OPPOSITION TO PLAINTIFFS'
RENEWED APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION ON AN ORDER
SHORTENING TIME**

1 **DECLARATION OF KENNETH M. ANTOS**

2 KENNETH M. ANTOS, under penalty of perjury, states as follows:

3 I have personal knowledge of the facts stated herein, except for those facts stated to be
4 based upon information and belief. If called to do so, I would truthfully and competently testify
5 to the facts stated herein, except those facts stated to be based upon information and relief.

6 1. I am a Trustee and Beneficiary of the Kenneth and Shelia Antos Living Trust dated
7 April 26, 2007 (“Antos Trust”).

8 2. I was a managing member of KCI Investments, LLC, a revoked Nevada limited
9 liability company (“KCI”). KCI was in the business of operating restaurants.

10 3. On or about April 16, 2007, my wife, Shelia M. Neumann-Antos, and I purchased
11 real property located in Clark County, Nevada commonly known as 5148 Spanish Heights Drive,
12 Las Vegas, Nevada 89148 (the “Property”).

13 4. On or about October 14, 2010 my wife and I transferred title to the Property to the
14 Antos Trust. See Exhibit A of the Appendix of Exhibits to Defendants/Counterclaimants’
15 Opposition to Plaintiffs’ Renewed Application for Temporary Restraining Order and Motion for
16 Preliminary Injunction (“Appendix”)

17 5. On or about June 22, 2012, KCI entered into a Secured Promissory Note with CBC
18 Partners I, LLC, a Washington limited liability company (“CBCI”). As Managing Member of
19 KCI, I signed this Promissory Note. See Exhibit B to Appendix, Secured Promissory Note.

20 6. The June 22, 2012, Secured Promissory Note (the “Note”) was modified and
21 amended several times. See Exhibit C to Appendix, First Second, Third, Fifth, Sixth, and Eighth
22 Modifications to Secured Promissory Note.

23 7. On November 13, 2013, a Fourth Modification to Secured Promissory Note
24 (“Fourth Modification”) was entered into. See Exhibit D. to Appendix

25 8. As the credit provided under the terms of the Note directly and indirectly
26 benefitted the Antos Trust, and my wife and I as beneficiaries of the Antos Trust, we agreed to
27 certain conditions to the Fourth Modification.

28 9. As a condition to the Fourth Modification, I agreed to not have the Property be

1 security for any additional debt that I may incur.

2 10. On or about October 31, 2014, a Seventh Modification to Secured Promissory
3 Note and Waiver of Defaults (“Seventh Modification”) was entered into. See Exhibit F, to
4 Appendix, Seventh Modification.

5 11. As the credit provided under the terms of the Note directly and indirectly
6 benefitted the Antos Trust, and my wife and I as beneficiaries of the Antos Trust, we agreed to
7 certain conditions to the Seventh Modification.

8 12. As a condition to the Seventh Modification, the Antos Trust provided to CBCI a
9 Deed of Trust along with a Certificate of Trust Authority. See Paragraph 18(f) of the Seventh
10 Modification Exhibit F to Appendix and Certificate of Trust Existence and Authority and Exhibit
11 G to Appendix.

12 13. As a result of the condition precedent to the Seventh Modification and my rights
13 as Trustee of the Antos Trust to encumber the property, on or about December 29, 2014, a Deed
14 of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“Deed of Trust”) was
15 recorded against the Property in the Clark County Recorder’s Office as Instrument No.
16 201412290002856, for the purpose of securing the Note. See Exhibit H to Appendix.

17 14. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note and
18 Waiver of Defaults (Ninth Modification) was entered into.

19 15. As the credit provided under the terms of the Note directly and indirectly
20 benefitted the Antos Trust, and my wife and I as beneficiaries of the Antos Trust, we agreed to
21 certain conditions to the Ninth Modification.

22 16. As a condition to the Ninth Modification, the Antos Trust provided to CBCI a
23 Correction to the Deed of Trust. See Paragraph 14(c) of the Ninth Modification Exhibit I to
24 Appendix.

25 17. As a result of the condition to the Ninth Modification and my rights as Trustee of
26 the Antos Trust to encumber the property, on July 22, 2015, a Correction to Deed of Trust,
27 Assignment of Rent, Security Agreement and Fixture Filing was recorded in the Clark County
28 Recorder’s Office Instrument No 201507220001146.

1 18. In March of 2016, I as Trustee of the Antos Trust, listed the property for sale
2 through the Greater Las Vegas Association of Realtors' Multiple Listing Service with Simply
3 Vegas Real Estate acting as the Broker.

4 19. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
5 Agreement. As a part of the December 2, 2016, Forbearance Agreement, the Antos Trust signed
6 a Consent, Reaffirmation, and General Release of the Trust which specifically states that the
7 Antos Trust "agrees to join in and be bound... as though the Trust were a Credit Party." See
8 Forbearance Agreement Exhibit K to Appendix, specifically Bates No 5148SH 000740.

9 20. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
10 (Tenth Modification) was entered into.

11 21. As the credit provided under the terms of the Note directly and indirectly
12 benefitted the Antos Trust, and my wife and I as beneficiaries of the Antos Trust, we agreed to
13 certain conditions to the Tenth Modification.

14 22. As a condition to the Tenth Modification, the Antos Trust provided to CBCI a First
15 Amendment to the Deed of Trust. See Paragraph 6(e) of the Tenth Modification Exhibit L to
16 Appendix.

17 23. As a result of the condition to the Tenth Modification and my rights as Trustee of
18 the Antos Trust to encumber the property, on December 19, 2016, the First Modification to Deed
19 of Trust, Assignment of Rents, Security Agreement and Fixture Filing was recorded in the Clark
20 County Recorder's Office as Instrument No. 201612190002739. See Exhibit M to Appendix.

21 24. In July of 2017, my wife and I were approached with a proposal to sell the Property
22 under a Forbearance Agreement with Mr. Jay Bloom to take possession of the Property. See
23 Exhibit N to Appendix.

24 25. As a result of the negotiation with Mr. Bloom and CBCI on or about August 4,
25 2017, Spanish Heights Acquisition Company, LLC ("SHAC") was formed, with SJCVC Ventures
26 ("SJCVC"), CBC partners, LLC (CBCP), and Antos Trust as Managing Members.

27 26. On or about August 15, 2017, a Real Property Lease was entered into by and
28 between SHAC as Landlord and SJCVC as Tenant.

1 27. On or about September 27, 2017, my wife and I signed the Forbearance Agreement
2 and related documents at the office of Maier Gutierrez and Associates.

3 28. Upon signing the Forbearance Agreement, it was my understanding that SJC
4 would be responsible for all of the outstanding debts of the Property in exchange for the Antos
5 Trusts' rights of Possession of the Property. See the Limited Liability Company Agreement of
6 SHAC, specifically Bates No 5148SH 000053 – 5148SH 000055, Exhibit O to Appendix.

7 29. On or about August 2019, it became apparent that SJC was not meeting its
8 obligations under the Forbearance Agreement. As such discussions were had about entering into
9 an Amendment to the Forbearance Agreement.

10 30. SJC did not perform under the initial Forbearance Agreement.

11 31. On April 1, 2020, I received a letter from Michael R. Mushkin indicating that
12 CBCI was exercising its rights under the Pledge Agreement and requested an Assignment of
13 Membership Interest of SHAC to CBCI's nominee CBC Partners, LLC. See Exhibit Y of
14 Appendix.

15 32. On April 1, 2020, I returned to Michael R. Mushkin the signed Assignment of
16 Interest, assigning the Antos Trust's membership interest in SHAC to CBC Partners, fulfilling
17 my obligation under the Pledge Agreement. See Exhibit Z of Appendix.

18 33. At the time of my deposition, on September 23, 2020, I did not relate the term
19 consideration to the replacement of collateral, which occurred in 2014, as a result of my sale of
20 CBCI collateral.

21 I declare under penalty of perjury that the foregoing is true and correct.

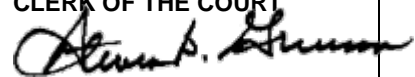
22 DATED this 24 day of December, 2020.

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24 
25 KENNETH M. ANTOS
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **Declaration of Kenneth M. Antos in Support of**
3 **Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for**
4 **Temporary Restraining Order and Motion For Preliminary Injunction On An Order**
5 **Shortening Time** was submitted electronically for filing and/or service with the Eighth Judicial
6 District Court on this 24th day of December, 2020. Electronic service of the foregoing document
7 shall be upon all parties listed on the Odyssey eFileNV service contact list:
8

9 /s/Karen L. Foley
10 An Employee of
11 MUSHKIN & COPPEDGE
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RPLY

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com

djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: 11

**PLAINTIFFS' REPLY IN SUPPORT OF
RENEWED APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION ON AN
ORDER SHORTENING TIME**

Hearing Date: January 4, 2021

Hearing Time: 10:00 a.m.

Plaintiffs Spanish Heights Acquisition Company, LLC ("SHAC") and SJC Ventures Holding
Company, LLC, d/b/a SJC VENTURES, LLC ("SJC") ("Plaintiffs"), by and through their attorney of
record, MAIER GUTIERREZ & ASSOCIATES, hereby file this reply in support of their renewed motion

1 for a temporary restraining order, and, after notice and a hearing, for a preliminary injunction on an
2 order shortening time (the “Motion”).

3 This reply is made and based upon the following memorandum of points and authorities, the
4 exhibits attached hereto, and the papers and pleadings on file in this matter.

5 DATED this 1st day of January, 2021.

6
7 **MAIER GUTIERREZ & ASSOCIATES**

8 /s/ Danielle J. Barraza

9 JOSEPH A. GUTIERREZ, ESQ.
10 Nevada Bar No. 9046
11 DANIELLE J. BARRAZA, ESQ.
12 Nevada Bar No. 13822
13 8816 Spanish Ridge Avenue
14 Las Vegas, Nevada 89148
15 *Attorneys for Plaintiffs*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 Defendants’ opposition was replete with rampant speculation that Plaintiffs’ counsel of record
19 Mr. Gutierrez was Mr. Bloom’s counsel throughout the negotiations of the Forbearance Agreement
20 (he was not). Instead of focusing on legal issues, Defendants have claimed that Mr. Bloom’s “counsel
21 [has] been less than candid with this Court,” which is completely baseless and sanctionable in itself.
22 Opp. at p. 23. Defendants’ obsession with personally attacking Plaintiffs’ counsel is disturbing but
23 predicable at this stage, as Defendants would prefer to deviate from a rational legal analysis.

24 What Defendants did not, and could not, contradict in their opposition was the fact that the
25 Note for the underlying commercial restaurant loan to Kenneth Antos’ company KCI Investments,
26 LLC, which purportedly secured the “third Deed of Trust” against the Property that was owned by the
27 Antos Trust, was never amended to reflect that the Antos Trust was either a debtor or a guarantor
28 under the Note. Not only that, but the Antos Trust undisputedly never received any consideration for
attempting to convey a “third Deed of Trust” to CBC Partners, which means the language of the Deed

1 of Trust reflecting that consideration was provided (language that Mr. Bloom relied upon) was a
2 misrepresentation.

3 This lack of consideration went acknowledged by CBC Partners I, LLC itself in its deposition:

4 Q: So was any additional consideration provided separately to the Antos Trust in
5 addition – not in addition, but in exchange for the deed of trust being
6 provided?

6 A: Not to my knowledge.

7 See **Exhibit 1**, Deposition Transcript of Rule 30(b)(6) corporate representative for CBC Partners I,
8 LLC at pp. 33-34. This testimony confirmed that the representation otherwise on the Deed of Trust
9 was not accurate.

10 Defendants also noticeably failed to address that defendant 5148 Spanish Height’s attempted
11 non-judicial foreclosure is based upon a Notice of Default which was issued by CBC Partners I, LLC
12 months after it testified that it had sold the Note to a wholly separate entity, 5148 Spanish Heights
13 LLC. The CBC Partners I, LLC Notice of Default is on its face defective, as is the Notice of Breach
14 and election to Sell and Notice of Sale, since they rely upon the defective Notice of Default.

15 Given Plaintiffs’ likelihood of success on the merits, it would be improper to allow Defendants
16 to rush a non-judicial foreclosure sale while this matter is being litigated, especially when Defendants
17 have intentionally violated an order compelling discovery responses in an attempt to evade disclosing
18 relevant information which has yet to be produced. If Defendants had a meritorious defense, they
19 would not be trying to sneak a quick foreclosure during the holidays. Instead, Plaintiffs are now facing
20 irreparable harm as a result of Defendants’ refusal to simply cooperate with the judicial process.

21 As such, the exigent circumstances present in this case require granting Plaintiffs’ application
22 for a temporary restraining order. Further, a preliminary injunction should be ordered until this case
23 can be fully decided on the merits.

24 **II. LEGAL ARGUMENT**

25 **A. THERE IS NO VALID THIRD-POSITION DEED OF TRUST**

26 The Deed of Trust specifically states that “FOR GOOD AND VALUABLE
27 CONSIDERATION,” the Antos Trust is providing CBC Partners I, LLC an interest in the Property.
28 Mot at Ex. 7, PLTFS00702. Both CBC Partners I, LLC and Kenneth Antos confirmed that was not

1 really true, as the Antos Trust received no consideration whatsoever. See Ex 1 herein at pp. 33-34
2 and Mot. at Ex. 4 at p. 69.

3 In their opposition, Defendants' only argument for the validity of the third-position "Deed of
4 Trust" is that Kenneth Antos (a non-legal expert who desperately signed whatever CBC Partners, LLC
5 put in front of him that would enable him to obtain more money for his failed restaurant business)
6 believes the Deed of Trust is valid and "believes the money is due." Opp. at pp. 16-18. That is not
7 the test for determining the validity of a Deed of Trust. Not even the after-the-fact declaration that
8 Defendants' counsel drafted for Kenneth Antos can somehow create the appearance of consideration
9 being provided to the Antos Trust. Defendants now insist that "the initial Secured Promissory Note
10 was modified several times. Throughout the modifications, the collateral was changed with the
11 Property ultimately becoming the collateral for the Secured Promissory Note." Opp. at p. 16.

12 But in all of those modifications, not a single one adds the Antos Trust, the *owner* of the
13 Property, as a borrower or guarantor under the KCI commercial loan. The Antos Trust is undisputedly
14 a non-signatory to the underlying Note documents and had zero involvement in that process. Kenneth
15 Antos himself admitted that the Antos Trust did no business with CBC Partners I, LLC. Mot. at Ex.
16 4 at pp. 71-72. So while Kenneth Antos and his companies may have attempted to turn the Property
17 into collateral under the Note, they frankly had no authority to do so because they never owned the
18 Property – the Antos Trust did and had since 2010.

