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 04:30 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 II

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4/7/2021	Findings of Fact, Conclusions of Law, & Order Regarding Evidentiary Hearing in *TGC/Farkas Funding, LLC v. First 100, LLC et al* (Case No. A-20-822273-C)	II	PA0348-0385
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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
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Attorney for Respondents

DATED this 9th day of February 2022.

/s/ Brandon Lopipero
An Employee of MAIER GUTIERREZ & ASSOCITES

Electronically Filed
3/17/2021 1:05 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SPANISH HEIGHTS ACQUISITION COMPANY LLC, Plaintiff, vs. CBC PARTNERS I LLC, Defendant. AND RELATED PARTIES	CASE NO. A-20-813439-B DEPT NO. XI **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

MONDAY, MARCH 15, 2021

PRELIMINARY INJUNCTION HEARING AND TRIAL - DAY 4

VOLUME II

APPEARANCES:

FOR THE PLAINTIFFS: JOSEPH A. GUTIERREZ, ESQ.

FOR CBC PARTNERS I: MICHAEL R. MUSHKIN, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X

E X H I B I T S

LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 15, 2021, 1:07 P.M.

*** * * * ***

(Pause in the proceedings.)

THE COURT: All right. Mr. Bloom, come back up. I'd like to remind you, you're still under oath.

THE WITNESS: Of course.

THE COURT: Okay.

JAY BLOOM

(having been recalled as a witness and previously sworn, testified as follows:)

CONTINUED DIRECT EXAMINATION

BY MR. MUSHKIN:

Q Good afternoon, Mr. Bloom.

So you've made a claim in this matter that somehow the one-action rule bars recovery. Can you explain the basis of your claims in fact?

A My understanding is that the one-action rule provides a lender against real property the opportunity to claim one remedy. In this particular case, the CBC entity took the equitable interest in the entity that holds title to the property which would preclude a subsequent foreclosure action or -- well, I guess it would preclude the foreclosure action against the property.

Q I'd like to direct your attention to Exhibit 39, page 21. You may recall that before we left, I showed you the title -- or the preliminary title report that showed the deed of trust of record in '14, long before you arrived; correct?

A Yep.

Q And I direct your attention to paragraph 6.21. Let me just find it for you.

I'm sorry. I thought I had the right provision. Oh, here it is. Do you see paragraph A?

A I do.

Q Is that not a written waiver of the one-action rule, sir?

A It appears to be.

Q And you saw earlier where I referenced in the forbearance agreements that the remedies were cumulative? Do you recall that? We talked about that a little earlier.

A I believe I recall that.

Q Okay. Do you have any other support for your argument?

A I don't know the applicability of -- or the ability to waive the one-action rule for a primary residence. But, no, I can just testify as to my understanding of the one-action rule and its applicability.

Q So we talked about the doctrine of merger before you left. Have you found any other documents or do you have any other facts that support your claim that there's somehow a merger here, other than the fact that stock was taken pursuant to a pledge agreement?

A Well, it's the stock that was taken pursuant to the pledge agreement from the anti-trust --

Q I'm asking for anything other than that, sir.

A In addition to that, it's my understanding that Mr. Hallberg's advice from counsel in the beginning of the transaction was not to do that. So it would be -- the performance of the parties is additional evidence.

Q Your testimony is that because Mr. Hallberg didn't want to be a member of SHAC, that that's a fact in support of the merger doctrine? Is that your testimony?

A My conversations with Mr. Hallberg was that CBC, although it originally intended to be a one-third owner of SHAC, upon advice of counsel, came back and said that they couldn't be an owner in SHAC and at the same time be a lender to SHAC or to -- against -- a lender against the property.

Q Okay. So that was not in response to my question. It didn't have anything to do with my question, sir.

My question is, is it your testimony that because Mr. Hallberg didn't want to be a member of SHAC, that that supports your merger doctrine claim? Yes or no.

A Yes. Correct.

Q Thank you.

Anything else that you have that supports your claim?

A That's all that I can recall at the moment.

Q Thank you.

Now, there's been a lot of testimony about that pledge agreement, that you claim that that wasn't supposed to be the agreement. Is that still your testimony?

A It is.

Q And have you been able to produce any document that supports your claim of legacy language?

A I recall from my previous testimony about the lease where there was legacy language where there was --

Q Sir, I'm not talking about --

MR. GUTIERREZ: Objection, Your Honor.

THE COURT: You've got to let him finish, Mr. Mushkin.

MR. MUSHKIN: Okay.

THE COURT: I know it's going to take longer, but I'm prepared.

You can finish, Mr. Bloom.

THE WITNESS: In previous testimony, you showed a document that -- where the title wasn't changed, where the lease was removed but the language acknowledges the lease extension, the lease renewal, for two subsequent two-year periods. So that is -- to answer your question, that is in response to your question, yes, there's legacy language that's not appropriate in these documents.

The extension -- the title of the extension of the lease is one example and the conflicting language of the pledge agreement where SJC is not -- doesn't even have a signature block, much less as a signatory, is another example.

BY MR. MUSHKIN:

Q Okay. So I'm not even sure what question you answered. But my question is, do you have any drafts or any documents that are unexecuted or e-mails that reflect this change in terms that you've testified to?

A The executed document itself doesn't have a signature block and isn't signed --

Q Sir --

A -- by SJC.

Q -- you can keep answering wrong questions, and we're going to be here all week, sir. I'm not asking about that.

I'm asking about other evidence, any e-mail -- is there an e-mail that talks about legacy language?

A I don't believe there is.

Q Can you tell me a date and time of a phone call that talks about legacy language?

A Not from recollection.

Q Is there anything that Mr. Gutierrez can provide from his review of the contracts that shows that there's legacy language?

A The contract itself includes legacy language that's in contradiction to the document signature block and lack of a signature by the SJC party.

Q So your total claim is that because that last page of the pledge agreement is not executed properly, that's the only evidence that you have that SJCV didn't agree to it?

A Well, aside from a party not signing an agreement, that it can't be bound by an agreement it's not a signatory to, I'd have to go through the document and look through the language to be sure if there's any other language besides, It's just not a signatory to the agreement.

Q Well, let's take a look at the pledge agreement, sir, and let you go through it page by page and see if you can tell me. Because you acknowledge that you ratified the pledge agreement twice; right?

A I acknowledge that on behalf of SJC as the manager, it ratified the Antoses' ability to pledge their 49 percent interest.

Q Oh. Oh, no, sir. You ratified the actual forbearance -- the actual pledge agreement right in the forbearance agreement, didn't you? Let's go take a look. This is Exhibit 1, page 16. Let's go to paragraph 9:

Antos parties and SJCV parties acknowledge.

Do you see that?

A I do.