19 This is not the normal case of a bank providing a loan to a prospective home-buyer like most
20 Deeds of Trusts are established. This is a case of a commercial restaurant loan being issued to KCI
21 Investments, LLC, the Antos' agreeing to be guarantors on that note in individual capacities, the
22 company then defaulting on that loan numerous times, and then CBC Partners I, LLC trying to obtain
23 a Deed of Trust over the Antos' residence even though neither KCI Investments, LLC, nor the Antos'
24 individually, owned Property. The Antos Trust, never having been added as a borrower or guarantor
25 under the Note, and more importantly never having received any consideration for attempting to
26 convey the Deed of Trust, has no obligation under the commercial restaurant loan to KCI Investments,
27 LLC. Similarly, Plaintiffs as the successor-in-interest to the Property have no obligation under what
28 we have now discovered is an invalid Deed of Trust.

1 No consideration was ever provided to the Antos Trust for a signed Deed of Trust. Defendants
2 insist that “[t]he balance due from Plaintiffs is approximately \$5,578,459.15 (\$2,935,001.14 for
3 principal, pre-forbearance protection payments of \$1,326,744.55, interest and late charges of
4 \$1,315,105.24 and interest accrued at the rate of 20% in the amount of \$1,608.22 per day from April
5 1, 2020, Exhibit V)”. But that is the balance due by KCI Restaurant Brands as borrower and the
6 Antos’ individually as guarantors. It is not due from the Antos Trust, nor from Plaintiffs.

7 Even if the Court were to somehow find that the Antos Trust, a non-party to the commercial
8 Loan to KCI, somehow was a borrower or guarantor to a commercial loan to which it never signed
9 any amendment to the Note, then the Doctrine of Merger would have extinguished the Note when the
10 Note holder took an equitable position in the collateral at the time the Antos’ transferred their interest
11 to the lender CBC Partners I, LLC.

12 Even further, if the commercial loan to KCI somehow transformed into a debt of the Antos
13 Trust, and the Note was not extinguished under the Doctrine of Merger, then still the One Action Rule
14 would prevent foreclosure as the lender (CBC Partners I, LLC) already elected its remedy in taking
15 possession of an equitable interest.

16 **B. DEFENDANTS’ NOTICING DOCUMENTS ARE INVALID**

17 Notably, the Amended Forbearance Agreement was actually breached by defendant CBC
18 Partners I, LLC almost immediately after its execution, as CBC Partners I, LLC failed to make the
19 required mortgage payments to the holders of the first and second position mortgages (City National
20 Bank and Northern Trust Bank. *See* Mot. at Ex. 20, PLTFS00261-Correspondence from Jonathan
21 Ukeiley of Northern Trust Bank stating that there are past due bills from “January, February, March
22 and April 2020.” Defendant 5148 Spanish Heights, LLC has not fully remedied this breach, as late
23 fees are still due.

24 In other words, Defendants are coming to this Court with unclean hands and seeking relief
25 for alleged breaches under an agreement which Defendants have been in breach of for a year now.
26 Perhaps realizing they will not succeed, Defendants have pivoted to trying to notice their own
27 foreclosure sale, but they have continuously gone about it in a way that violates Nevada’s foreclosure
28 statutes, which went totally unaddressed in Defendants opposition.

1 The July 2, 2020 “Notice of Default” states that “**CBC Partners I, LLC**, at its option, without
2 further demand, may evoke the power of sale and any other remedies permitted by Nevada law.” *See*
3 Mot. at Ex. 18. However, months before that at the May 2020 preliminary injunction hearing, CBC
4 Partners I, LLC claimed that it had sold its Note to 5148 Spanish Heights LLC. CBC Partners I, LLC
5 had no authority to issue a Notice of Default in July 2020, making that document void and
6 unenforceable.

7 Disregarding that, on September 15, 2020, 5148 Spanish Heights, LLC moved forward not
8 with recording its own Notice of Default but by causing a “Notice of Breach and Election to Sell
9 Under Deed of Trust” to be recorded against the Property. Mot. at Ex. 19. This Notice of Breach.
10 Even if Plaintiffs had breached their obligations under the invalid third-position “Deed of Trust,”
11 which they have not, this Notice of Breach is improper since it is based on the void Notice of Default.

12 While Plaintiffs acknowledge that Defendants wanted to rush through with foreclosure
13 proceedings as fast as possible in an attempt to circumvent judicial intervention and did not want to
14 start all over again by having 5148 Spanish Heights, LLC issue its own Notice of Default, their failure
15 to do so means that the subsequently recorded Notice of Breach and Notice of Sale (recorded on
16 December 15, 2020) are also invalid.

17 Defendants repeatedly boast about the authenticity and the clarity of “the Documents.” What
18 they ignore is the substance of those documents, as the documents are clear that Antos Trust was never
19 a borrower or guarantor under the underlying Note; the documents are clear that SJC Ventures was
20 never a signatory to the Pledge Agreement; and the documents are clear that CBC Partners was, and
21 its successor 5148 Spanish Heights LLC is, in default of both the Forbearance Agreement
22 and Amended Forbearance Agreement.

23 Defendants in multiple instances disregard the indisputable instances when certain parties are
24 not signatories to documents, and simply wants obligations to attach to non-parties to agreements,
25 even when those non-parties received no consideration, as is the case with the Antos Trust receiving
26 nothing in exchange for trying to convey a “Deed of Trust” to CBC Partners I, LLC.

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

An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1

Spanish Heights Acquisition Company, LLC, et al.

v.

CBC Partners I, LLC, et al.

Transcript of

Alan Hallberg

Volume I

November 6, 2020



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DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY,)
LLC, a Nevada Limited Liability Company;)
SJC VENTURES HOLDING COMPANY, LLC d/b/a)
SJC VENTURES, LLC, a Delaware Limited)
Liability Company,)
)
 Plaintiffs,)
vs.)
 Case No.)
 A-20-813439-B

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

DEPOSITION OF ALAN HALLBERG

NRCP 30(b)(6) FOR CBC PARTNERS I, LLC

Via Videoconference

Taken on Friday, November 6, 2020

By a Certified Stenographer

At 9:30 a.m.

Las Vegas, Nevada

Reported by: HOLLY LARSEN, CCR 680, CA CSR 12170

Job No. 42660A

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1 APPEARANCES: 2 For the Plaintiffs: (Via Videoconference) 3 4 MAIER GUTIERREZ & ASSOCIATES BY: DANIELLE J. BARRAZA, ESQ. 8816 Spanish Ridge Avenue 5 Las Vegas, Nevada 89148 702.629.7900 6 djb@mgalaw.com 7 8 For Defendants CBC Partners I, LLC; CBC Partners, LLC; 5148 Spanish Heights, LLC; and Dacia LLC: 9 (Via Videoconference) 10 MUSHKIN & COPPEDGE BY: MICHAEL R. MUSHKIN, ESQ. 11 6070 South Eastern Avenue Suite 270 12 Las Vegas, Nevada 89119 702.454.3333 13 mmushkin@mccnvlaw.com 14 15 16 17 18 19 20 21 22 23 24 25	1 P R O C E E D I N G S 2 3 THE COURT REPORTER: Good morning. My name is 4 Holly Larsen. I am a Nevada Certified Court Reporter 5 here on behalf of Oasis Reporting Services. My CCR 6 number is 680. 7 Today's date is Friday, November 6, 2020. The 8 time is approximately 9:30 a.m. This is the deposition 9 of NRCP 30(b)(6) for CBC Partners I, LLC, Alan 10 Hallberg, in the matter of Spanish Heights Acquisition 11 Company, LLC, et al., versus CBC Partners I, LLC, et 12 al., venued in the District Court of the State of 13 Nevada for the County of Clark, Case Number 14 A-20-813439-B. 15 At this time, I will ask counsel to identify 16 themselves, state whom they represent, and agree on the 17 record that there is no objection to this deposition 18 officer administering a binding oath to the witness 19 through remote videoconferencing. If no objection is 20 stated, we will proceed forward with the agreement of 21 all counsel. We will begin appearances with the 22 noticing attorney. 23 MS. BARRAZA: Good morning. Danielle 24 Barraza on behalf of the plaintiffs. No objection. 25 MR. MUSHKIN: Good morning. Mike Mushkin
3	5
1 I N D E X 2 WITNESS PAGE 3 ALAN HALLBERG 4 Examination by Ms. Barraza 5, 70 Examination by Mr. Mushkin 67, 72 5 6 7 E X H I B I T S 8 NUMBER PAGE 9 Exhibit 1 Grant, Bargain, Sale Deed 26 10 Exhibit 2 Secured Promissory Note 18 11 Exhibit 3 Forbearance Agreement 40 12 Exhibit 5 Deed of Trust 28 13 Exhibit 7 Note Purchase and Sale 56 Agreement 14 Exhibit 8 April 1, 2020, 58 Correspondence 15 Exhibit 9 April 3, 2020, 60 Correspondence 16 17 Exhibit 12 Correspondence with 47 Northern Trust 18 Exhibit 13 Notice of Default 61 19 Exhibit 14 Notice of Breach and 63 Election to Sell Under Deed of Trust 21 Exhibit 19 Responses to First Set of 53 Requests for Production of 22 Documents 23 Exhibit 26 Deposition Notice 8 24 25	1 on behalf of the defendants. No objection. Thank 2 you for recording for us or whatever you're doing. 3 Whereupon, 4 ALAN HALLBERG, 5 having been first duly sworn to testify to the truth, 6 was examined, and testified as follows: 7 8 EXAMINATION 9 BY MS. BARRAZA: 10 Q. Good morning. Can you please state your 11 name and spell your name for the record? 12 A. Alan Hallberg. First is A-l-a-n. Last is 13 H-a-l-l-b-e-r-g. 14 Q. And have you ever had your deposition taken 15 before? 16 A. No. 17 Q. So I'm just going to kind of go through 18 really quick. I'm sure your counsel already advised 19 you, but a little bit of ground rules for this 20 deposition, how it's going to work. The oath you 21 just took is the same exact oath that you would take 22 in a court of law. Do you understand that? 23 A. Yes. 24 Q. That means you're subject to the same 25 penalties of perjury just as you would in a court of

6	<p>1 law. Do you understand that?</p> <p>2 A. Yes.</p> <p>3 Q. Really important in this deposition that we</p> <p>4 do not talk over each other. So please wait for me</p> <p>5 to finish my question before going into your answer,</p> <p>6 and I'm going to try to wait for you to finish your</p> <p>7 complete answer before going into my next question.</p> <p>8 Okay?</p> <p>9 A. Yes.</p> <p>10 Q. There's times where you might say "uh-huh,"</p> <p>11 "uh-uh," shake your head, nod your head. If you do</p> <p>12 that, I'm just going to ask for a verbal response.</p> <p>13 Not trying to be rude, just trying to have a clear</p> <p>14 record. Okay?</p> <p>15 A. Yep.</p> <p>16 Q. There's times that your counsel will be</p> <p>17 lodging objections throughout the course of this</p> <p>18 deposition. So unless you're specifically</p> <p>19 instructed not to answer the question, even if</p> <p>20 there's an objection, we do still expect you to</p> <p>21 answer. Do you understand that?</p> <p>22 A. Yes.</p> <p>23 Q. Is there any reason why you won't be able</p> <p>24 to give me your full, complete, and truthful answers</p> <p>25 to the questions today?</p>	8
7	<p>1 A. No. No reason.</p> <p>2 Q. Can you give me a description of how you</p> <p>3 are related to CBC Partners I, LLC?</p> <p>4 A. I am the chief credit officer of the</p> <p>5 general partnership CBC Partners, LLC, and we manage</p> <p>6 the loans of the fund CBC Partners I, LLC.</p> <p>7 Q. Okay. How long have you been in that role?</p> <p>8 A. Since its founding in 2007. November 2007.</p> <p>9 Q. And did you go to college?</p> <p>10 A. Yes.</p> <p>11 Q. Where did you go?</p> <p>12 A. Georgetown University.</p> <p>13 Q. What's your degree in?</p> <p>14 A. Bachelor of science.</p> <p>15 Q. Any other post-graduate education?</p> <p>16 A. No.</p> <p>17 Q. Have you ever been convicted of a crime?</p> <p>18 A. No.</p> <p>19 Q. Have you ever been arrested for any crimes</p> <p>20 involving dishonesty?</p> <p>21 A. No.</p> <p>22 Q. When did you first learn about this</p> <p>23 deposition?</p> <p>24 A. I believe it was last week.</p> <p>25 Q. If we could go to Exhibit 26, and tell me</p>	9
	<p>1 when you have that pulled up.</p> <p>2 (Exhibit 26 marked.)</p> <p>3 BY MS. BARRAZA:</p> <p>4 Q. You're looking at a document, Notice of</p> <p>5 Taking Web-Based Video Deposition of NRCP 30(b)(6)</p> <p>6 Deposition of CBC Partners I, LLC. Is that what</p> <p>7 you're looking at?</p> <p>8 A. Yes.</p> <p>9 Q. So this is what's called the notice for</p> <p>10 this deposition that we're in right now. Have you</p> <p>11 previously reviewed this document?</p> <p>12 A. This morning.</p> <p>13 Q. Was this morning the first time you ever</p> <p>14 saw this?</p> <p>15 A. Yes.</p> <p>16 Q. So I want to turn your attention to page 2</p> <p>17 of Exhibit 26. Do you see where it says "Topics"?</p> <p>18 A. Yes.</p> <p>19 Q. What I want you to do is look through those</p> <p>20 topics. You apparently looked through it this</p> <p>21 morning, but if you would look through, again,</p> <p>22 Topics 1 through 39 and let me know if you are, in</p> <p>23 fact, the person with the ability to testify as to</p> <p>24 all these topics.</p> <p>25 A. Yes.</p>	