Q No breach by CBC. Do you see that?

A I do.

Q Interest fees and other charges. Do you see that?
A I do.
Q So you've agreed to the amounts; is that fair?
A Referencing the amounts stated elsewhere in the agreement, yes.
Q Yeah, the note.
Now let's look at 8, their representations and warranties, 8.3:

> To the extent applicable, the Antos parties and SJC parties lawfully possessable [sic] the hundred percent ownership interest in the property and collateral for the forbearance agreement.

Do you see that?
A I do.
Q Let's take a look at the next section of Section 9.
9.3:

> There's no waiver.

Do you see that?
A I do not. It's off the page. If you could slide the page --
Q I'm sorry. I'm getting better.
Is it on there now?
A Yes. Yes, I see that.
Q 9.6, The loan balance is true and correct.

Do you see that?

A I do.

Q 9.7, Fair consideration.

Do you see that?

A It's off the page. If you could slide the page up.

Q Do you see that?

A I do.

Q Thank you.

I direct your attention to page 23 of Exhibit 1, paragraph 25. Do you see that, The remedies are cumulative?

A I do.

Q And you signed this agreement, did you not?

A In an official capacity, yes.

Q Let's just be absolutely certain. That's your signature for SJC Ventures LLC; correct?

A Correct.

Q And note there's nowhere on here where SHAC signs; correct?

A Correct.

Q Okay. Now, there is an amendment; correct?

A I believe so.

Q And the amendment has a series of exhibits; is that correct?

A I'd have to see what the exhibits are, but I believe so.

Q Well, we went through them before. One of them was a limited liability company operating agreement. Do you recall that document?

A I do.

Q In fact, you testified you prepared it; is that correct?

A Yes.

Q Did anybody else help you?

A No.

Q Now let's go to --

A Well, let me -- let me amend that answer. Vernon Nelson, I believe, would have participated on behalf of CBC.

Q I didn't hear a word you said.

THE COURT: Vernon Nelson would have participated on behalf of CBC.

MR. MUSHKIN: I'm aware of that, Your Honor. Thank you.

THE COURT: Well, that was his --

THE WITNESS: That was my testimony.

THE COURT: That was what he said. I was trying to help.

MR. MUSHKIN: I asked if anybody helped.

THE COURT: I was like a read-back.

MR. MUSHKIN: I asked if anybody helped him.

THE COURT: And that was what he said when he modified his answer.

BY MR. MUSHKIN:

Q Okay. So now we go to the --

THE COURT: Did I get it right, sir?

THE WITNESS: Yes. Yes, that is correct.

BY MR. MUSHKIN:

Q Now we'll take a look at the investor member covenants. Do you recall signing this?

A I believe so.

Q And you're going to provide that $150,000 funding; right?

A Correct.

Q And then you're supposed to do it a second time; right?

A Correct.

Q And then you're going to service the CBC Partners receivable. Didn't do that, did you?

A Well, I think that's what the use of the 150,000 was for.

Q Okay. We went through this. We don't need to do it again. Let me get to the pledge.

MR. MUSHKIN: What exhibit is the pledge agreement, please?

THE CLERK: 8.

MR. MUSHKIN: Thank you. I was only two away.

BY MR. MUSHKIN:

Q Before we get there, you were to maintain books and records for the company; is that correct?

A Correct.

Q And part of the books and records of the company would be the maintaining of tax records and tax returns; correct?

A Correct.

Q And have you ever filed a tax return for this matter -- for this -- for SHAC?

A No.

Q Why?

A Because it would only have losses. There was no tax liability.

Q Can't you pass those losses through to the members so they can use them?

A There wasn't any material loss. The cost of preparation would have been more than the losses realized.

Q So you just decided on your own not to file tax returns?

A Yeah. There was nothing to report. There was no net income.

Q Now, 11.02 calls for reports to members. Did you ever file a -- fill out a report to the members?

A I don't have the document, so I'm not sure what 11.02

is.

Oh. No.

Q Why?

A Because the reports to members would have been reported as to profits or losses, and there was no material profits or losses that warranted a tax return which would have issued a K-1 against.

Q So it's your testimony that the depreciation and interest losses are not deductible?

A Good -- good question.

Q Thank you.

A I don't know. I'm not an accountant.

Q Now let's take a look at 12.04. You agreed that this was a binding agreement, did you not, sir?

A Yes.

Q Let's take a look at Exhibit 8, which is 5148 Spanish Heights 000089. This agreement -- and it's -- the first page says it's between the Kenneth and Sheila Antos Living Trust, SJC Ventures, pledgeors, to CBC Partners I, secured party, or CBC I.

Do you see -- do you recall that?

A If you could put it on the --

Q I'm asking if you recall it, sir.

A I don't recall the language of every agreement. There's a lot of them.

Q Do you recall that the pledge agreement was between CBC and the Antoses and SJCV?

A I believe so.

Q So there it is.

THE COURT: Can you zoom out so we can see it --

MR. MUSHKIN: Oops. Sorry.

THE COURT: -- or move it down. Thank you.

BY MR. MUSHKIN:

Q Do you see that?

A I do.

Q And is it your testimony that SJCV did not agree to pledge its stock?

A Yes.

Q What was your answer?

A My answer was, "Yes."

Q Okay. Now, you say that in spite of the forbearance agreement which says it, the amended forbearance agreement which says it, and the pledge agreement itself that says they're a party. Is that your testimony?

A Those are some of the relevant documents, yes.

Q Let's take a look at Exhibit 16, 5148 Spanish Heights 00014, the amendment to the forbearance agreement. Do you recall signing that?

A If you could show me the document.

Q I'm just asking you if you recall signing the amended forbearance agreement, sir.

A I believe so.

Q Does that document refresh your recollection?

A Yes.

Q And this extension is until March 31st of 2020; is that correct?

A I think you just had that up. I think that's the date that I saw below. Yes.

Q You don't have any independent recollection of that, sir?

A I do after reviewing that document.

Q So you have testified a number of times that somehow the security agreement was a replacement for the pledge agreement. Do you recall that testimony?

A Yes.

Q Do you have any e-mails that support that allegation?

A I don't recall any e-mails. I think most of it was telephone conversations that culminated in the final documents.

Q And you're aware that on the 17th of July, you sent an e-mail that laid out the basic terms of the transaction; right?

A Would that be -- what year would that be?

Q '17.

A Yeah. That was the initial proposal.

Q And within that document, it specifically said additional collateral for the loan, didn't it?

A I think that was part of the initial proposal.

Q Thank you.

Paragraph 12 of the amendment says, The security agreement will remain in effect --

THE COURT: Exhibit number?

BY MR. MUSHKIN:

Q -- right?

THE COURT: 16.

THE CLERK: Yes. We're still on --

MR. MUSHKIN: Yes.

THE COURT: Thank you.

MR. MUSHKIN: 000156.

THE COURT: Great.

BY MR. MUSHKIN:

Q Do you see paragraph 12 there, sir?

A I do.

Q And it also says that the pledge agreement remains in effect, doesn't it?

A It does.

Q And you signed this agreement?

A Which agreement is this?

Q The amendment to the forbearance agreement that extends it to March 31st of 2020.

A Yes.

Q So as late as January, you're still pledging your stock in SHAC; right?

A No. That misstates what my testimony was.

Q Well, that's what it says here, doesn't it?

A No.

Q Tell me what that says, sir.

A What this document does is it extends the security agreement which gives a security interest in any proceeds (indiscernible) the judgment by SJC, and it extends the pledge agreement from the Antoses, which was approved to be pledged by SJC in its capacity as a manager.

Q It doesn't say that, does it, sir?

A That's my understanding of what it says.

Q Okay. It says, SJCV pledges here, doesn't it?

THE COURT: Can you read it or do you need to move it over?

THE WITNESS: I think you need to move it over.

THE COURT: There you go.

Thank you, Mr. Mushkin.

THE WITNESS: So it says, The security agreement shall remain in effect. And that's referencing SJC's security agreement.

BY MR. MUSHKIN:

Q -- to the effect that the judgment lien pledge agreement, one, constitute a valeting obligation of SJCV and

First 100 Holdings in accordance with the terms; two, properly evidenced is CBC's first priority position on the collection professionals, no one given notice.

A All of that --

Q Do you see that?

A I do. All of that refers to the security agreement which collateralizes it with an interest in the proceeds realized under SJC's portion of the judgments.

Q It says right there "pledge agreement," doesn't it, sir?

A It says "judgment lien and pledge agreement." The only judgment relates to the security agreement which pledges First 100's interest in proceeds realized under the judgment.

Q And then if we turn to 162 of that exhibit, that is your signature, both as Spanish Heights manager and SJCV; correct?

A Correct.

MR. MUSHKIN: Your Honor, I believe I'll pass the witness.

THE COURT: Thank you.

Mr. Gutierrez, I know that you are not appearing to examine Mr. Bloom on behalf of Spanish Heights Acquisition. But on behalf of SJC Ventures, would you like to inquire?

MR. GUTIERREZ: I do, Your Honor.

THE COURT: Okay. How's that, keeping our record clean.

MR. GUTIERREZ: I'll wipe this cabinet down, Your Honor.

THE COURT: Do we have any more of those, Ramsey, or are we running out?

THE MARSHAL: We should have two more over there. I'll double check.

THE COURT: Okay. All right. Mr. Gutierrez, you're up.

MR. GUTIERREZ: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GUTIERREZ:

Q Mr. Bloom, do you recall being questioned about whether you had any written documents to dispute the validity of the pledge agreement against SJC as a non-signatory agreement?

A I think so, yes.

Q And do you recall being asked whether or not you ever, as -- on behalf of SJC ever sent notice to CBC that you disputed the validity of the pledge agreement?

A Yes.

Q Okay. I'm going to show you Exhibit 92. Can you see that, Mr. Bloom?

A I do.

Q And can you tell me what this letter is?

A   This is a letter to Mr. Mushkin on behalf of Spanish Heights Acquisition Company addressing a special meeting under the operating agreement and calling that meeting in SJC's capacity as a managing member for April 13th, 2020, at 1:00 p.m.

Q   And did you send an agenda along with this notice?

A   I believe I did, yes.

Q   Okay. And here's a page number, 945, on this same exhibit. Do you see this document, Mr. Bloom?

A   I do.

Q   And is this the agenda for the special meeting you had?

MR. MUSHKIN: Excuse me. I'm just sneaking up for a second.

THE COURT: You're not allowed to speak up.

MR. MUSHKIN: Oh, I'm sneaking. Sue me.

THE COURT: Only lawyers. You've got to leave your mask on. Judge Bell said we're not allowed to take it off for any reason or any purpose. She gave us a lecture.

MR. MUSHKIN: What if I have a drink of water?

THE COURT: I know. We're not even supposed to drink water anymore.

Come on. Get your mask back on.

MR. MUSHKIN: I think there's some constitutional issues involved here, Judge.

THE COURT: I do too, but I'm trying to comply.
All right.
MR. GUTIERREZ: Thank you, Judge.
BY MR. GUTIERREZ:
Q Mr. Bloom, we were looking at page 945 of this Exhibit 92. Can you tell me what this document is?
A This is the agenda for the special meeting of the members of Spanish Heights Acquisition Company.
Q And can you look -- and I'm on page 946 -- that Item Number 7, and tell me what that is.
A Item 6?
Q Item 7.
A Item 7. Oh.
Yes, one of the agenda items was to address the validity of the pledge agreement claim.
Q Okay. So as of April 10th, 2020, SJC was disputing the validity of the pledge agreement and gave notice to CBC about that dispute; correct?
A Right. Subsequent to the note sale, Mr. Mushkin became involved, and that's the first time the pledge agreement was tried to -- was attempted to be asserted against SJC, and we raised the issue on April 10th.
Q That was after -- and let me show you Exhibit 74, Mr. Bloom.
Have you seen this letter before? April 1st, 2020.

A Yes.

Q And this is the letter you're talking about, about being put on notice of the interest by CBC into SHAC?

A Correct.

Q Okay. Now, Mr. Bloom, did SJC, as manager of SHAC, send out a notice of a capital call to the Antos Trust, CBC, and its successors recently?

A Yes.

Q And tell us, when was that done?

A I think we sent out a capital call on March 1st.

Q And what was the reason for the capital call?

THE COURT: March 1st of this year?

THE WITNESS: Yeah, I'm sorry. Yes, March 1st of 2021.

THE COURT: Thank you.

THE WITNESS: The company needed capital. The way the company's been addressing its cash flow requirements to make payments under the first and second for the past 12 months has been by taking a prepayment of rent for several months, by SJC as tenant, for each month of payment obligations of SHAC. So SHAC would have to collect, you know, $30,000 a month to make $30,000 in payments. So SJC -- for SJC, $30,000 in rent payments is four or five, six months.

So we've gotten to the point now where we've extended -- we've prepaid the lease through the end of the two

two-year extensions, and SHAC continues to need money to make post-petition payments under its obligations to the first and second. Insurance company -- the insurance was just renewed on the real property and prepaid for a year. So there's all kinds of capital requirements.

BY MR. GUTIERREZ:

Q How much money was being requested?

A SJC requested capital contributions of $100,000, $51,000 from SJC as the investor member and $49,000 from whoever the Antos Trust successor is for its 49 percent.