<p style="text-align: right;">10</p> <p>1 A. Yesterday and sometime last week. I don't</p> <p>2 remember the exact day.</p> <p>3 Q. Yesterday's conversation, how long did that</p> <p>4 conversation with your counsel last?</p> <p>5 A. Approximately 15 to 20 minutes.</p> <p>6 Q. I just want to confirm during that</p> <p>7 conversation you did not review any documents?</p> <p>8 A. Correct.</p> <p>9 MR. MUSHKIN: Excuse me, Counsel. You mean</p> <p>10 other than the ones that you provided?</p> <p>11 MS. BARRAZA: We can clarify that actually.</p> <p>12 BY MS. BARRAZA:</p> <p>13 Q. Let me ask you this: I assume your counsel</p> <p>14 forwarded you along the exhibits for this</p> <p>15 deposition?</p> <p>16 A. This morning.</p> <p>17 Q. So this morning, did you review those</p> <p>18 exhibits?</p> <p>19 A. No.</p> <p>20 Q. Now, you also mentioned talking to your</p> <p>21 counsel a few weeks ago or last week?</p> <p>22 A. Last week. I don't remember the exact day.</p> <p>23 Q. That's fine. How long did that</p> <p>24 conversation last?</p> <p>25 A. Approximately 15 minutes.</p>	<p style="text-align: right;">12</p> <p>1 Q. At some point either this week or last</p> <p>2 week, Kenneth Antos was emailing you and it was</p> <p>3 mortgage documents. When you say "mortgage</p> <p>4 documents," are you talking about --</p> <p>5 A. Statements.</p> <p>6 Q. Sorry?</p> <p>7 A. Statements.</p> <p>8 Q. Mortgage statements. And are you talking</p> <p>9 about the first mortgage, the second mortgage, or</p> <p>10 which mortgage?</p> <p>11 A. I believe it was the first mortgage that</p> <p>12 was showing delinquency.</p> <p>13 Q. Was there any substantive comments that</p> <p>14 Kenneth left you in that email, or was he just</p> <p>15 forwarding you those mortgage statements?</p> <p>16 A. Simply forwarding.</p> <p>17 Q. Did you respond to that email?</p> <p>18 A. No.</p> <p>19 Q. Aside from that email you just mentioned,</p> <p>20 any other conversations you've had with Kenneth</p> <p>21 Antos since the one you had in March of 2020 over</p> <p>22 the phone?</p> <p>23 A. I don't believe so. Certainly not on the</p> <p>24 phone. He may have forwarded other emails in the</p> <p>25 past, but I don't recall. I didn't reply to him.</p>
<p style="text-align: right;">11</p> <p>1 Q. And did you review any documents during</p> <p>2 that conversation?</p> <p>3 A. No.</p> <p>4 Q. Have you spoken with either Kenneth or</p> <p>5 Sheila Antos regarding this deposition?</p> <p>6 A. No.</p> <p>7 Q. When was the last time you spoke to Kenneth</p> <p>8 Antos?</p> <p>9 A. I believe that was in March of this year</p> <p>10 prior to the sale of our note.</p> <p>11 Q. So March of 2020 is when you believe is the</p> <p>12 last time you spoke to Kenneth Antos; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Was that conversation over the phone or in</p> <p>15 person?</p> <p>16 A. Phone.</p> <p>17 Q. And have you exchanged any kind of email or</p> <p>18 text or any other kind of communications with</p> <p>19 Kenneth Antos since then?</p> <p>20 A. Yes. I believe I received an email from</p> <p>21 Antos. I think it was either early this week or</p> <p>22 last week. He was forwarding mortgage statements on</p> <p>23 the property, which were -- the payments were</p> <p>24 falling behind. So he had received copies and</p> <p>25 forwarded those to me.</p>	<p style="text-align: right;">13</p> <p>1 Q. Now, aside from your counsel, have you</p> <p>2 spoken to anybody else about this deposition today?</p> <p>3 A. Does my wife count?</p> <p>4 Q. That's fine. Aside from your wife, anybody</p> <p>5 else?</p> <p>6 A. No.</p> <p>7 Q. Now, we're here today -- I'll just state</p> <p>8 for the record so there's no confusion -- because</p> <p>9 this litigation involves a property located at</p> <p>10 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.</p> <p>11 Throughout this deposition I'm going to be referring</p> <p>12 to that as the "property." Is that okay with you?</p> <p>13 A. Yes.</p> <p>14 Q. Is CBC Partners I, LLC, licensed to conduct</p> <p>15 business in the state of Nevada?</p> <p>16 A. No.</p> <p>17 Q. I want to make sure. Because I believe you</p> <p>18 testified to the same back at the preliminary</p> <p>19 injunction hearing. Do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. And since that hearing, has CBC Partners I,</p> <p>22 LLC, done anything in an effort to become authorized</p> <p>23 to conduct business in the state of Nevada?</p> <p>24 A. We have not pursued getting a business</p> <p>25 license in the state of Nevada.</p>

<p>14</p> <p>1 Q. Do you recall testifying at that</p> <p>2 preliminary injunction hearing for this litigation</p> <p>3 back in May?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall testifying that the only</p> <p>6 business that CBC Partners I, LLC, had conducted in</p> <p>7 Nevada was with respect to the origination of the</p> <p>8 loan to Kenneth Antos' company such as Pacific</p> <p>9 Restaurant Brands? Do you recall that?</p> <p>10 A. Yes.</p> <p>11 Q. Now is that still the case as you sit here</p> <p>12 today? Is there any other business that CBC</p> <p>13 Partners I, LLC, has conducted in the state of</p> <p>14 Nevada aside from that loan associated with Kenneth</p> <p>15 Antos?</p> <p>16 A. There was a smaller loan that was</p> <p>17 outstanding for 12 months with a Las Vegas-based</p> <p>18 company. It was repaid on schedule. That, I</p> <p>19 believe, was at least five years ago, if not longer.</p> <p>20 Q. Did that Las Vegas-based company have</p> <p>21 anything to do with Kenneth Antos?</p> <p>22 A. No.</p> <p>23 Q. So I want to get into talking about the</p> <p>24 origination of the loan. And when I'm talking about</p> <p>25 the loan so that we can kind of shorten it to only</p>	<p>16</p> <p>1 Q. I assume in discussing the concept of</p> <p>2 providing a loan, CBC Partners I, LLC, conducted</p> <p>3 some sort of due diligence into these companies?</p> <p>4 A. Yes.</p> <p>5 MR. MUSHKIN: Objection to the form of the</p> <p>6 question.</p> <p>7 You should answer, please.</p> <p>8 THE WITNESS: Yes. We performed due</p> <p>9 diligence.</p> <p>10 BY MS. BARRAZA:</p> <p>11 Q. And just, in general, what did that kind of</p> <p>12 due diligence entail?</p> <p>13 A. Review of financial statements, historical</p> <p>14 financial statements, review of projections, review</p> <p>15 of assets within those financial statements, review</p> <p>16 of Ken Antos' personal financial condition including</p> <p>17 the property.</p> <p>18 Q. So when you say you also reviewed -- or CBC</p> <p>19 Partners I, LLC, also reviewed Ken Antos' personal</p> <p>20 financial condition including the property, what did</p> <p>21 it review regarding the property?</p> <p>22 A. I believe at the time he had provided us</p> <p>23 what would then be considered a recent appraisal.</p> <p>24 So we looked through that. We pulled comps from the</p> <p>25 neighborhood, so we looked at that.</p>
<p>15</p> <p>1 "loan," I'm talking about that loan that was</p> <p>2 provided to Kenneth Antos' various restaurant</p> <p>3 companies, Pacific Restaurant Brands. I think</p> <p>4 there's -- do you recall KCB? Is that another</p> <p>5 entity or no?</p> <p>6 A. No. There's KCI.</p> <p>7 Q. That's what I meant. And KCI. So do you</p> <p>8 understand that to be the underlying loan that's at</p> <p>9 issue in this litigation?</p> <p>10 A. Yes.</p> <p>11 Q. So tell me about how that loan first</p> <p>12 originated.</p> <p>13 A. Several years ago it was brought to us by a</p> <p>14 finder. The purpose of the loan was to provide</p> <p>15 growth capital to a franchisee of a restaurant brand</p> <p>16 who was based in Las Vegas. And he was looking at</p> <p>17 growing not only in Las Vegas but in</p> <p>18 Southern California.</p> <p>19 Q. And do you recall who was that finder?</p> <p>20 A. The name is Doug Metz, M-e-t-z.</p> <p>21 Q. And prior to this point had CBC Partners I,</p> <p>22 LLC, ever conducted any kind of business with</p> <p>23 Kenneth Antos or any of his associated companies</p> <p>24 such as KCI Investments?</p> <p>25 A. No.</p>	<p>17</p> <p>1 Q. Back when this loan was being originated,</p> <p>2 did Kenneth Antos reveal that the owner of the</p> <p>3 property was the Antos trust?</p> <p>4 A. I don't recall.</p> <p>5 Q. And back when this loan was being</p> <p>6 originated, did CBC Partners I, LLC, conduct a title</p> <p>7 check to determine who the property was titled to?</p> <p>8 MR. MUSHKIN: I'd like a clarification if I</p> <p>9 could. You keep referencing when this originated.</p> <p>10 Are you talking about the original note or the lien</p> <p>11 on the property itself?</p> <p>12 MS. BARRAZA: I'm talking about back -- the</p> <p>13 original note. So I'm thinking back in the 2012</p> <p>14 time frame.</p> <p>15 BY MS. BARRAZA:</p> <p>16 Q. Is that the original note, Mr. Hallberg?</p> <p>17 A. Yes.</p> <p>18 Q. So back in this original note time frame in</p> <p>19 2012, did CBC Partners I, LLC, conduct any kind of</p> <p>20 title check regarding the property to determine who</p> <p>21 the owner was?</p> <p>22 A. No. Any title check would have been</p> <p>23 performed by our outside counsel in Seattle at the</p> <p>24 time that we took a security interest in the</p> <p>25 property.</p>

<p>18</p> <p>1 Q. I'm sorry. I missed the last part of what</p> <p>2 you just said.</p> <p>3 A. Any analysis or any title search would have</p> <p>4 been done by our outside counsel at the time that we</p> <p>5 were taking a security interest in the property.</p> <p>6 Q. Understood.</p> <p>7 A. Not by CBC Partners I.</p> <p>8 Q. Understood. If we could turn to Exhibit 2,</p> <p>9 just tell me when you have it pulled up.</p> <p>10 (Exhibit 2 marked.)</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MS. BARRAZA:</p> <p>13 Q. I just want to make sure, at the top of the</p> <p>14 page does it say "Secured Promissory Note"?</p> <p>15 A. Yes.</p> <p>16 Q. I'll represent to you this Exhibit 2 is a</p> <p>17 series of documents that have been submitted by your</p> <p>18 counsel in this litigation. It consists of the</p> <p>19 secured promissory note, and it also consists of</p> <p>20 various guaranty agreements and various</p> <p>21 modifications to that secured promissory note.</p> <p>22 If you could look at the bottom right-hand</p> <p>23 side of the first page of Exhibit 2, do you see how</p> <p>24 it says 5148SH?</p> <p>25 A. Yes.</p>	<p>20</p> <p>1 A. Yes.</p> <p>2 Q. It looks like Ken Antos signed on behalf of</p> <p>3 KCI Investments. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. It looks like John Otter signed on behalf</p> <p>6 of CBC Partners I, LLC. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Tell me who John Otter is.</p> <p>9 A. He's the managing partner of CBC Partners.</p> <p>10 Q. And is he still the managing partner?</p> <p>11 A. Yes.</p> <p>12 Q. Was John Otter the main representative on</p> <p>13 behalf of CBC Partners I, LLC, who was working on</p> <p>14 this loan with the Antos companies and working on</p> <p>15 this note?</p> <p>16 A. No. I was.</p> <p>17 Q. So you were personally involved, including</p> <p>18 back then in 2012?</p> <p>19 A. Yes.</p> <p>20 Q. I do want to go to page 612 on Exhibit 2.</p> <p>21 Tell me whenever you're there.</p> <p>22 A. Okay.</p> <p>23 Q. It looks like this is the first</p> <p>24 modification to the secured promissory note. Is</p> <p>25 that your understanding?</p>
<p>19</p> <p>1 Q. Then it says 000594?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So throughout this deposition, when</p> <p>4 I talk about page numbers, I'm going to be referring</p> <p>5 to those Bates stamps at the bottom right. Okay?</p> <p>6 A. Uh-huh. Yes.</p> <p>7 Q. And so looking at page 594 on Exhibit 2, is</p> <p>8 this, to your knowledge, a true and accurate copy of</p> <p>9 the original, the first security note?</p> <p>10 A. Yes.</p> <p>11 Q. All right. And this security note was</p> <p>12 between KCI Investments, LLC, as the borrower and</p> <p>13 CBC Partners I, LLC, as the lender; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. It appears from the face of this document</p> <p>16 the original loan amount was 300,000; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, if we turn to -- actually, I want to</p> <p>20 turn to page 609 on Exhibit 2. Tell me whenever</p> <p>21 you're there.</p> <p>22 A. Okay.</p> <p>23 Q. I want to make sure we're looking at this.</p> <p>24 It appears to be a signature page of that secured</p> <p>25 promissory note. Is that your understanding?</p>	<p>21</p> <p>1 A. Yes.</p> <p>2 Q. And is it your understanding this note went</p> <p>3 through several modifications over the course of</p> <p>4 years?</p> <p>5 MR. MUSHKIN: Objection to the form.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MS. BARRAZA:</p> <p>8 Q. Now, if we could go to 629 of Exhibit 2.</p> <p>9 Tell me whenever you're there.</p> <p>10 A. Okay.</p> <p>11 Q. This appears to be an acknowledgement and</p> <p>12 agreement of guarantors. What do you understand</p> <p>13 this document to be?</p> <p>14 A. As it clearly states it's an</p> <p>15 acknowledgement by the guarantors there was a loan</p> <p>16 modification.</p> <p>17 Q. Is it CBC Partners I, LLC's understanding</p> <p>18 that the personal guarantors were Kenneth Antos and</p> <p>19 Sheila Antos for this loan?</p> <p>20 A. Yes.</p> <p>21 Q. Were there any other guarantors for this</p> <p>22 loan?</p> <p>23 A. I believe initially there was another</p> <p>24 guarantor, but he did not continue with the loan.</p> <p>25 The primary guarantors were Kenneth and Sheila</p>

<p>22</p> <p>1 Antos.</p> <p>2 Q. So you believe there was another individual</p> <p>3 guarantor?</p> <p>4 A. Yes.</p> <p>5 Q. Now, if you could just tell me in general</p> <p>6 how do these various modifications come about? Was</p> <p>7 this a situation of Mr. Antos approaching CBC</p> <p>8 Partners I, LLC, asking for a modification, or how</p> <p>9 did this come about?</p> <p>10 A. Usually he was asking for additional money</p> <p>11 to fund the growth. And then he would approach us</p> <p>12 and ask for extensions of maturity date because he</p> <p>13 wasn't quite ready to pay the loan.</p> <p>14 Q. I assume throughout the course of the</p> <p>15 years, as further modifications were granted, CBC</p> <p>16 Partners I, LLC, was in agreement with providing</p> <p>17 those additional funds in exchange for these</p> <p>18 additional modifications to the note; is that</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, I'd like to get into at some point in</p> <p>22 time were there discussions about CBC Partners I,</p> <p>23 LLC, obtaining a deed of trust on the property?</p> <p>24 A. Yes.</p> <p>25 Q. Tell me about how those conversations came</p>	<p>24</p> <p>1 Q. Has CBC Partners I, LLC, gone through its</p> <p>2 emails with Kenneth Antos since the commencement of</p> <p>3 this litigation?</p> <p>4 A. No.</p> <p>5 Q. Are there potentially emails out there</p> <p>6 between CBC Partners I and Kenneth Antos regarding</p> <p>7 discussing the possibility of CBC Partners I, LLC,</p> <p>8 obtaining that deed of trust on the property?</p> <p>9 MR. MUSHKIN: Objection to the form of the</p> <p>10 question. Vague and ambiguous.</p> <p>11 Please answer if you can.</p> <p>12 THE WITNESS: I believe most of the</p> <p>13 communication regarding this deed of trust was</p> <p>14 verbal. It was telephonic. There may have been</p> <p>15 some emails, but most of the negotiation was</p> <p>16 telephonic.</p> <p>17 BY MS. BARRAZA:</p> <p>18 Q. And so what we would ask is that CBC</p> <p>19 Partners I, LLC, goes through and looks at its prior</p> <p>20 emails. And if it uncovers any emails with Kenneth</p> <p>21 Antos specifically regarding the deed of trust and</p> <p>22 the discussions about CBC Partners I obtaining a</p> <p>23 deed of trust on the property, we would ask that</p> <p>24 those be produced. Is that something that's doable?</p> <p>25 A. I would defer to counsel on that.</p>
<p>23</p> <p>1 about.</p> <p>2 A. I don't recall all of the details.</p> <p>3 Initially on the loan we had an assignment of a</p> <p>4 stream of payments due Mr. Antos. Those went away.</p> <p>5 They were already settled and we asked for</p> <p>6 replacement collateral, and that replacement</p> <p>7 collateral was a third position on the property.</p> <p>8 Q. What I'm trying to figure out is the</p> <p>9 additional collateral, the property, was that</p> <p>10 something Kenneth Antos had offered up, or was that</p> <p>11 something CBC Partners I brought up on its own as</p> <p>12 wanting to take that additional collateral?</p> <p>13 A. We brought it up. He agreed.</p> <p>14 Q. Okay. And do you recall approximately when</p> <p>15 those conversations took place?</p> <p>16 A. I don't recall.</p> <p>17 Q. Would those conversations have taken place</p> <p>18 in person or over the phone or email?</p> <p>19 A. Most likely over the phone.</p> <p>20 Q. Has CBC Partners I, LLC -- let me start</p> <p>21 with this question: Did you email Kenneth Antos</p> <p>22 back in the time frame of 2012 through 2014</p> <p>23 regarding the note?</p> <p>24 A. Probably. That's eight years ago. I'm</p> <p>25 sure Ken Antos and I had communication back then.</p>	<p>25</p> <p>1 MR. MUSHKIN: I don't see a problem with</p> <p>2 that. I don't need to have this on the record.</p> <p>3 (A discussion was held off the record.)</p> <p>4 BY MS. BARRAZA:</p> <p>5 Q. You mentioned you had various discussions</p> <p>6 with Kenneth Antos regarding CBC Partners I, LLC,</p> <p>7 wanting to take a deed of trust over the property as</p> <p>8 additional collateral. Was anybody else involved in</p> <p>9 these discussions?</p> <p>10 A. The original finder, Doug Metz, may have</p> <p>11 participated telephonically to the best of my</p> <p>12 recollection.</p> <p>13 Q. Do you recall Kenneth Antos having any kind</p> <p>14 of legal counsel during those specific discussions?</p> <p>15 A. Not on the call, no.</p> <p>16 Q. At any point during those discussions?</p> <p>17 A. No. My discussions were with Ken. He did</p> <p>18 not have counsel on the phone with him.</p> <p>19 Q. Going back to this Exhibit 2 and the</p> <p>20 secured promissory note documents and the various</p> <p>21 modifications, who drafted those documents?</p> <p>22 A. The outside counsel for CBC which is Lane</p> <p>23 Powell based in Seattle.</p> <p>24 Q. And does CBC Partners I, LLC, have any</p> <p>25 recollection of Kenneth Antos or any representative</p>

<p>26</p> <p>1 of the borrower making any kind of changes or</p> <p>2 proposing any kind of changes to the security</p> <p>3 promissory note or any of its modifications?</p> <p>4 A. I don't recall.</p> <p>5 Q. I want to turn to Exhibit 5. I do</p> <p>6 apologize. I do want to turn to Exhibit 1. Tell me</p> <p>7 whenever you're there.</p> <p>8 (Exhibit 1 marked.)</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MS. BARRAZA:</p> <p>11 Q. Exhibit 1 says "Grant Bargain Sale Deed" at</p> <p>12 the top. Do you see that?</p> <p>13 A. Yes.</p> <p>14 MR. MUSHKIN: Bates numbers PLTFS 00642 for</p> <p>15 purposes of identification.</p> <p>16 BY MS. BARRAZA:</p> <p>17 Q. So I'll represent to you this is a recorded</p> <p>18 copy of the grant, bargain, and sale deed with</p> <p>19 respect to the property. It indicates that Kenneth</p> <p>20 Antos and Sheila Antos, as joint tenants, for</p> <p>21 valuable consideration are conveying the property to</p> <p>22 their trust. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. This was recorded -- you can look at the</p> <p>25 top right-hand corner -- in October of 2010. Do you</p>	<p>28</p> <p>1 dispute that?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Going back to Exhibit 2, if you can, the</p> <p>4 secured promissory note, those documents. Tell me</p> <p>5 whenever you're there.</p> <p>6 A. I'm there.</p> <p>7 Q. In either this original secured promissory</p> <p>8 note on page 594 or in any of the modifications</p> <p>9 thereto that follow on these pages, was the Antos</p> <p>10 Trust listed as a borrower on any of those</p> <p>11 documents?</p> <p>12 A. I don't recall.</p> <p>13 Q. And was the Antos Trust listed as -- do you</p> <p>14 have any recollection of the Antos Trust being</p> <p>15 listed as a guarantor on the note?</p> <p>16 A. I don't have a recollection, no.</p> <p>17 Q. I do want to go back to Exhibit 5. Tell me</p> <p>18 whenever you're there.</p> <p>19 (Exhibit 5 marked.)</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. I just want to make sure what we're looking</p> <p>23 at -- it says, Deed of Trust, Assignment of Rents,</p> <p>24 Security Agreement, and Fixture Filing. Is that</p> <p>25 what you're looking at?</p>
<p>27</p> <p>1 see that?</p> <p>2 A. Yes.</p> <p>3 Q. Does CBC Partners I, LLC, have any reason</p> <p>4 to dispute that during the time that it has</p> <p>5 conducted business with Kenneth Antos and his</p> <p>6 companies, the property -- during that time period,</p> <p>7 the property was owned by the Antos Trust and not</p> <p>8 Kenneth Antos and Sheila Antos individually; is that</p> <p>9 correct?</p> <p>10 MR. MUSHKIN: To the extent it calls for a</p> <p>11 legal conclusion, I object.</p> <p>12 Mr. Hallberg, you can answer the question</p> <p>13 if you can.</p> <p>14 THE WITNESS: For documentation, especially</p> <p>15 with respect -- especially with documents pertaining</p> <p>16 to the property, we relied heavily on advice from</p> <p>17 our external counsel in Seattle, Lane Powell. Being</p> <p>18 asked for specific information regarding whether</p> <p>19 these documents are good or not, you know, again,</p> <p>20 I'm not an attorney.</p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. Let me phrase it this way. Does CBC</p> <p>23 Partners I, LLC, have any reason to dispute, as it</p> <p>24 sits here today, that the Antos Trust owned the</p> <p>25 property as of October of 2010? Any reason to</p>	<p>29</p> <p>1 A. Yes.</p> <p>2 Q. Do you recognize this document?</p> <p>3 A. Yes.</p> <p>4 Q. What do you understand this document to be?</p> <p>5 A. A deed of trust drafted by outside counsel.</p> <p>6 Q. When you're talking about outside counsel,</p> <p>7 you're talking about CBC Partners I, LLC's outside</p> <p>8 counsel?</p> <p>9 A. Yes.</p> <p>10 Q. This is the deed of trust that CBC</p> <p>11 understands that it acquired against the property;</p> <p>12 is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Was there any specific reason</p> <p>15 why CBC Partners I, LLC, did not want to take a deed</p> <p>16 of trust in the first place originally back when</p> <p>17 this note was issued?</p> <p>18 A. As I mentioned earlier, Mr. Antos had</p> <p>19 another piece of collateral we had taken position</p> <p>20 in. That ended up being sold, and the proceeds of</p> <p>21 that collateral were not applied to the loan. So we</p> <p>22 asked for additional collateral or replacement</p> <p>23 collateral which is the house.</p> <p>24 Q. That loan that you're talking about, the</p> <p>25 original loan, it was a commercial business loan for</p>

<p style="text-align: right;">30</p> <p>1 the purpose of his various restaurant entities?</p> <p>2 A. Yes.</p> <p>3 Q. I just want to make sure we're clear for</p> <p>4 the record. This deed of trust was not for the</p> <p>5 purpose of CBC Partners I, LLC, providing any funds</p> <p>6 to Kenneth Antos or any of his entities so that they</p> <p>7 could purchase the property; is that correct?</p> <p>8 MR. MUSHKIN: Objection to the form of the</p> <p>9 question. Vague and ambiguous. He's wrinkling his</p> <p>10 brow too.</p> <p>11 BY MS. BARRAZA:</p> <p>12 Q. Go ahead.</p> <p>13 A. Can you please repeat the question?</p> <p>14 Q. Sure. Is it correct that the purpose of</p> <p>15 CBC Partners I, LLC, obtaining this deed of trust</p> <p>16 was not for providing -- was not to help facilitate</p> <p>17 Kenneth Antos to purchase the property? Is that</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Because the Antos Trust had already owned</p> <p>21 the property long before this deed of trust came</p> <p>22 about; is that correct?</p> <p>23 A. That's my understanding.</p> <p>24 Q. Prior to this deed of trust coming about,</p> <p>25 did CBC Partners I, LLC, conduct any due diligence</p>	<p style="text-align: right;">32</p> <p>1 MS. BARRAZA: Sorry. I'm talking about</p> <p>2 Exhibit 5.</p> <p>3 MR. MUSHKIN: That's not a note. It's a</p> <p>4 deed of trust.</p> <p>5 MS. BARRAZA: I'm sorry. I thought it said</p> <p>6 deed of trust.</p> <p>7 MR. MUSHKIN: That's all right. I</p> <p>8 thought -- you just confused me. I thought you were</p> <p>9 doing it on purpose just to shake me up to make sure</p> <p>10 I'm paying attention.</p> <p>11 BY MS. BARRAZA:</p> <p>12 Q. If you could look at Exhibit 5, that first</p> <p>13 paragraph is actually one very long sentence. If</p> <p>14 you could just read that to yourself where it starts</p> <p>15 saying "This deed of trust, assignment of rent," and</p> <p>16 tell me when you're done reading it.</p> <p>17 A. Okay.</p> <p>18 Q. Do you see how in that first paragraph of</p> <p>19 Exhibit 5 the term "trustor" is a defined term and</p> <p>20 that term means the Kenneth Antos and Sheila</p> <p>21 Neumann-Antos Living Trust dated April 26, 2007? Do</p> <p>22 you understand that the Antos Trust is defined as</p> <p>23 the trustor?</p> <p>24 A. Yes.</p> <p>25 Q. I want to go to the second paragraph of</p>
<p style="text-align: right;">31</p> <p>1 as to any other deeds of trust that had already been</p> <p>2 recorded against the property?</p> <p>3 A. Yes. That would have been done by outside</p> <p>4 counsel.</p> <p>5 Q. At the time this deed of trust was recorded</p> <p>6 in 2014, did CBC have an understanding and a belief</p> <p>7 that it was obtaining a third position deed of trust</p> <p>8 against the property?</p> <p>9 A. Yes.</p> <p>10 Q. When CBC Partners I, LLC, obtained this</p> <p>11 deed of trust, did it ever go back and amend the</p> <p>12 note to provide that the Antos Trust would be a</p> <p>13 borrower under the note?</p> <p>14 MR. MUSHKIN: Objection to the form of the</p> <p>15 question. Calls for a legal conclusion.</p> <p>16 You may answer.</p> <p>17 THE WITNESS: I don't recall.</p> <p>18 BY MS. BARRAZA:</p> <p>19 Q. Okay. No recollection of that. I do want</p> <p>20 to go through some of the language in this note. If</p> <p>21 you look at the first paragraph, I actually just</p> <p>22 want you to read that first sentence to yourself.</p> <p>23 MR. MUSHKIN: Which exhibit, Counsel?</p> <p>24 MS. BARRAZA: Sorry?</p> <p>25 MR. MUSHKIN: Which exhibit?</p>	<p style="text-align: right;">33</p> <p>1 Exhibit 5 where it states "For good and valuable</p> <p>2 consideration trustor hereby jointly and severally</p> <p>3 irrevocably grants, bargains, sells, transfers, and</p> <p>4 assigns to trustee," and it goes on. Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. So is it CBC Partners I, LLC's</p> <p>8 understanding that this language is the trustor</p> <p>9 granting CBC Partners I, LLC, a deed of trust with</p> <p>10 the power to sell the property; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now, what good and valuable consideration</p> <p>13 did the Antos Trust receive in exchange for</p> <p>14 providing this deed of trust to CBC Partners I, LLC?</p> <p>15 MR. MUSHKIN: Objection. Asked and</p> <p>16 answered.</p> <p>17 BY MS. BARRAZA:</p> <p>18 Q. You can answer it.</p> <p>19 A. As I said before, the original</p> <p>20 consideration was providing a loan to the companies</p> <p>21 controlled by Ken Antos. We asked for a replacement</p> <p>22 collateral, and this was it.</p> <p>23 Q. So was any additional consideration</p> <p>24 provided separately to the Antos Trust in</p> <p>25 addition -- not in addition, but in exchange for</p>