Q And did you receive a response from -- on behalf of the SJC parties?

A Yes.

Q And what was that response?

A On March 2nd of 2021, SJC wired its $51,000 capital contribution to SHAC.

Q And did CBC parties or 5148 or the Antos Trust provide any money as part of the capital call?

A On March 10th, which was the deadline for the capital call, I got a very pointed letter from Mr. Mushkin that indicated that they wouldn't -- they would not be participating in the capital call, and somehow he construed that as -- the capital call as being a fraud.

MR. GUTIERREZ: And, Your Honor, at this time, we'd move to admit Exhibits 146, 147, and 148, which are the letters.

THE COURT: Have you showed them to Mr. Mushkin?

MR. GUTIERREZ: Yes, Your Honor. We disclosed them last week in a supplement and added them to the next set of exhibits in line.

THE COURT: Mr. Mushkin, any objection?

MR. MUSHKIN: I object. Beyond the scope and beyond discovery.

THE COURT: They'll be admitted. We've got to give them electronically to Dulce though.

THE CLERK: I have them.

THE COURT: Okay. Sweet.

(Exhibit Number(s) 146-148 admitted.)

THE COURT: So I take it they didn't pay on the capital call?

THE WITNESS: They did not.

THE COURT: Okay. That was really all I needed to know.

MR. GUTIERREZ: That's all. Okay. That's it. There you go. Okay.

MR. MUSHKIN: No argument.

BY MR. GUTIERREZ:

Q So, Mr. Bloom, you were also asked repeatedly about potential defaults in the forbearance agreement. Did CBC at any point from 2017 to 2019 ever send you a notice of default?

A No.

Q Did CBC ever contact you from 2017 to 2019 -- ever talk to you about filing a quiet title action?

A No.

Q And did CBC ever contact you to discuss why the reserve account was not funded?

A Only at inception and then on renewal when we elected to -- we weren't able to -- Bank of America wasn't able to open the kind of account that they wanted, so we just agreed to prepay CBC and the expenses for the year, which negated the need for that account.

Q And how would you describe your relationship with CBC from 2017 to 2019?

A It was good. Alan -- Alan Hallberg was my guest at a Vegas Golden Knights game, and we would socialize.

Q And were you working together with Mr. Hallberg to ensure compliance with the agreements?

A Yes.

Q Okay. Were you providing communication with Mr. Hallberg to update him on the collection efforts (indiscernible) nonjudgment?

A Yes. Every time there was an update, I would share it with Alan Hallberg.

Q At any point, did you ever misrepresent the status of the non-collection efforts to Mr. Hallberg?

A No. I would share with him the updates we got verbally, and I would share with him documents we received by e-mail.

Q Mr. Bloom, you were also asked about some renovations to the property. I think over lunch you were able to find a repair invoice, is that right, from Home Automation Repair?

A Yes.

Q What was that document?

A That was an estimate or a bill for improvements to the home early on. The home automation system in the house was fried by a power surge from construction, is what I was told was the cause, but nothing worked. So I brought in a home automation company to effectuate repair and replacement of components.

Q And when was that?

A I don't remember the dates, but it would be on the -- on the invoices.

Q Okay. And if the invoice stated it was October 5th, 2019, does that sound right?

A Yeah.

Q Okay. And was that paid, that invoice?

A Yes.

Q And do you recall how much the total was for that invoice?

A There were two invoices. The work was done in two phases. One was in the 50-something thousand and the second one was 40-something thousand.

MR. GUTIERREZ: Okay. Your Honor, we'd move at this time to admit Exhibit 149, which is the Home Automation Repair invoices. We found them over lunch and had them disclosed and sent to Dulce electronically and counsel.

MR. MUSHKIN: Your Honor --

THE COURT: Have you ever seen them before?

MR. MUSHKIN: Your Honor, I have to object. First of all --

THE COURT: No, I'm just asking. The first question is, have you ever seen them before?

MR. MUSHKIN: Never saw them before.

THE COURT: Okay.

MR. MUSHKIN: When I saw them -- the first time I saw them, Judge, is when I looked, at lunch, at their filings today and saw that they had filed it this morning.

THE COURT: Okay.

MR. GUTIERREZ: The question was asked of Mr. Bloom during his examination whether he has documents --

THE COURT: So he's used it to refresh his recollection.

MR. GUTIERREZ: Yes.

THE COURT: We will mark them as offered. We're not going to mark them as admitted.

MR. GUTIERREZ: Fair enough. Thank you, Your Honor.

THE COURT: So they're part of the record, and he's used them to refresh his recollection, which is permissible even if they weren't disclosed.

MR. MUSHKIN: I appreciate that, Your Honor. I'll just have one follow-up question because there's no --

THE COURT: Sure.

MR. MUSHKIN: -- proof of payment.

THE COURT: Mr. Mushkin, we can argue whatever you want to argue.

BY MR. GUTIERREZ:

Q Mr. Bloom, could you just walk us through the status of the foreclosure notices that you received on the property from CBC and 5148?

A Yes. I believe there was a March 2020 -- was it March or April -- maybe April 2020 notice of default. That was rescinded and there was another CBC notice of default that was issued several months later, subsequent to the note being sold. So CBC sold its note and then several months later issued another notice of default.

Then there was a 5148 notice of breach and election to sell. Then there was a 5148 notice of sale. Each of those notices predicated on the prior. I believe this Court ordered -- found the notices improper. And then I think 5148 issued, for the first time, a notice of default as the most recent notice. And then there were no subsequent notice of breaches or notice of sale from 5148. They just wanted to jump straight to sale without the statutory required notices.

Q Is there a pending sale date notice now?

A I didn't receive notice, but a marketing firm contacted me and said that there's a sale date set for March 30th in about -- what is that, two weeks or something.

MR. GUTIERREZ: Thank you, Mr. Bloom. I don't have any other questions.

THE COURT: Anything further?

MR. GUTIERREZ: I'm wiping down the...

THE COURT: I know. I'm watching you.

REDIRECT EXAMINATION

BY MR. MUSHKIN:

Q Mr. Bloom, have you provided any proof of payment of this alleged invoice for the home automation system?

A The payment was made by credit card --

Q Yes-or-no answer. Have you provided any proof of payment?

A I'd have to pull the credit card statement and then the bank statement paying the credit card to provide that.

Q Mr. Bloom, this is much easier than that.

Have you provided evidence in this case of payment of this alleged invoice or -- it says it's a -- the document on its face is an estimate. It's not even an invoice.

But I'm asking you if you have provided evidence to this Court of your payment of those estimates.

A I don't know what's been submitted in the exhibit pack, but those invoices were paid.

MR. MUSHKIN: Your Honor, I have no further questions of this witness.

THE COURT: Thank you.