<p>34</p> <p>1 this deed of trust being provided?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. I do want to go to another page of this</p> <p>4 document. Page 927 on Exhibit 5, tell me whenever</p> <p>5 you're there.</p> <p>6 A. Okay.</p> <p>7 Q. Do you see how it says near the bottom,</p> <p>8 "For the purpose of securing"?</p> <p>9 A. Yes.</p> <p>10 Q. I'm going to read a little bit of this. It</p> <p>11 says, "For the purpose of securing, 1, the payment</p> <p>12 of any and all amounts, collectively the guaranteed</p> <p>13 obligations, due and owing by trustor under that</p> <p>14 certain guaranty from Kenneth Antos and Sheila Antos</p> <p>15 dated June 22, 2012, in favor of beneficiary." Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So what amounts were actually due and owing</p> <p>19 by the Antos Trust?</p> <p>20 MR. MUSHKIN: Objection. Form of the</p> <p>21 question.</p> <p>22 THE WITNESS: I don't know where to go with</p> <p>23 this.</p> <p>24 MR. MUSHKIN: Do you understand what she's</p> <p>25 asking?</p>	<p>36</p> <p>1 BY MS. BARRAZA:</p> <p>2 Q. Does CBC Partners I, LLC, have any</p> <p>3 knowledge of the guaranty on the security note</p> <p>4 involving the Antos Trust owing any kind of money to</p> <p>5 CBC Partners I, LLC?</p> <p>6 MR. MUSHKIN: Same objection. Objection to</p> <p>7 form of the question.</p> <p>8 Counsel, are you asking if the trust as a</p> <p>9 party is on the note?</p> <p>10 MS. BARRAZA: I was actually asking for --</p> <p>11 MR. MUSHKIN: We'll stipulate that the</p> <p>12 trust is not a maker of the note.</p> <p>13 MS. BARRAZA: So the trust is not a maker</p> <p>14 of the note.</p> <p>15 BY MS. BARRAZA:</p> <p>16 Q. So does CBC Partners I, LLC, have any</p> <p>17 knowledge of the trust being a guarantor under the</p> <p>18 note?</p> <p>19 MR. MUSHKIN: Same thing. Foundation as to</p> <p>20 when?</p> <p>21 MS. BARRAZA: As to any point in time.</p> <p>22 MR. MUSHKIN: Now I know what you're</p> <p>23 talking about. That happens --</p> <p>24 MS. BARRAZA: That's not for you to answer.</p> <p>25 That's for --</p>
<p>35</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. BARRAZA:</p> <p>3 Q. That's fine. Does CBC Partners I, LLC,</p> <p>4 have any knowledge of the Antos Trust owing any</p> <p>5 money under the guaranty from that promissory note?</p> <p>6 A. I don't recall how the trust was handled in</p> <p>7 the guaranty documents.</p> <p>8 Q. So as CBC Partners I, LLC, sits here today,</p> <p>9 does it have any kind of knowledge of the Antos</p> <p>10 Trust being listed anywhere in the guaranty</p> <p>11 documents?</p> <p>12 A. I do not recall.</p> <p>13 Q. And as CBC Partners I, LLC, sits here</p> <p>14 today, does it have any knowledge of the Antos Trust</p> <p>15 owing any kind of money with respect to the</p> <p>16 guaranty?</p> <p>17 MR. MUSHKIN: Objection. Lacks foundation.</p> <p>18 THE WITNESS: The line of questioning is</p> <p>19 pretty confusing. The guaranty supports the</p> <p>20 borrower which was the restaurant entity.</p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. So the guaranty had nothing to do with the</p> <p>23 Antos Trust; correct?</p> <p>24 MR. MUSHKIN: Same objection. Lacks</p> <p>25 foundation. When?</p>	<p>37</p> <p>1 MR. MUSHKIN: No. I'm just going to the</p> <p>2 document because I saw it in here. That's all.</p> <p>3 THE WITNESS: Pardon me, but you're asking</p> <p>4 me what's on a document that you already possess.</p> <p>5 So, no, I don't recall. As I said in the beginning</p> <p>6 of the deposition, I have not reviewed these</p> <p>7 documents.</p> <p>8 BY MS. BARRAZA:</p> <p>9 Q. Okay. So what I'm entitled to do at this</p> <p>10 deposition is question your recollection</p> <p>11 irrespective of what the documents say. It's okay</p> <p>12 if you don't recall. I just need you to answer that</p> <p>13 if that's the reality --</p> <p>14 A. I don't recall.</p> <p>15 Q. When the time came for discussions about</p> <p>16 this deed of trust, CBC Partners I, LLC's counsel</p> <p>17 would have done a title check on the property; is</p> <p>18 that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, were any -- would those documents have</p> <p>21 been saved to any files that CBC Partners I, LLC,</p> <p>22 has regarding that title check?</p> <p>23 A. I don't recall.</p> <p>24 Q. So we just ask, if there were any documents</p> <p>25 saved during that time with respect to a title check</p>

<p style="text-align: right;">38</p> <p>1 and any communications about that title check, that 2 they be produced. 3 MR. MUSHKIN: Counsel, just in an attempt 4 to help in that regard, in these documents, there is 5 the title -- there it is -- at 675 is the loan 6 policy of title insurance. So I think the trail on 7 those documents would lead back to First American 8 Title Insurance Company. It was done through 9 outside counsel. To the extent I can help you, 10 there's where that all goes. That's an Alta loan 11 policy on this. 12 BY MS. BARRAZA: 13 Q. Going back to Exhibit 2, if you can tell me 14 whenever you're there. 15 A. Okay. 16 Q. As CBC Partners I, LLC, sits here today, 17 does it have any recollection of the Antos Trust 18 signing off on any of the modifications to the note? 19 A. I can't recall. 20 Q. Now, at some point was Kenneth Antos and 21 his associated entities, were they at some point 22 defaulting on the note with CBC Partners I, LLC? 23 A. Yes. 24 Q. When did that take place? 25 A. I don't recall.</p>	<p style="text-align: right;">40</p> <p>1 push Kenneth Antos to sell the property? 2 A. I don't recall the exact amount of time. 3 Maybe a year or two. 4 Q. At some point did Kenneth Antos represent 5 that he found a potential purchaser for the 6 property? 7 A. At a couple of points he said there were 8 maybe one or two interested parties in the property. 9 I think it was through a listing agent. 10 Q. At some point did those turn into 11 substantive discussions involving CBC Partners I, 12 LLC, and a potential purchaser? 13 A. No. We stayed out of any purchase and sale 14 discussions. 15 Q. If we could turn to Exhibit 3. Tell me 16 whenever you're there. 17 A. Okay. 18 (Exhibit 3 marked.) 19 BY MS. BARRAZA: 20 Q. Does it say "Forbearance Agreement" at the 21 top? 22 A. Yes. 23 Q. And what do you understand this forbearance 24 agreement to be? 25 A. Essentially enables Jay Bloom to come into</p>
<p style="text-align: right;">39</p> <p>1 Q. Do you recall the approximate year? 2 A. I'm sorry. I don't recall. I would have 3 to look at my files. 4 Q. And what action did CBC Partners I, LLC, 5 take as a result of Kenneth Antos' business entities 6 defaulting on that note? 7 A. We were pushing him to sell the house 8 basically. 9 Q. And did CBC Partners I, LLC, understand 10 that Kenneth Antos and his wife, they lived at that 11 property; is that correct? 12 A. Yes. 13 Q. When you say they were pushing him to sell 14 the house, were letters sent, or how was CBC 15 Partners I, LLC, pushing him to sell the house? 16 A. I believe we had a notice of default sent 17 to him, and there were several telephonic 18 conversations regarding what to do with the house. 19 Q. Was CBC Partners I, LLC, actively involved 20 in attempting to sell the property? 21 A. No. 22 Q. Was CBC Partners I, LLC, involved in trying 23 to find potential buyers for the property or no? 24 A. No. 25 Q. How long was CBC Partners I, LLC, trying to</p>	<p style="text-align: right;">41</p> <p>1 the house, live there, pay us some consideration for 2 that, and we forbear for an agreed period of time. 3 Meanwhile, Mr. Bloom indicated he had 4 sources of liquidity that would most likely retire 5 our note plus the other notes on the property. 6 Q. Now, this is dated September 2017. Does 7 that sound right to you? 8 A. Yes. 9 MR. MUSHKIN: Can you give a Bates number, 10 please? 11 BY MS. BARRAZA: 12 Q. Page 1 of Exhibit 3. Do you see that? 13 A. Yes. 14 Q. Who drafted this forbearance agreement? 15 A. Vernon Nelson. 16 Q. Who is he? 17 A. An attorney in Las Vegas. 18 Q. Did CBC Partners I, LLC, have any 19 involvement in drafting or editing this forbearance 20 agreement? 21 A. I assume we had made some comments, but 22 most of the drafting was done by Vernon. 23 Q. Is CBC Partners I, LLC, contending that it 24 has ever held any other deeds of trust in the state 25 of Nevada aside from this deed of trust from this</p>

<p style="text-align: right;">42</p> <p>1 litigation?</p> <p>2 A. I'm not aware of any other deeds of trust</p> <p>3 in the state of Nevada.</p> <p>4 Q. Did CBC Partners I, LLC, have any</p> <p>5 discussions with Jay Bloom regarding this</p> <p>6 forbearance agreement back when it was being</p> <p>7 drafted?</p> <p>8 A. Yes.</p> <p>9 Q. Tell me about those.</p> <p>10 A. From a high level, it's as I just</p> <p>11 described. He came to us, said he had sources of</p> <p>12 liquidity including a fairly sizable judgment. He</p> <p>13 could live in the house, contribute to some of the</p> <p>14 expenses, and then that liquidity would retire our</p> <p>15 position as well as the other positions of the</p> <p>16 house.</p> <p>17 Q. Does CBC Partners I, LLC, have any</p> <p>18 recollection of the time period that this</p> <p>19 forbearance agreement was being discussed to the</p> <p>20 time that it was actually executed, how much time</p> <p>21 had passed?</p> <p>22 A. Approximately two to three months is my</p> <p>23 recollection.</p> <p>24 Q. Did CBC Partners I, LLC -- during the</p> <p>25 course of its discussions with Jay Bloom, did it</p>	<p style="text-align: right;">44</p> <p>1 question.</p> <p>2 THE WITNESS: I don't understand the</p> <p>3 question.</p> <p>4 BY MS. BARRAZA:</p> <p>5 Q. So why did CBC Partners I, LLC, not seek to</p> <p>6 regain its membership in Spanish Heights Acquisition</p> <p>7 Company after the property had already been</p> <p>8 transferred --</p> <p>9 MR. MUSHKIN: Same objection.</p> <p>10 THE WITNESS: I thought I explained the</p> <p>11 answer clearly before. We're a creditor. We're not</p> <p>12 an attorney.</p> <p>13 MR. MUSHKIN: Mind if I interject one</p> <p>14 question, Danielle?</p> <p>15 MS. BARRAZA: Sure.</p> <p>16 MR. MUSHKIN: Mr. Hallberg, were you ever</p> <p>17 asked -- before you were made a member, did somebody</p> <p>18 say to you, you know, sign this document. I'm going</p> <p>19 to be a member of SHAC?</p> <p>20 THE WITNESS: Can you rephrase the</p> <p>21 question, Mike?</p> <p>22 MR. MUSHKIN: Sure. Anybody tell you they</p> <p>23 were going to make you a member of SHAC?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. MUSHKIN: How did that come about?</p>
<p style="text-align: right;">43</p> <p>1 represent that it held a valid deed of trust against</p> <p>2 the property with the power to sell the property?</p> <p>3 MR. MUSHKIN: Calls for a legal conclusion.</p> <p>4 I object.</p> <p>5 You can certainly answer.</p> <p>6 THE WITNESS: My answer would be we</p> <p>7 represented we had a third position on the property.</p> <p>8 BY MS. BARRAZA:</p> <p>9 Q. Now, at some point in this forbearance</p> <p>10 agreement and with its associated documents, was</p> <p>11 there discussion of CBC Partners I, LLC, obtaining a</p> <p>12 share in Spanish Heights Acquisition Company?</p> <p>13 A. Originally, yes.</p> <p>14 Q. Tell me about that.</p> <p>15 A. Mr. Bloom had assumed that he and his</p> <p>16 entities would have a third, Antos would have a</p> <p>17 third, and CBC I would have a third. I explained to</p> <p>18 Mr. Bloom we could not be an owner and a creditor,</p> <p>19 so we resigned.</p> <p>20 Q. Is there a reason why CBC Partners I, LLC,</p> <p>21 did not seek to regain its membership interest in</p> <p>22 Spanish Heights Acquisition Company after the</p> <p>23 property was transferred from the Antos Trust to</p> <p>24 Spanish Heights Acquisition Company?</p> <p>25 MR. MUSHKIN: Objection to the form of the</p>	<p style="text-align: right;">45</p> <p>1 THE WITNESS: I think through the original</p> <p>2 drafting of the documents. I believe Mr. Bloom had</p> <p>3 had some input into the original structuring of the</p> <p>4 deal. You know, once I saw the draft and it listed</p> <p>5 us as having a third of that, I said, No, we can't</p> <p>6 do that. So that was -- I believe -- again, this is</p> <p>7 the best of my recollection -- that Mr. Bloom had</p> <p>8 already formed the LLC and had us as a third owner,</p> <p>9 and that's when I told him, No, no, no. We need to</p> <p>10 resign.</p> <p>11 MR. MUSHKIN: Thank you. What I was trying</p> <p>12 to ask is did anybody ask you in advance before you</p> <p>13 saw it, and I think you answered that.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MS. BARRAZA:</p> <p>16 Q. What is CBC Partners I, LLC, understanding</p> <p>17 of why it can't be a lender and an owner?</p> <p>18 A. Lender liability.</p> <p>19 Q. Now, does CBC Partners I, LLC, recall that</p> <p>20 associated with this forbearance agreement there was</p> <p>21 what's called a pledge agreement?</p> <p>22 A. Yes.</p> <p>23 Q. Tell me about what that was.</p> <p>24 A. My understanding is the pledge agreement</p> <p>25 pledges the owner interest in SHAC to CBC. And to</p>

46	48
<p>1 the extent the forbearance agreement is in default,</p> <p>2 that eventual payment is not made to retire our</p> <p>3 note, we call the pledge and take over ownership</p> <p>4 with SHAC.</p> <p>5 Q. Do you recall testifying at the preliminary</p> <p>6 injunction hearing that you did not see that SJC</p> <p>7 Ventures, LLC, was a signatory to that pledge</p> <p>8 agreement?</p> <p>9 A. That's correct.</p> <p>10 Q. And do you have any testimony otherwise</p> <p>11 today as you sit here today?</p> <p>12 A. No.</p> <p>13 MS. BARRAZA: I'm going to take a</p> <p>14 five-minute break if I can, and then we'll come</p> <p>15 back.</p> <p>16 (A break was taken.)</p> <p>17 BY MS. BARRAZA:</p> <p>18 Q. With respect to this forbearance agreement</p> <p>19 on Exhibit 3, what were CBC Partners I, LLC's</p> <p>20 obligations?</p> <p>21 A. I don't remember all of them. I know the</p> <p>22 primary obligations involve the payment to the first</p> <p>23 and second mortgages.</p> <p>24 Q. At some point the forbearance agreement was</p> <p>25 amended. Do you recall that?</p>	<p>1 261, and tell me whenever you're done.</p> <p>2 A. I'm done.</p> <p>3 Q. It looks like this email on 261 is Northern</p> <p>4 Trust claiming that there's an outstanding bill to</p> <p>5 cure the January, February, March, and April 2020</p> <p>6 past due bills. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Now, does CBC Partners I, LLC, have any</p> <p>9 reason to dispute that those bills did become</p> <p>10 outstanding in those dates referenced?</p> <p>11 A. No reason, no.</p> <p>12 Q. And has CBC Partners I, LLC, since made</p> <p>13 those payments?</p> <p>14 A. We sold the note in early April, and we</p> <p>15 disclosed at the time we sold the note that there</p> <p>16 were payments owing on this mortgage.</p> <p>17 Q. So is it correct that CBC Partners I, LLC,</p> <p>18 did not make those payments for January, February,</p> <p>19 March, April 2020?</p> <p>20 MR. MUSHKIN: Objection to the extent it</p> <p>21 calls for a legal conclusion.</p> <p>22 THE WITNESS: Prior to the sale of the</p> <p>23 note, it was clear that those needed to be paid, and</p> <p>24 that was discussed with the buyer. So it was our</p> <p>25 assumption that the buyer would take care of it.</p>
47	49
<p>1 A. It was extended.</p> <p>2 Q. It looks like -- if you want to turn to</p> <p>3 Exhibit 4, tell me whenever you're there.</p> <p>4 A. Okay.</p> <p>5 Q. Is this what you recognize to be on</p> <p>6 Exhibit 4, the amendments extending the forbearance</p> <p>7 term?</p> <p>8 A. Yes.</p> <p>9 Q. Did CBC Partners I, LLC, perform all of its</p> <p>10 obligations with respect to making those payments to</p> <p>11 the first and second mortgage?</p> <p>12 A. Yes, we did.</p> <p>13 Q. If we could turn to Exhibit 12 and tell me</p> <p>14 whenever you're there.</p> <p>15 (Exhibit 12 marked.)</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MS. BARRAZA:</p> <p>18 Q. Exhibit 12, I'll represent to you, has been</p> <p>19 disclosed by the plaintiffs as an email between Jay</p> <p>20 Bloom and a representative of Northern Trust</p> <p>21 Company.</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever looked at this email before?</p> <p>24 A. No.</p> <p>25 Q. I'll let you look through that first page,</p>	<p>1 BY MS. BARRAZA:</p> <p>2 Q. So I understand it's CBC Partners I, LLC's</p> <p>3 position that it was agreed, everybody was on the</p> <p>4 same page that the buyer would purchase it. I just</p> <p>5 want to clarify for the record that CBC Partners I,</p> <p>6 LLC, is not the entity that made those payments;</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 MR. MUSHKIN: I want to make the same</p> <p>10 objection. To the extent it calls for a legal</p> <p>11 conclusion, I'll object. I want to just reference</p> <p>12 the transfer document because I believe it may</p> <p>13 address that.</p> <p>14 BY MS. BARRAZA:</p> <p>15 Q. Now I want to go to the forbearance</p> <p>16 agreement. Did Spanish Heights Acquisition Company</p> <p>17 ever make any kind of payments to CBC Partners I,</p> <p>18 LLC?</p> <p>19 A. Yes.</p> <p>20 Q. Does CBC Partners I, LLC, have records of</p> <p>21 those payment transactions?</p> <p>22 A. Yes. I believe we provided that to</p> <p>23 counsel.</p> <p>24 Q. And have all of those transactions been</p> <p>25 produced in this litigation?</p>

<p style="text-align: right;">50</p> <p>1 A. I would defer to counsel. I provided 2 everything to Mike Mushkin. 3 MS. BARRAZA: We'll just ask, to the extent 4 there's any outstanding transactions that have not 5 been produced, that those be produced. 6 MR. MUSHKIN: Objection to the form of the 7 question. You mean any evidence of those 8 transactions is what you want produced; correct? 9 MS. BARRAZA: If there is any evidence of 10 any transactions between CBC and SHAC, we would want 11 those transactions to be produced. 12 MR. MUSHKIN: Thank you for the 13 clarification. 14 BY MS. BARRAZA: 15 Q. So tell me about CBC Partners I, LLC's 16 position as to what happened following the execution 17 of this amended forbearance agreement. 18 MR. MUSHKIN: Objection to the form of the 19 question. Vague and ambiguous. 20 THE WITNESS: What do you mean our 21 "position"? 22 BY MS. BARRAZA: 23 Q. So was the forbearance agreement followed, 24 or what happened with it? 25 A. It basically matured. We extended it out</p>	<p style="text-align: right;">52</p> <p>1 it. 2 Q. Do you have any reason to dispute that the 3 name of that entity is 5148 Spanish Heights, LLC? 4 A. It sounds familiar, yes. 5 Q. So tell me about how these conversations 6 went with respect to Mr. Mushkin offering to 7 purchase the property -- not the property, the note. 8 A. I believe he originally approached 9 Mr. Antos, and then Ken referred Mr. Mushkin to me. 10 And he indicated -- asking what our position was. 11 Do we want to continue on, or would we be willing to 12 sell our position? I said we would be willing to 13 sell our position. And at that point we started 14 negotiating what that would look like in terms of 15 price. 16 Q. And what price was agreed upon? 17 A. I don't have it in front of me. I'm sorry. 18 I don't recall. 19 Q. The approximate price? 20 A. I think that document's been provided, the 21 purchase and sale agreement. I think in the 3-plus 22 million range. 23 Q. CBC Partners I, LLC, did it obtain that 3 24 million range or so? Did it obtain that money from 25 5148 Spanish Heights, LLC?</p>
<p style="text-align: right;">51</p> <p>1 to the end of March, and Mr. Bloom indicated he 2 would not have liquidity to retire our note by that 3 maturity date. So our position was, well, we could 4 either, you know, enforce or sell. And we chose to 5 sell the note. 6 Q. So tell me about that. Tell me about how 7 the decision to sell the note came about. 8 A. I was approached by Mike Mushkin through 9 Mr. Antos. Mike indicated if we were willing to 10 sell, and we said yes. And we negotiated, and we 11 sold. 12 Q. And you negotiated with who? 13 A. Mike Mushkin. 14 Q. With anybody else? 15 A. No. 16 Q. And who did CBC Partners I, LLC, understand 17 it was selling its note to? 18 A. Mike Mushkin and/or the entity he was 19 controlling. 20 Q. Did CBC Partners I, LLC, conduct any kind 21 of due diligence into that entity? 22 A. No. 23 Q. As you sit here today, do you know the name 24 of that entity? 25 A. I've heard it in the past. I don't recall</p>	<p style="text-align: right;">53</p> <p>1 A. Yes. 2 Q. When did it obtain that money? 3 A. The end of the first week of April or part 4 of the second week around that point. It was 5 definitely the first half of April. 6 MR. MUSHKIN: Of 2020? 7 THE WITNESS: Yes, 2020. 8 MR. MUSHKIN: Just trying to make the 9 record nice and clear. 10 BY MS. BARRAZA: 11 Q. How was that 3 million or so dollars, how 12 was that provided to CBC Partners I, LLC? 13 A. Wire transfer. 14 Q. If you can turn to Exhibit 19 and tell me 15 whenever you're there. 16 A. Okay. 17 (Exhibit 19 marked.) 18 BY MS. BARRAZA: 19 Q. Have you ever seen Exhibit 19 before? 20 A. Yes. I believe so. 21 Q. I'll represent to you what Exhibit 19 is. 22 It's CBC Partners I, LLC's responses to written 23 discovery requests that the plaintiff Spanish 24 Heights Acquisition Company has set forth. I want 25 to turn your attention to Request Number 2, which is</p>

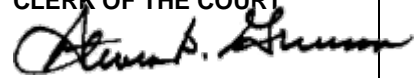
<p>54</p> <p>1 on page 3 of Exhibit 19. Tell me whenever you're</p> <p>2 there.</p> <p>3 A. Yes.</p> <p>4 Q. Now, if we can look at Request Number 2.</p> <p>5 It's asking for a copy of the payment, wire, check,</p> <p>6 or other for the purported purchase of Antos note.</p> <p>7 That's exactly what we're asking for. We're asking</p> <p>8 for that wire transfer you just mentioned.</p> <p>9 It looks like your answer was "CBC is in</p> <p>10 the process of obtaining documents responsive to</p> <p>11 this request." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What process has CBC Partners I, LLC,</p> <p>14 conducted?</p> <p>15 A. Just going through our accounting records.</p> <p>16 Q. Has it gone through those accounting</p> <p>17 records, and has it obtained that wire transfer?</p> <p>18 A. Yes. We have that.</p> <p>19 Q. And has that been produced in this</p> <p>20 litigation?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Is there any reason why it can't be</p> <p>23 produced in this litigation?</p> <p>24 MR. MUSHKIN: Can I answer that question,</p> <p>25 please?</p>	<p>56</p> <p>1 you're there.</p> <p>2 A. Okay.</p> <p>3 (Exhibit 7 marked.)</p> <p>4 BY MS. BARRAZA:</p> <p>5 Q. Now, this Exhibit 7 is titled "Note</p> <p>6 Purchase and Sale Agreement." Have you even it</p> <p>7 before?</p> <p>8 A. Yes.</p> <p>9 Q. Tell me what CBC Partners I, LLC's</p> <p>10 understanding of what this document is.</p> <p>11 A. We are selling our position in the</p> <p>12 property.</p> <p>13 Q. Now, is this -- does CBC Partners I, LLC,</p> <p>14 understand it's selling the underlying note?</p> <p>15 A. Yes.</p> <p>16 MR. MUSHKIN: To the extent that it calls</p> <p>17 for a legal conclusion, I object. I'll actually</p> <p>18 also add your objection, that the document speaks</p> <p>19 for itself, although I never make that objection.</p> <p>20 But I want to do it once today.</p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. If we look at Section B on the recitals on</p> <p>23 page 953, it mentions the secured promissory note</p> <p>24 dated June 22, 2012, and the ten modifications?</p> <p>25 A. Yes.</p>
<p>55</p> <p>1 MS. BARRAZA: Sure.</p> <p>2 MR. MUSHKIN: So I also have done the same</p> <p>3 thing on the other end of that wire and I have it</p> <p>4 today. I think Karen is going to lodge it with you.</p> <p>5 We wanted to try and get them together. In this</p> <p>6 world of electronic transfers, getting an actual</p> <p>7 document is not the easiest thing in the world to</p> <p>8 do.</p> <p>9 I actually think that Mr. Hallberg is</p> <p>10 referencing their internal document that</p> <p>11 acknowledges that they got it, not what you're</p> <p>12 actually asking for, which I went out and got on my</p> <p>13 end. And I will ultimately, if you still want it</p> <p>14 after receiving mine, ask him to go -- you get a</p> <p>15 little declaration from the -- mine is from the</p> <p>16 sending bank. His is from the receiving bank. I'd</p> <p>17 never known how to do this before today. That's the</p> <p>18 only reason I'm interrupting is because it was a</p> <p>19 whole process.</p> <p>20 MS. BARRAZA: Yeah. I mean, if there's</p> <p>21 also any internal kind of records evidencing that</p> <p>22 transfer, we would like it.</p> <p>23 BY MS. BARRAZA:</p> <p>24 Q. We can turn to the purchase and sale</p> <p>25 agreement. That's Exhibit 7. Tell me whenever</p>	<p>57</p> <p>1 Q. It says, Excluding that certain severed</p> <p>2 note in the amount of \$15,000. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What was that severed note again with the</p> <p>5 \$15,000? What was that about?</p> <p>6 A. I believe it dealt more with the</p> <p>7 restaurants.</p> <p>8 Q. Is it CBC Partners I, LLC's position that,</p> <p>9 aside from that severed note, it was transferring</p> <p>10 the secured promissory note and all the loan</p> <p>11 modifications to 5148 Spanish Heights, LLC?</p> <p>12 A. Yes.</p> <p>13 Q. All right. Who drafted this note purchase</p> <p>14 and sale agreement?</p> <p>15 A. I believe Mr. Mushkin.</p> <p>16 Q. And did -- who is the point person from CBC</p> <p>17 Partners I, LLC, working with Mr. Mushkin on this</p> <p>18 specific agreement, Exhibit 7?</p> <p>19 A. I was the point person.</p> <p>20 Q. And did you -- on behalf of CBC, did you</p> <p>21 have any edits or revisions to the note purchase and</p> <p>22 sale agreement that Mr. Mushkin had drafted?</p> <p>23 A. No.</p> <p>24 Q. Was anybody else involved in this note</p> <p>25 purchase and sale agreement?</p>

<p>58</p> <p>1 A. Conceptually, John Otter, my partner, as 2 well as the CBC board. But they did not review this 3 agreement during its negotiation. 4 Q. Now, it looks like this Exhibit 7 is dated 5 April 1, 2020. Do you see that? 6 A. Yes. 7 Q. It looks like it was signed on page 961. 8 Do you see that? 9 A. Yes. 10 MR. MUSHKIN: Counsel, you're referring -- 11 961 is Exhibit B. 12 THE WITNESS: 959. 13 MS. BARRAZA: Thank you. 959. 14 BY MS. BARRAZA: 15 Q. So it looks like the agreement is dated 16 April 1st, and it was signed by both parties on 17 April 3rd; is that correct? 18 A. Yes. 19 Q. After CBC Partners I, LLC, sold its notes, 20 did it have any other interest in the property? 21 A. No. 22 Q. Now, if we could turn to Exhibit 8, and 23 tell me whenever you're there. 24 A. Okay. 25 (Exhibit 8 marked.)</p>	<p>60</p> <p>1 (Exhibit 9 marked.) 2 BY MS. BARRAZA: 3 Q. This document appears to be a notice for 4 SJC Ventures, LLC, to vacate the property. Is that 5 your understanding of what this is? 6 A. Yes. 7 Q. This is dated April 3, 2020. It looks like 8 CBC Partners I, LLC, was cc'd on this. Did CBC 9 Partners I, LLC, authorize this notice to vacate 10 being sent out? 11 A. Yes. 12 Q. Why was it still taking actions with 13 respect to the property after it had already sold 14 its note? 15 A. We still had the provision that we're held 16 to via the purchase and sale agreement. So we still 17 have some responsibility with this transaction. 18 Q. You're stating here today that CBC 19 Partners I, LLC, authorized this April 3, 2020, 20 letter being sent out? 21 A. Yes. 22 Q. Does CBC Partners I, LLC -- is it still 23 responsible for servicing the note? 24 A. No. 25 Q. Going back briefly to the -- I think it was</p>
<p>59</p> <p>1 BY MS. BARRAZA: 2 Q. Have you ever seen this Exhibit 8 before? 3 A. Yes, I believe so. 4 Q. What do you understand this document to be? 5 A. It's a notice of default. 6 Q. It looks like it's saying this letter shall 7 serve as notice that on April 15, 2020, CBC 8 Partners I, LLC, will exercise its right under the 9 pledge agreement by transferring the pledge 10 collateral. Do you see that on the second 11 paragraph? 12 A. Yes. 13 Q. Now, at the time this document, this 14 letter, was sent on April 1, 2020, had CBC Partners 15 already sold its note? 16 MR. MUSHKIN: Objection. Asked and 17 answered I believe. 18 THE WITNESS: Yeah. I believe we had, yes. 19 BY MS. BARRAZA: 20 Q. You believe you had. Did CBC Partners I, 21 LLC, authorize this notice of default going out? 22 A. Yes. 23 Q. Let's turn to Exhibit 9. Tell me whenever 24 you're there. 25 A. Yes.</p>	<p>61</p> <p>1 Exhibit 7. I want to go back to the note purchase. 2 Is that the only agreement that was executed between 3 CBC Partners I, LLC, and 5148 Spanish Heights, LLC, 4 regarding the property? 5 A. Yes. I believe so. 6 Q. If we could go to Exhibit 13. Tell me 7 whenever you're there. 8 A. Okay. 9 (Exhibit 13 marked.) 10 BY MS. BARRAZA: 11 Q. Have you ever seen Exhibit 13 before? 12 A. I don't believe so. 13 Q. So you can look through it. It appears to 14 be a notice of default. On the first paragraph, it 15 looks like it says, Your loan with CBC Partners I, 16 LLC, is in default. Do you see that? 17 A. Yes. 18 Q. Do you see how it says, Because of this, 19 CBC Partners I, LLC, at its option without further 20 demand may invoke the power of sale and any other 21 remedies permitted by Nevada law? Do you see that? 22 A. Yes. 23 Q. Do you see this is dated July 2, 2020? 24 A. Yes. 25 Q. Does CBC Partners I, LLC, believe it has</p>