Ramsey --

Sir, you can step down.

Ramsey, will you close the wipes so they don't dry out.

THE MARSHAL: Yes.

THE COURT: Your next witness.

MR. MUSHKIN: Mr. Hallberg, would you now dial into the --

THE COURT: So, Mr. Hallberg, we're going to send you to the video now. So hang up on us on the phone and go --

MR. HALLBERG: Okay. Will do.

THE COURT: And then we'll talk to you on video in a minute, sir.

MR. HALLBERG: Thank you.

THE COURT: All right. Is he your only additional witness?

MR. MUSHKIN: That's it, Judge. Just a few questions of Mr. Hallberg, and we'll rest.

THE COURT: That's fine.

And then after Mr. Mushkin goes, are you going to have a rebuttal case?

MR. GUTIERREZ: No, Your Honor.

THE COURT: Okay.

MR. GUTIERREZ: We can go to closing arguments.

(Pause in the proceedings.)

THE COURT: Mr. Hallberg, are you there?

MR. HALLBERG: Hello. I am here.

THE COURT: All right. I've got audio.

MR. MUSHKIN: There he is.

THE COURT: Now we've got video.

It's nice to see you again, sir. Sorry you didn't want to come back to Vegas.

MR. HALLBERG: Oh, I did want to come back. Mr. Mushkin told me not to come back.

THE COURT: Okay. Well, we'll hold him accountable for that.

MR. MUSHKIN: Wait. I want to just take the bus off of me just for a second. I'm going to push the bus away.

THE COURT: Since this is a new day from when you testified previously, I need you to be re-sworn again. It's my understanding you've consented to be sworn over the video line; is that correct?

MR. HALLBERG: That's correct.

THE COURT: Would you raise your right hand, please.

ALAN HALLBERG

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Thank you.

Please state and spell your name for the record.

THE WITNESS: Alan Hallberg, A-l-a-n, H-a-l-l-b-e-r-g.

THE CLERK: Thank you.

THE COURT: All right. Mr. Mushkin, you're up.

DIRECT EXAMINATION

BY MR. MUSHKIN:

Q Mr. Hallberg, you heard Mr. Bloom's testimony today; is that correct?

A Yes.

Q Do you believe that Mr. Bloom testified truthfully?

A No.

Q Can you tell me, just quickly, just certain areas that you think Mr. Bloom was not truthful?

A I'll start with a couple. The first is Ken Antos and I on the introductory call, the first call we had with Mr. Bloom, it was made clear what the genesis of our loan was and that this had always started out as a commercial loan. So that was made aware to Mr. Bloom.

Q And just to follow up --

A Secondly --

Q Sorry. Go ahead.

A No, it's okay. Go ahead.

Q Just to follow up on that, I would direct your attention to the forbearance agreement, page 1.

A Just a minute, please.

Q Paragraph -- oh, I can't use this.

THE CLERK: Is that Exhibit 1, Mr. Mushkin?

MR. MUSHKIN: Yes. The forbearance agreement is Exhibit 1. And this is F148 -- "F148" -- 5148 Spanish Heights, it looks like, five zeros and a one.

THE WITNESS: Yes, I've got it.

BY MR. MUSHKIN:

Q And at paragraph A, subparagraph (1), it discloses right in there that this is KCI Investments and Preferred Brands, that the original -- collectively the amended note; is that correct?

A That's correct.

Q Go ahead. Now tell me about the second one.

A The second one, when we were -- Mr. Bloom and I were negotiating, you know, we talked about what would happen if the judgment -- if monies from that judgment were not to come through that he would not, you know, receive any liquidity. And Mr. Bloom's answer was: Well, it's simple. We'll form an LLC. We're going to pledge the equity in the LLC as security for the obligation. So if, you know, there's no liquidity from this judgment, then the equity in SHAC, you know, reverts to CBC.

Q And it was always your --

A And that was always the agreement.

Q And it was always your understanding that 100 percent of the stock in SHAC was pledged pursuant to the pledge agreement?

A Absolutely. Otherwise, we're releasing a portion of our collateral. There's no way we do that.

Q And there was -- you heard Mr. Bloom's testimony, not only today but I believe at the original motion for preliminary injunction, where he kept -- he keeps insisting on some legacy language. Do you recall that testimony?

A I recall the testimony, yes.

Q Are you aware of any such legacy language?

A No.

Q Are you aware of any circumstance where the security agreement in the judgment replaced the pledge of 100 percent interest in SHAC?

A Absolutely not, because you're -- they're apples and oranges.

Q In fact --

A The security agreement, you know, is additional collateral. We, in no way, shape, or form, would release, you know, any portion of that original collateral that we already have in the form of the third position on a house.

Q So but for the pledge agreement, you would not have allowed the transfer into SHAC; is that fair?

A Correct.

Q You've seen this notice -- strike that.

In the deed of trust itself, there's a waiver of the one-action rule; is that a fair statement?

A Yes, I believe so.

Q And it was intentionally drafted that way; correct?

A Yes.

Q This is a commercial transaction with guarantors and other collateral; is that fair?

A Yes.

Q So it would have had to be there; is that -- it would be logical for it to be there; is that a fair statement?

A Yes.

Q Now, there's also -- you've heard this testimony of the merger doctrine. Did the merger doctrine ever come up in discussions in this case before the case was filed?

A No.

Q You never discussed merger with Mr. Bloom?

A No.

Q And so to the best of your knowledge, title has never rested in either CBC or 5148; is that correct?

A Correct.

MR. MUSHKIN: No further questions of this witness, Your Honor.

THE COURT: Cross-examination.

Mr. Mushkin, you've got to wipe down. I haven't been making you do it, but you've got to do it this time. I've got to have you do it at least once.

MR. MUSHKIN: I'm sorry.

THE COURT: That's okay. These are the kinder, gentler wipes, not the bleach ones the county buys.

Thank you.

MR. MUSHKIN: I want to do like Rudy Gobert and now go back and touch everything though, which is bad. I'm sorry. I can't help it. I'm caged up for a year. (Indiscernible).

Sorry. I'm losing it here.

MR. GUTIERREZ: Just briefly, Your Honor.

THE COURT: That's why I set aside a whole week for you guys.

Mr. Gutierrez, would you like to examine Mr. Hallberg --

MR. GUTIERREZ: Just briefly, Your Honor.

THE COURT: -- who doesn't have to wear a mask, is able to be easily understood, and is having a wonderful day not in the courtroom?

MR. MUSHKIN: And whose glasses aren't fogging up.

THE WITNESS: Exactly.

CROSS-EXAMINATION

BY MR. GUTIERREZ:

Q Can you hear me and see me, Mr. Hallberg?

A Hello?

Q Can you hear me and see me, Mr. Hallberg?

A Yes, yes.

Q Okay. I just have a few questions for you.

In 2017, did you ever provide the commercial note with -- between KCI and the Antoses to Jay Bloom?

A I believe I indicated to Mr. Bloom that all the original documents were available at Vernon Nelson's office.

Q My question is, though --

A And Mr. Bloom --

Q My question, did you provide the actual documents to Mr. Bloom in 2017?

A Not personally, no.

Q Okay. Did you ever provide the amendments to the KCI note to Mr. Bloom in 2017?

A I don't recall. I believe all the documents are with Mr. Nelson who Mr. Bloom already knows and had a relationship with.

Q My question was, did you send them, though, Mr. Hallberg? Did you ever send --

A I don't believe so.

Q Do you have any proof of sending those documents to Mr. Bloom?

A I -- I don't remember.

Q Now, you testified previously about the equity in the pledge agreement for CBC. You were asked some questions about that. Do you recall that?

A Yes.

Q Why was that -- why wasn't CBC placed in the pledge agreement for the equity to revert to CBC as opposed to the Antoses?

A I don't understand your question. Can you please rephrase it?

Q Sure will.

Was it your understanding in the pledge agreement that CBC would obtain the equity from SJC?

A That's my understanding, yes.

Q And you testified that the security agreement involving the First 100 judgment was additional collateral; is that correct?

A Yes, yes.

Q Okay. Why wasn't SJC a signatory to that pledge agreement if it was pledging its collateral to CBC?

A I -- I -- I don't know. I did not draft the agreement. An attorney did.

MR. GUTIERREZ: Thank you, Your Honor. No further questions.

THE COURT: Anything else, Mr. Mushkin?

MR. MUSHKIN: No, Your Honor. Defendant/counter-claimant rests.

THE COURT: Thank you, sir. You can call us back on the phone if you'd like.

THE WITNESS: Okay. Thank you, Your Honor.

THE COURT: All right. Okay. So Mr. Mushkin's rested.

Okay. Now, Mr. Mushkin, are you certain that every exhibit you want in is in?

MR. MUSHKIN: I believe so, Your Honor.

THE COURT: Okay.

MR. MUSHKIN: I believe all the exhibits are in.

THE COURT: No, not all the exhibits are in.

MR. MUSHKIN: Well, then the only thing that I believe are not in are the discovery responses.

THE CLERK: (Indiscernible.)

MR. MUSHKIN: It's not at issue today. The only thing that was not in is the calculation, and that's not at issue today, Judge.

THE COURT: Okay. All right. Mr. Gutierrez, do you have any additional evidence to present at this time?

MR. GUTIERREZ: No, Your Honor.

THE COURT: Okay. Before you start arguing, because

I have no life, during the lunch hour, I pulled the first amended complaint where SJC Ventures is a plaintiff and went through the allegations. And if you need a short break while you do this, let me know.

As part of our discussions today under the five areas that are stipulated to be discussed, understanding there is an avenue of discussion about the impact of what I should be doing given the bankruptcy status, what claims for relief in your amended complaint related to SJC are impacted by A, the five stipulated items?

And if you need a few minutes to sit and look at your amended complaint, please do it. Because I'm going to turn to Mr. Mushkin now, and say, "Mr. Mushkin, I still don't have a life and printed your counterclaim over the lunch hour. And for those that are not related directly to Spanish Hills [sic], can you identify for me the claims for relief in your counterclaim that are?"

And do you have your counterclaim with you?

MR. MUSHKIN: We'll have the claims in just a moment, Judge.

THE COURT: Okay. So I'm going to step away --

MR. MUSHKIN: Thank you, Your Honor.

THE COURT: -- for a minute so you guys don't feel pressured to hurry, that you can take your time to make sure you can frame it. It's only 2:00 o'clock so we've got plenty of time to do arguments.

Do you anticipate being done with argument today?

MR. GUTIERREZ: I don't think I'll be more than 20 minutes, Your Honor.

MR. MUSHKIN: I don't think I'll be much more than a half an hour, Judge.

THE COURT: Well, I'm going to then go offer my courtroom to the kind folks in Department 18.

(Pause in the proceedings.)

THE COURT: Okay. Mr. Gutierrez, you're first.

(Pause in the proceedings.)

THE COURT: Okay. Mr. Gutierrez, you're first.

MR. GUTIERREZ: Your Honor, we went through the first amended complaint to I think -- so the question was which claims would --

THE COURT: Remember, we advanced the trial and the matter for stipulated issues. There were five stipulated issues. I'm just trying to make sure that since I'm dealing with SJC as the party who is not in bankruptcy that I make sure that I'm in the right causes of action from your perspective.

MR. GUTIERREZ: Okay. In walking through each one of these causes of action, Your Honor, I think all of them --

THE COURT: So we don't have to worry about 1. We're not worrying about 1.

MR. GUTIERREZ: 1 would apply to SHAC.

THE COURT: But we are not worrying about 1.

MR. GUTIERREZ: Understood.

THE COURT: Because it wasn't part of what was part of the stipulation.

MR. GUTIERREZ: The same with Number 2.

THE COURT: Okay.

MR. GUTIERREZ: Number 3 has to do with the one-action rule, but it's our position that obviously affects SHAC and also the property.

THE COURT: Well, it says plaintiffs. So...

MR. GUTIERREZ: It does. Well, it does.

THE COURT: It does.

MR. GUTIERREZ: That's been my objection all along, that we have two plaintiffs, and one which is Spanish Heights Acquisition Company and the other in SJC Ventures Holdings that can have a cause of action; however, one is a bankrupt party. And I understand Your Honor's position in trying to effectuate a ruling on the nonbankrupt party, but I still think it'll affect SHAC and its property, and that's been our that we've maintained.

THE COURT: Okay.

MR. GUTIERREZ: So and that was one of the issues that's outlined in the five points, the application of the one-action rule.

THE COURT: Okay.

MR. GUTIERREZ: The fourth cause of action has to do with the doctrine of merger, which is also part of the stipulation for this hearing, Your Honor. And I believe that one also applies to SHAC property the same way the third cause of action would.

THE COURT: Okay. And it's alleged by plaintiffs. So I understand your position.

MR. GUTIERREZ: The fifth cause of action discusses the manager of SHAC is SJC Ventures --

THE COURT: Right.

MR. GUTIERREZ: -- and the declaratory relief. I don't believe that was subject to the terms of this hearing, Your Honor.

THE COURT: I didn't see that as part of our stipulation.

MR. GUTIERREZ: No. So I don't know that that would apply to the terms of this proceeding.

The sixth cause of action is the restraining order that I don't believe applied here as well.

THE COURT: Well, it does because we are in an injunctive relief hearing.