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<p>1 any -- does it believe it currently has any powers</p> <p>2 to sell the property?</p> <p>3 MR. MUSHKIN: Objection to the form of the</p> <p>4 question to the extent it calls for a legal</p> <p>5 conclusion.</p> <p>6 BY MS. BARRAZA:</p> <p>7 Q. You can answer.</p> <p>8 A. No. We believe we sold the loan in April</p> <p>9 of 2020. So the holder of that note has the ability</p> <p>10 to do this, not CBC Partners I.</p> <p>11 Q. Okay. So is it CBC Partners I, LLC's</p> <p>12 position that as of the date of this letter, July 2,</p> <p>13 2020, it did not have the power to sell the</p> <p>14 property?</p> <p>15 MR. MUSHKIN: Objection to the form of the</p> <p>16 question. Vague and ambiguous. Asked and answered.</p> <p>17 BY MS. BARRAZA:</p> <p>18 Q. You can answer.</p> <p>19 A. Yes. That's my assumption that we did not</p> <p>20 have the ability to force a sale on July 2nd.</p> <p>21 Q. Did CBC Partners I, LLC, personally</p> <p>22 authorize this July 2, 2020, correspondence being</p> <p>23 sent out?</p> <p>24 A. No.</p> <p>25 Q. I want to go to Exhibit 14. Tell me</p>	<p>1 Partners I, LLC.</p> <p>2 Q. Setting aside what the documents may state,</p> <p>3 has CBC Partners I, LLC, had any conversations with</p> <p>4 Kenneth Antos regarding the doctrine of merger?</p> <p>5 A. No.</p> <p>6 Q. And has CBC Partners I, LLC, had any</p> <p>7 conversations with Kenneth Antos or with Spanish</p> <p>8 Heights Acquisition Company regarding the one action</p> <p>9 rule?</p> <p>10 A. No.</p> <p>11 Q. Does CBC Partners I, LLC, service any of</p> <p>12 the other mortgages on the property?</p> <p>13 A. No.</p> <p>14 MR. MUSHKIN: Objection to the form of the</p> <p>15 question. You don't mean payment. You mean service</p> <p>16 in -- I'm actually going to go back. I'm not sure</p> <p>17 what you mean by "service."</p> <p>18 MS. BARRAZA: That's fine. We can just</p> <p>19 strike that.</p> <p>20 BY MS. BARRAZA:</p> <p>21 Q. Tell me about CBC Partners I, LLC's history</p> <p>22 of paying any HOA payments associated with the</p> <p>23 property.</p> <p>24 A. It was the responsibility of Mr. Bloom to</p> <p>25 make sure that those payments were made. We did get</p>
63	65
<p>1 whenever you're there.</p> <p>2 A. Okay.</p> <p>3 (Exhibit 14 marked.)</p> <p>4 BY MS. BARRAZA:</p> <p>5 Q. I assume you haven't, but have you ever</p> <p>6 seen this Exhibit 14 before?</p> <p>7 A. No.</p> <p>8 Q. Do you have any idea what this document is</p> <p>9 without looking at it at length?</p> <p>10 A. No.</p> <p>11 Q. Before we go to CBC Partners, LLC's</p> <p>12 testimony, I want to get your testimony as to what</p> <p>13 is CBC Partners I, LLC's relationship with CBC</p> <p>14 Partners, LLC?</p> <p>15 A. CBC Partners, LLC, is the general partner</p> <p>16 and manager of the fund CBC Partners I, LLC.</p> <p>17 Q. Has CBC Partners, LLC, been involved in any</p> <p>18 of the underlying secured promissory note documents?</p> <p>19 A. Yes. The credit committee and the board of</p> <p>20 directors of the manager is at CBC Partners, LLC.</p> <p>21 Q. Does CBC Partners I, LLC, have any personal</p> <p>22 knowledge of CBC Partners, LLC, being a signatory to</p> <p>23 any of the underlying promissory note documents?</p> <p>24 A. Not to my knowledge. I assume these are</p> <p>25 all signed on behalf of the lender of record, CBC</p>	<p>1 a notice of intent to sell the property by the HOA</p> <p>2 because of unpaid HOA dues. I discussed the issue</p> <p>3 with Mr. Bloom. He said he would pay. He did not.</p> <p>4 We got to within a day or two of the deadline, and</p> <p>5 this CBC ended up making that payment.</p> <p>6 Q. Tell me about any history that CBC</p> <p>7 Partners I, LLC, has with paying any kind of</p> <p>8 insurance on the property.</p> <p>9 A. I believe that was for the account of</p> <p>10 Mr. Bloom, not for CBC.</p> <p>11 Q. CBC Partners I, LLC, do they have any</p> <p>12 personal knowledge of any video footage being taken</p> <p>13 regarding the property?</p> <p>14 A. No.</p> <p>15 Q. Has CBC Partners I, LLC, engaged in any</p> <p>16 kind of communications with the HOA regarding the</p> <p>17 property?</p> <p>18 A. No.</p> <p>19 Q. And did CBC Partners I, LLC, hire an</p> <p>20 inspector to conduct a report regarding the</p> <p>21 condition of the property earlier this year?</p> <p>22 A. I believe that was done by Mr. Mushkin.</p> <p>23 Q. Did CBC Partners I, LLC, pay for that</p> <p>24 report?</p> <p>25 A. No.</p>

<p>66</p> <p>1 Q. Did CBC Partners I, LLC, select the</p> <p>2 inspector?</p> <p>3 A. No.</p> <p>4 Q. Does CBC Partners I, LLC, have any input on</p> <p>5 the details of that report?</p> <p>6 A. No.</p> <p>7 MS. BARRAZA: I think I'm almost done. I</p> <p>8 just want to go off for two minutes to verify.</p> <p>9 Then --</p> <p>10 MR. MUSHKIN: Can I ask a few questions</p> <p>11 before you go off? Like three or four real quick?</p> <p>12 MS. BARRAZA: If you can just do yours when</p> <p>13 I'm done.</p> <p>14 MR. MUSHKIN: I thought you were done.</p> <p>15 MS. BARRAZA: I'm saying I want to go off</p> <p>16 for two minutes to verify I don't have anything</p> <p>17 else. At that point I'll verify if I do or if I</p> <p>18 don't. Then we can do yours if you guys are fine</p> <p>19 rolling right into CBC Partners I, LLC, after that.</p> <p>20 MR. MUSHKIN: You did Partners I.</p> <p>21 MS. BARRAZA: Just CBC Partners, LLC.</p> <p>22 MR. MUSHKIN: I just have a few questions.</p> <p>23 Very short.</p> <p>24 MS. BARRAZA: I'll be back in two minutes.</p> <p>25 Thanks.</p>	<p>68</p> <p>1 A. Yes. Mr. Bloom and I had that discussion</p> <p>2 during the negotiations where he indicated, if the</p> <p>3 liquidity doesn't come through for him, it's very</p> <p>4 simple. We enforce our rights, and we have the</p> <p>5 pledge of the membership interest in SHAC, and we</p> <p>6 basically take over the property.</p> <p>7 Q. And were you offered a security interest in</p> <p>8 the judgment that's described in the document as</p> <p>9 additional collateral for Mr. Bloom's performance?</p> <p>10 A. Yes. I believe so.</p> <p>11 Q. Do you believe that you disclosed all of</p> <p>12 the note and amendment terms to Mr. Bloom before he</p> <p>13 entered into the forbearance agreement?</p> <p>14 A. Yes.</p> <p>15 Q. Was there any information that Mr. Bloom</p> <p>16 asked you to produce for him that you did not</p> <p>17 produce?</p> <p>18 A. No.</p> <p>19 Q. Does CBC continue to assist in the</p> <p>20 collection of the note and deed of trust?</p> <p>21 A. Only insofar as we're living up to our</p> <p>22 indemnification provision and here in this</p> <p>23 deposition.</p> <p>24 Q. When Ms. Barraza asked you about servicing</p> <p>25 the note, do you know what she meant by that? What</p>
<p>67</p> <p>1 (A break was taken.)</p> <p>2 MS. BARRAZA: I'm concluding with my</p> <p>3 questions for today. However, with respect to the</p> <p>4 fact that we still have not received the evidence of</p> <p>5 the transfer, we are reserving our right to recall</p> <p>6 this deposition with respect to documents that we</p> <p>7 have requested that we still have not received.</p> <p>8 With that in mind, Mr. Mushkin, you can go</p> <p>9 ahead and do any questions that you have.</p> <p>10</p> <p>11 EXAMINATION</p> <p>12 BY MR. MUSHKIN:</p> <p>13 Q. Alan, did you ever discuss the doctrine of</p> <p>14 merger with Mr. Bloom?</p> <p>15 A. No.</p> <p>16 Q. Did you ever discuss the doctrine of merger</p> <p>17 with Mr. Antos?</p> <p>18 A. No.</p> <p>19 Q. Had you ever heard of the doctrine of</p> <p>20 merger before this case?</p> <p>21 A. No.</p> <p>22 Q. At the time that the pledge agreement was</p> <p>23 executed, did you believe that you were getting a</p> <p>24 hundred percent of the membership interest in SHAC</p> <p>25 as collateral for the forbearance agreement?</p>	<p>69</p> <p>1 did you think she meant by "servicing the note"?</p> <p>2 A. In its industry accepted terminology as the</p> <p>3 payment and collection agent for a mortgage, we are</p> <p>4 not acting as such.</p> <p>5 Q. But in regards to all things regarding the</p> <p>6 note and its collection, in terms of the</p> <p>7 foreclosure, you are assisting as you are requested;</p> <p>8 is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Now, there's a lot of stuff about these</p> <p>11 notices. The note is between CBC I and the parties</p> <p>12 to the note; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And nowhere does the note say 5148 as the</p> <p>15 maker of the note, does it?</p> <p>16 A. Correct.</p> <p>17 Q. So the note is properly referenced in terms</p> <p>18 of who the maker of the note is. Is that fair?</p> <p>19 MS. BARRAZA: Objection. Form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. MUSHKIN:</p> <p>22 Q. Now, on April 1st the documents were</p> <p>23 ready -- the testimony you earlier gave is that the</p> <p>24 documents were executed on April 3rd. Is that fair?</p> <p>25 A. Yes.</p>

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<p>1 Q. And then the actual transfer of payment</p> <p>2 wasn't until April 6th?</p> <p>3 A. Yes.</p> <p>4 Q. And so the transaction doesn't close until</p> <p>5 April 6th; is that correct?</p> <p>6 MS. BARRAZA: Objection. Form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. MUSHKIN: That's all I have.</p> <p>9 MS. BARRAZA: I have a few more coming off</p> <p>10 of that.</p> <p>11</p> <p>12 FURTHER EXAMINATION</p> <p>13 BY MS. BARRAZA:</p> <p>14 Q. If we could go back to Exhibit 2, the</p> <p>15 secured promissory note documents. Did CBC</p> <p>16 Partners I, LLC, provide those documents to Jay</p> <p>17 Bloom while they were negotiating the forbearance</p> <p>18 agreement?</p> <p>19 A. I don't recall. If he had asked, I would</p> <p>20 have provided. But I don't recall if I provided it</p> <p>21 or not.</p> <p>22 Q. So as it sits here today, does it have any</p> <p>23 reason to dispute that those documents were not</p> <p>24 provided to Jay Bloom?</p> <p>25 MR. MUSHKIN: Objection to the form of the</p>	<p>1 not an attorney.</p> <p>2 MS. BARRAZA: I'll pass the witness.</p> <p>3</p> <p>4 FURTHER EXAMINATION</p> <p>5 BY MR. MUSHKIN:</p> <p>6 Q. Do you have any specific recollections of</p> <p>7 any questions arising in terms of the validity of</p> <p>8 the deed of trust from Mr. Bloom?</p> <p>9 A. None whatsoever.</p> <p>10 MR. MUSHKIN: No further questions.</p> <p>11 THE COURT REPORTER: Do you want a copy of</p> <p>12 this?</p> <p>13 MR. MUSHKIN: Yes.</p> <p>14 THE COURT REPORTER: Read and sign?</p> <p>15 MR. MUSHKIN: Sure.</p> <p>16 (Proceedings concluded at 11:24 a.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
71	73
<p>1 question.</p> <p>2 THE WITNESS: No reason to dispute. But,</p> <p>3 again, I will repeat myself, if he would have asked,</p> <p>4 he would have been given them.</p> <p>5 BY MS. BARRAZA:</p> <p>6 Q. And did CBC Partners I, LLC, provide to Jay</p> <p>7 Bloom any kind of disclosure that the Antos Trust</p> <p>8 was not a borrower under the underlying promissory</p> <p>9 note and was not a guarantor under the underlying</p> <p>10 promissory note?</p> <p>11 MR. MUSHKIN: Form.</p> <p>12 THE WITNESS: Please repeat that question.</p> <p>13 BY MS. BARRAZA:</p> <p>14 Q. So did CBC Partners I, LLC, ever disclose</p> <p>15 to Jay Bloom that the Antos Trust was not a borrower</p> <p>16 under the underlying secured promissory note?</p> <p>17 A. I don't believe I disclosed that, no.</p> <p>18 Q. And did CBC Partners I, LLC, disclose to</p> <p>19 Jay Bloom that the Antos Trust was not a guarantor</p> <p>20 on the underlying note?</p> <p>21 MR. MUSHKIN: Same objection as to</p> <p>22 requiring a legal conclusion.</p> <p>23 Answer if you can.</p> <p>24 THE WITNESS: Yeah, I don't believe that</p> <p>25 was disclosed. Again, I will disclose right now I'm</p>	<p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF NEVADA)</p> <p>3)SS</p> <p>4 COUNTY OF CLARK)</p> <p>5 I, Holly Larsen, a duly certified court reporter</p> <p>6 licensed in and for the State of Nevada, do hereby</p> <p>7 certify:</p> <p>8 That I reported the taking of the deposition</p> <p>9 of the witness, Alan Hallberg, at the time and place</p> <p>10 aforesaid;</p> <p>11 That prior to being examined, the witness was by me</p> <p>12 duly sworn to testify to the truth, the whole truth,</p> <p>13 and nothing but the truth;</p> <p>14 That I thereafter transcribed my shorthand</p> <p>15 notes into typewriting and that the typewritten</p> <p>16 transcript of said deposition is a complete, true, and</p> <p>17 accurate record of testimony provided by the witness at</p> <p>18 said time to the best of my ability.</p> <p>19 I further certify (1) that I am not a relative</p> <p>20 or employee of counsel of any of the parties; nor a</p> <p>21 relative or employee of the parties involved in said</p> <p>22 action; nor a person financially interested in the</p> <p>23 action; nor do I have any other relationship with any</p> <p>24 of the parties or with counsel of any of the parties</p> <p>25 involved in the action that may reasonably cause my</p> <p>impartiality to be questioned; and (2) that transcript</p> <p>review pursuant to NRCP 30(e) was requested.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>in the County of Clark, State of Nevada, this 18th day</p> <p>of November, 2020.</p> <p align="right"><i>Holly Larsen</i></p> <p align="right">HOLLY LARSEN, CCR NO. 680</p>



NEOJ

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com

djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: 11

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

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

1 **ORDER** was hereby entered on the 5th day of January, 2021. A copy of which is attached hereto.