MR. GUTIERREZ: Well, I don't know if this one applied differently to -- yeah, okay. So this one would apply here, Your Honor, Cause of Action Number 6.

THE COURT: Okay.

MR. GUTIERREZ: Cause of Action Number 7 is regarding the Antos's trust assignment of membership interest and references the merger doctrine, paragraph 102.

THE COURT: So that's D. Okay.

MR. GUTIERREZ: The eighth cause of action we don't believe applies at this stage, Your Honor, which is a breach of the forbearance agreement against CBC.

THE COURT: Okay.

MR. GUTIERREZ: Same with 9, which is a breach of the implied covenant related to the same contract.

THE COURT: Okay.

MR. GUTIERREZ: Number 10 and Number 11 and Number 12 all relate to Dacia.

THE COURT: Okay.

MR. GUTIERREZ: And I don't believe they apply here as well.

THE COURT: We're not on that yet.

Contribution also not. That's 12.

MR. GUTIERREZ: Yes. That's correct.

THE COURT: Okay. All right. So now that I've disrupted your argument, if you'd like to go to your argument.

And then, Mr. Mushkin, when it's your turn to argue, I'll ask you to go through the same process with me.

MR. GUTIERREZ: Closing argument, Your Honor?

THE COURT: Yes, please.

MR. GUTIERREZ: Thank you.

CLOSING ARGUMENT FOR THE PLAINTIFFS

MR. GUTIERREZ: Your Honor, I think we've already made our position clear on the actual position that we are taking with the stay. I don't need to reiterate that. And, I'm glad Your Honor went through each claim; that was where I was going to start as to what -- so we had some clarification what we believed was going forward.

But, Your Honor, I think we started this case, this hearing with going with five discrete issues that Your Honor was going to look at for purposes of the defenses that were raised to the foreclosure and part of the motion for preliminary injunction.

The first one, Your Honor, was contractual interpretation, validity of the secured promissory note between CBC, KCI and all modifications. Early on, Your Honor, I think we started this on February 1st, and we heard from Ken Antos and Alan Hallberg that day. They both testified that the note was never amended to add Antos trust, the owner of the property, as a borrower. They added Preferred Restaurants Brand as an additional borrower but never the Antos trust.

We heard from Mr. Hallberg today that those documents were never sent to Mr. Bloom. And we'll get to that later.

But with the note never amended to add the Antos trust as a guarantor prior to the issuance of the deed of trust, the notes, the amendments and the guarantees were all drafted by CBC.

Alan Hallberg testified that he had over 30 years of experience with promissory notes and guarantees. Any ambiguity should be construed against the drafter.

Antos testified he no longer -- that he had no legal counsel to advise him during this transaction. And there is and never was an obligation of the Antos trust for which the Antoses could secure a deed of trust as a pledgor.

There is also no guarantee by the Antos trust that coincides with the deed of trust. Mr. Bloom testified about this as well, that the consent and the reaffirmation of the guarantee never occurred.

The second issue, Your Honor, goes to the interpretation and validity of the third position deed of trust, including the modifications and whether consideration was provided. Your Honor, for this issue, you have to look at the timing of when the deed of trust was issued in December of '14 and what guarantee was provided by the Antos trust at that time. And the testimony was there was nothing. Even Alan Hallberg testified that the December 2014 document signed by the Antos trust was not a guarantee.

When you look at the validity of the deed of trust, Your Honor, you have to look at the purpose of a deed of trust, which is (indiscernible) a deed or legal title, and the property is transferred to a trustee which holds that as security to a borrowing lender.

There's no debt for the Antos trust at the time the deed of trust was issued.

The third position deed of trust issued on December 29th, 2014.

The amended deed of trust was issued on December 19th, 2016.

It's undisputed there is no other deeds of trust issued following these dates or no other obligation that was created for these -- for this deed of trust.

The first obligation is created September 2017, which brings us to our point, Your Honor. This is an unsecured debt by the Antos trust. That's been our position. We're not saying the money is not owed. We're just saying there is no guarantee to protect the debt that was signed.

Your Honor heard evidence of a lack of consideration for the deed of trust: There was testimony of Ken Antos on behalf of the deed of the Antos trust; also testimony of Alan Hallberg of CBC who said no benefit was conferred to the Antos trust to pledge the deed of trust on the property; no money was exchanged with the Antos trust.

And, Your Honor, that brings us to our third issue which is the contractual interpretation or validity of the forbearance agreement, the amended forbearance agreement and all contracts associated to that.

The September 27, 2017, forbearance agreement, Exhibit 1, Your Honor, it's predicated, you know, upon a misrepresentation that there was a third mortgage, and that was covered during Mr. Bloom's testimony.

The issue of whether CBC breached first will be dealt with at another date, but that is a position that the SJC will be taking in this case.

The December 1st, 2019, amended forbearance agreement states CBC was to pay the first and second mortgage on the property. CBC, Your Honor, it's our position breached these agreements when it failed to make the payments to the first and second lien holders in January, February, March of 2020.

The fourth issue, Your Honor, is whether the doctrine of merger applies to the claims in this case. We've got cases we've cited, Your Honor, in our briefing and proposed findings of facts and conclusions of law. It is *First National Bank versus Kreig*, K-r-e-i-g, 32 P 641. The Nevada courts have held that when legal title and equitable title is held by the same person those interests merge. Your Honor, it's our position that the doctrine of merger extinguished the note when the noteholder CBC took an equitable position in the collateral at the time the Antoses transferred their interest in SHAC to CBC in April of 2020.

CBC knew at this inception -- knew this as at the inception, as the evidence initially showed that CBC was intended to be and actually was an equity holder and then resigned its membership interest precisely because of the doctrine of merger issues. And Mr. Hallberg testified about that back in February.

CBC can't be a borrower and lender under the same deal. The interests merged in April of 2020 when CBC acquired the Antos trust interest in SHAC.

And, Your Honor, there has also been no evidence of any intent to disclaim the merger doctrine by any party. Both Mr. Antos and Mr. Hallberg testified they had no idea what the doctrine of merger even was.

And, finally, Your Honor, going to the one-action rule, the one-action rule prevents foreclosure as the lender CBC already elected its remedy in taking possession of an equitable interest in SHAC. CBC exercised equitable rights when it selected the remedy of obtaining legal title to the property. The one-action rule in Nevada is codified in NRS 40.430. And, Your Honor, it's our position the one-action rule in this case would prevent foreclosure as the lender CBC already elected its remedy to take possession. So, Your Honor, CBC cannot take possession of the house or interest in the house and also pursue a foreclosure action.

Mr. Hallberg testified that CBC owned 49 percent interest in SHAC. And it's our position CBC could look to the Antoses or the Antos trust or KCI for any deficiencies.