2 DATED this 5th day of January, 2021.

3 Respectfully submitted,

4 **MAIER GUTIERREZ & ASSOCIATES**

5 /s/ Danielle J. Barraza

6 JOSEPH A. GUTIERREZ, ESQ.

7 Nevada Bar No. 9046

8 DANIELLE J. BARRAZA, ESQ.

9 Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

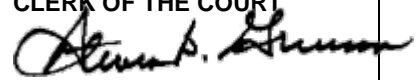
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 5th day of January, 2021, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

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

12 /s/ Natalie Vazquez
13 An Employee of MAIER GUTIERREZ & ASSOCIATES
14
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16
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18
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28



TRO

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com

djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: ● XI

TEMPORARY RESTRAINING ORDER

The Court, having reviewed the application for temporary restraining order filed by Plaintiffs
Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company, LLC

1 (“Plaintiffs”), including all other pleadings, declarations, and affidavits on file herein, and for good
2 cause appearing, finds that this is a proper instance for a temporary restraining order to be issued and
3 that if defendants CBC Partners I, LLC, CBC Partners, LLC, and 5148 Spanish Heights, LLC
4 (“Defendants”) are not restrained and enjoined by order of this Court, Plaintiffs will continue to suffer
5 immediate and irreparable injury. Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the application for
7 temporary restraining order filed by Plaintiffs be, and the same is hereby GRANTED in a limited
8 fashion because the July 2020 Notice of Default did not correctly identify the current owner of the
9 Note.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants, together with
11 any and all of their affiliates, agents, employees, and attorneys, are immediately and until after the
12 hearing on Plaintiffs’ motion for preliminary injunction, ordered to vacate and not proceed with the
13 foreclosure sale currently set for January 5, 2021.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an evidentiary hearing on
15 the motion for preliminary injunction filed by Plaintiffs and trial on related legal issues will take place
16 on the 1st day of February 2021, at 1 p.m., in Department 11 of the above-entitled Court.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall provide
18 appropriate security pursuant to NRCP 65(c) for the payment of such costs and damages sustained by
19 any party who is found to have been wrongfully enjoined or restrained in this action. This security
20 shall consist of the maintaining the status quo of the security that has previously been ordered by the
21 May 29, 2020 order granting Plaintiffs’ motion for preliminary injunction on a limited basis, which
22 includes the \$1,000 bond that Plaintiffs have already previously posted, in addition to plaintiff Spanish
23 Heights Acquisition Company continuing to tender payments which come due on the first mortgage
24 (to City National Bank) and the second mortgage (to Northern Trust Bank) while this injunction is in
25 place, although Plaintiff Spanish Heights Acquisition Company will not be required to make any
26 payments on any claimed third mortgage (to CBC Partners I, LLC or any purported transferee or
27 assignee of the Note associated with the third mortgage). Additionally, this security shall further
28 consist of Plaintiff Spanish Heights Acquisition Company paying the real property taxes, real property

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2 Heights Acquisition Company's obligation hereunder does not include taxes, real property insurance,
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4 Heights Acquisition Company's obligation hereunder does not include the HOA fees that have been
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6 Estate, but rather solely the outstanding monthly HOA assessments which come due during the
7 pendency of this Preliminary Injunction

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9 order shall remain in effect until the hearing on the motion for preliminary injunction, unless further
10 extended by order of this Court or stipulation of the parties.

11
12
13  January 5, 2021
14 Elizabeth Gonzalez, District Court Judge
15
16

17 Respectfully submitted,

Approved as to form and content:

18 **MAIER GUTIERREZ & ASSOCIATES**

MUSHKIN & COPPEDGE

19 /s/ Danielle J. Barraza

/s/ Michael R. Mushkin

20 JOSEPH A. GUTIERREZ, ESQ.
21 Nevada Bar No. 9046
22 DANIELLE J. BARRAZA, ESQ.
23 Nevada Bar No. 13822
24 8816 Spanish Ridge Avenue
25 Las Vegas, Nevada 89148
26 *Attorneys for Plaintiffs*

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L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
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Las Vegas, Nevada 89119
*Attorneys for Defendants CBC Partners I, LLC,
CBC Partners, LLC, 5148 Spanish Heights,
LLC, and Dacia LLC*

Natalie Vazquez

From: Michael Mushkin <Michael@mccnvlaw.com>
Sent: Monday, January 04, 2021 4:14 PM
To: Danielle Barraza
Cc: Natalie Vazquez; Karen Foley
Subject: Re: Spanish Heights matter/ TRO draft

Danielle

Please submit this version with my electronic signature. The sale has been set off.

MRM

Sent from my iPhone

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Let me know if this version works and we will get it submitted.

Thanks,

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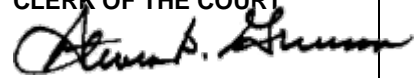
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TRO

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

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CBC PARTNERS I, LLC, a foreign Limited
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foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
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the Kenneth M. Antos & Sheila M. Neumann-
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ROE CORPORATIONS I through X, inclusive,

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AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: ● XI

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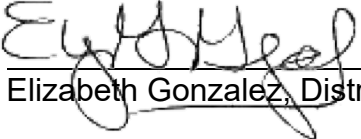
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14 Elizabeth Gonzalez, District Court Judge

January 5, 2021

15
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17 Respectfully submitted,

Approved as to form and content:

18 **MAIER GUTIERREZ & ASSOCIATES**

MUSHKIN & COPPEDGE

19 /s/ Danielle J. Barraza

/s/ Michael R. Mushkin

20 JOSEPH A. GUTIERREZ, ESQ.
21 Nevada Bar No. 9046
22 DANIELLE J. BARRAZA, ESQ.
23 Nevada Bar No. 13822
24 8816 Spanish Ridge Avenue
25 Las Vegas, Nevada 89148
26 *Attorneys for Plaintiffs*

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23 Nevada Bar No. 4954
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27 *CBC Partners, LLC, 5148 Spanish Heights,*
28 *LLC, and Dacia LLC*

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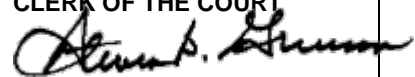
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STIP

JOSEPH A. GUTIERREZ, ESQ.

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Nevada Bar No. 13822

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Facsimile: 702.629.7925

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: 11

**STIPULATION REGARDING LEGAL
ISSUES TO BE DECIDED BY THE COURT
AT BIFURCATED TRIAL COMMENCING
FEBRUARY 1, 2021**

As requested by the Court, in preparation for the bifurcated trial commencing on February 1,
2021, Plaintiffs/Counterdefendants and Defendants/Counterclaimants, by and through their respective

attorneys of record, hereby stipulate that the following unresolved legal issues should be adjudicated by the Court at the bifurcated trial:

- 1) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between CBC Partners I, LLC and KCI Investments, LLC and all modifications thereto;
- 2) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust;
- 3) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts;
- 4) Whether the Doctrine of Merger applies to the claims at issue; and
- 5) Whether the One Action Rule applies to the claims at issue.

Dated this 11th day of January, 2021.

Dated this 11th day of January, 2021.

Respectfully submitted,

Approved as to form and content:

MAIER GUTIERREZ & ASSOCIATES

MUSHKIN & COPPEDGE

/s/ Danielle J. Barraza

/s/ Michael R. Mushkin

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

Fill in this information to identify your case:

United States Bankruptcy Court for the:

DISTRICT OF NEVADA

Case number (if known)

Chapter **11**☐ Check if this an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name **SPANISH HEIGHTS ACQUISITION COMPANY, LLC**

2. All other names debtor used in the last 8 years

Include any assumed names, trade names and doing business as names

3. Debtor's federal Employer Identification Number (EIN) **82-2350707**

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

**5148 Spanish Heights Drive
Las Vegas, NV 89148-1422**

Number, Street, City, State & ZIP Code

P.O. Box, Number, Street, City, State & ZIP Code

Clark

County

Location of principal assets, if different from principal place of business

Number, Street, City, State & ZIP Code

5. Debtor's website (URL)

6. Type of debtor

☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))☐ Partnership (excluding LLP)☐ Other. Specify:**PA0223**

Debtor **SPANISH HEIGHTS ACQUISITION COMPANY, LLC**
Name

Case number (if known)

7. Describe debtor's business A. Check one:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☒ None of the above

B. Check all that apply

- ☐ Tax-exempt entity (as described in 26 U.S.C. §501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. §80a-3)
- ☐ Investment advisor (as defined in 15 U.S.C. §80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor.
See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.

8. Under which chapter of the Bankruptcy Code is the debtor filing? Check one:

- ☐ Chapter 7
- ☐ Chapter 9

☒ Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11**. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- ☒ No.
- ☐ Yes.

If more than 2 cases, attach a separate list.

District	When	Case number
District	When	Case number

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

- ☒ No
- ☐ Yes.

List all cases. If more than 1, attach a separate list

Debtor	Relationship
District	When
	Case number, if known

Debtor **SPANISH HEIGHTS ACQUISITION COMPANY, LLC**
Name

Case number (if known)

11. Why is the case filed in this district?*Check all that apply:*

- ☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?☒ No☐ Yes.

Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (Check all that apply.)☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? _____

☐ It needs to be physically secured or protected from the weather.☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).☐ Other _____**Where is the property?**

Number, Street, City, State & ZIP Code _____

Is the property insured?☐ No☐ Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information**13. Debtor's estimation of available funds***Check one:*

- ☒ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available to unsecured creditors.

14. Estimated number of creditors☒ 1-49☐ 50-99☐ 100-199☐ 200-999☐ 1,000-5,000☐ 5001-10,000☐ 10,001-25,000☐ 25,001-50,000☐ 50,001-100,000☐ More than 100,000**15. Estimated Assets**☐ \$0 - \$50,000☐ \$50,001 - \$100,000☐ \$100,001 - \$500,000☐ \$500,001 - \$1 million☒ \$1,000,001 - \$10 million☐ \$10,000,001 - \$50 million☐ \$50,000,001 - \$100 million☐ \$100,000,001 - \$500 million☐ \$500,000,001 - \$1 billion☐ \$1,000,000,001 - \$10 billion☐ \$10,000,000,001 - \$50 billion☐ More than \$50 billion**16. Estimated liabilities**☒ \$0 - \$50,000☐ \$50,001 - \$100,000☐ \$100,001 - \$500,000☐ \$500,001 - \$1 million☐ \$1,000,001 - \$10 million☐ \$10,000,001 - \$50 million☐ \$50,000,001 - \$100 million☐ \$100,000,001 - \$500 million☐ \$500,000,001 - \$1 billion☐ \$1,000,000,001 - \$10 billion☐ \$10,000,000,001 - \$50 billion☐ More than \$50 billion

Fill in this information to identify the case:Debtor name **SPANISH HEIGHTS ACQUISITION COMPANY, LLC**United States Bankruptcy Court for the: **DISTRICT OF NEVADA**

Case number (if known): _____

☐ Check if this is an
amended filing**Official Form 204****Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an insider, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
NV Energy PO Box 30150 Reno, NV 89520-3086						\$610.00
NVEnergy PO Box 30150 Reno, NV 89520-3086		Power Bill				\$518.00
SJC Ventures LLC c/o US Corp Agents INC. 500 N. Rainbow Blvd. #300 Las Vegas, NV 89107						\$8,250.00

Debtor **SPANISH HEIGHTS ACQUISITION COMPANY, LLC**
Name

Case number (if known)

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

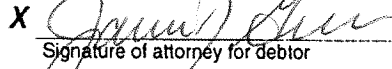
I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/3/2021
MM/DD/YYYY

(X) 
Signature of authorized representative of debtor

L. Blum
Printed name

Title Mgr of SJC - mgr of Spanish Heights**18. Signature of attorney**

X 
Signature of attorney for debtor

Date 2/3/2021
MM/DD/YYYY

James D. Greene
Printed name

Greene Infuso, LLP
Firm name

3030 South Jones Boulevard
Suite 101
Las Vegas, NV 89146
Number, Street, City, State & ZIP Code

Contact phone (702) 570-6000Email address JGreene@greeneinfusolaw.com

2647 NV
Bar number and State

**WRITTEN CONSENT OF THE SOLE MANAGER AND MAJORITY
MEMBER OF SPANISH HEIGHTS ACQUISITION CO., LLC**

The undersigned, being the sole manager and majority member of Spanish Heights Acquisition Co., LLC ("Company"), does hereby waive any and all requirements for calling, giving notice of, and holding a special meeting and, in lieu of such meeting, does hereby consent to, approve of and adopt the following resolutions:

RESOLVED that it is in the best interests of the Company, its creditors, its members and other interested parties to authorize the Manager of the Company, if it is determined to be best to do so, to cause to be filed a petition seeking relief under the provisions of Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Nevada ("Bankruptcy Court"), which shall commence the "Chapter 11 Filing"; and it is

FURTHER RESOLVED that the Manager of the Company, Jay Bloom in his capacity as Manager and owner of SJC Ventures Holdings, LLC ("Manager"), is hereby appointed to act as the designated representative of the Company in connection with the Chapter 11 Filing, to execute any and all appropriate papers and to take any actions he deems appropriate to prosecute the bankruptcy case resulting from the Chapter 11 Filing ("Bankruptcy Case");

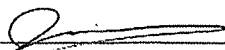
FURTHER RESOLVED that all actions taken by the Manager of the Company with respect to the Chapter 11 Filing and all matters and actions taken during, and in connection with, the Bankruptcy Case are hereby in all respects authorized, approved, ratified, confirmed and adopted as the acts of the Company; and it is

FURTHER RESOLVED that the Manager is authorized to retain the law firm of Greene Infuso, LLP ("Counsel") as counsel for the Company in connection with consultations regarding, and preparation for the Chapter 11 Filing and for conducting the Bankruptcy Case, and to execute an appropriate engagement agreement with Counsel, to pay Counsel an appropriate retainer, and to cause to be filed an appropriate application with the Bankruptcy Court for authority to retain Counsel pursuant to applicable provisions of the Bankruptcy Code; and it is

FURTHER RESOLVED that the Company is authorized and directed to employ any other firm(s) as professionals or consultants to the Company as are deemed necessary to represent and assist the Company in carrying out its duties under the Bankruptcy Code and, in connection therewith, the Company is hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and following the Chapter 11 Filing, and to cause to be filed appropriate applications to retain the services of such firms(s).

IN WITNESS WHEREOF, the undersigned has executed this Written Consent of the Sole Manager and Majority Member of Spanish Heights Acquisition Co., LLC effective as of this 31st day of December, 2020.

SPANISH HEIGHTS ACQUISITIONS CO. LLC
A Nevada limited liability company


By: SJC Ventures Holdings, LLC
Its Manager and Majority Member