We've discussed, Your Honor, that there has been no waiver of the one-action rule. And under NRS 40.495, Subsection (5), the one-action rule may not be waived by a guarantor if the mortgage or lien under Section D is secured by real property upon which the owner maintains the owner's principal residence, there is not more than one residential structure, and not more than four families reside.

Mr. Bloom testified that he is the only family living at this property, the 5148 property. And it's his principal place of residence. So therefore, Your Honor, this exception to NRS 40.495, Subsection (5), would apply, that there couldn't be a waiver of this statute.

Your Honor, in conclusion, the defendants have remedies, like we said. They just don't like the remedies they have. We're asking the Court to find the note is valid with the exception of the attempt to incorporate the property as security in that note. So the forbearance agreement and amended forbearance agreement are not valid with respect to the attempt to incorporate the invalid third position deed of trust into that agreement.

And, alternatively, if the Antos trust is found to be liable as a guaranty for the KCI debt, that the merger doctrine applies for the reasons we stated, and the one-action rule would prevent any foreclosure.

Your Honor, if you have any questions, especially in light of the bankruptcy and clarifying the position, I'd be more than happy to answer any questions from Your Honor.

THE COURT: So basically it's your position with respect to the merger doctrine that the proceeding under the pledge agreement to obtain the 49 percent interest in Spanish Hills -- Heights --

MR. GUTIERREZ: Heights. Heights.

THE COURT: -- Spanish Heights acted as an ownership interest in the real property itself rather than an ownership interest in an LLC?

MR. MUSHKIN: Yeah. And I understand --

THE COURT: So why on earth would anybody ever set up an LLC to own property then?

MR. GUTIERREZ: Well, I believe there's provisions -- there's circumstances they can. Because if you're going to set up an -- well, why they would do it was for a number of reasons: To protect themselves from liability, from -- any number of reasons. They have multiple people as owners and have that documented properly. But I think --

THE COURT: A lot like First 100, huh?

MR. MUSHKIN: First 100, that's a --

THE COURT: (Indiscernible) know that.

MR. GUTIERREZ: First --

THE COURT: Sorry.

MR. MUSHKIN: So, but it is. But you think about whether when they go to take a specific action and they acquire equity versus -- versus actually going in and saying, well, you know -- because what happened here, I believe, is that they -- once they acquired the equity interest, they chose that particular remedy, and their interests merged. And I don't believe that they have the ability to now go ahead and say we're going to foreclose and move forward with that provision.

THE COURT: So you're essentially asking me to ignore the separateness of the LLC then and find that it is a direct ownership interest even if it's only a partial interest?

MR. GUTIERREZ: No. I believe that -- I believe that -- no, we're not asking that all.

THE COURT: Okay.

MR. GUTIERREZ: We're not saying that. We're not saying to ignore any corporate formalities. We're saying that there was a reason why CBC did not want to be on the initial pledge agreement to have an interest in the property, and that reason was because of concerns of merging equity and their debt. And they can't be a lender and the actual owner at the same time is what we're saying unless -- and there was no clear waiver of that issue it's our position.

THE COURT: Okay.

MR. GUTIERREZ: I believe that had things been done -- this is a sloppy transaction. If you go back to look at the history, I think that's undisputed. You're having a commercial loan that's never disclosed, 10 amendments that are never disclosed. And you get to the position where now, CBC, the one change they have, the one material change they have is to make sure that they are not included as both a lender and the equity holder.

And then when they go and exercise that option on April 2020, well, now they become both. Unless the doctrine of merger is clearly waived, which parties do that routinely, then they -- those interests merge is our position.

THE COURT: Okay.

MR. GUTIERREZ: Because you can't be an equity holder and a borrower on the same note.

Any questions, Your Honor, about the bankruptcy? Anything about it related to procedurally?

THE COURT: No.

MR. GUTIERREZ: I still haven't heard anything from the bankruptcy court as we sit here today. So...

THE COURT: We're going to do what we're going to do, and I'm going to try real hard to navigate what I am allowed to do.

MR. GUTIERREZ: Understood. Thank you, Your Honor, for your time and for getting us back in.

THE COURT: Okay.

Mr. Mushkin.

CLOSING ARGUMENT FOR THE DEFENSE

MR. MUSHKIN: Your Honor, I'd like to thank you first and foremost for advancing the trial on the merits to the time of the preliminary injunction. What you've done is put the plaintiff on the spot, and I appreciate that.

Plaintiffs carry the burden --

THE COURT: Well, before you start, I need you --

MR. MUSHKIN: Oh, I'm sorry. I have it right here.

THE COURT: -- to go through the counterclaim.

MR. MUSHKIN: I'm sorry. I have it right here.

THE COURT: I made Mr. Gutierrez go through it. I'm going to make you do the same thing.

MR. MUSHKIN: Breach of contract, forbearance agreement; breach of covenant and good faith, forbearance agreement; breach of fiduciary duty --

THE COURT: Not part of this. It's not part of this; right?

MR. MUSHKIN: No, they are. This is against SJCV.

THE COURT: No. But I mean which -- under my five categories, breach of the contract --

MR. MUSHKIN: Breach of the forbearance agreement would be affected by finding that the forbearance agreement is a binding obligation.

THE COURT: So you're asking me to include that under the contractual interpretation and/or validity of the underlying secured promissory note?

MR. MUSHKIN: And that would be first cause of action, the second cause of action.

THE COURT: Okay.

MR. MUSHKIN: And then the unlawful detainer, fraud in the inducement and abusive process would not be affected at this time.

And then the breach of fiduciary duty, breach of the operating agreement, breach of the good faith and fair dealing of the operating agreement, breach of the pledge agreement, breach of covenant and fair dealing of the pledge agreement would all be affected as would -- and I suppose the dec relief at the end is also affected.

Unjust enrichment is a damage claim.

THE COURT: Okay. So for your part, I am looking at, just so I'm clear, my first three items were connected with your first and second claims for relief?

MR. MUSHKIN: Yes, ma'am.

THE COURT: Okay. And the rest of them are matters to handle some other date with a different fact finder maybe.

MR. MUSHKIN: The other breach of contract claims would also be affected because the agreements are part of the forbearance agreement. It has all those attachments and exhibits. So all of those -- the operating agreement, pledge agreement and the good faith and fair dealing -- all flow out of the same thing.

THE COURT: But not the breach of the good faith and fair dealing; right? Those were later.

MR. MUSHKIN: As to SJCV, sure.

THE COURT: Well, even as to my -- that wasn't part of the scope of my -- breach of covenant of good faith and fair dealing was not --

MR. MUSHKIN: I took your question to mean how will -- do those five issues affect those causes of action, and I'm saying that those five issues affect causes of action that I've set forth: The fiduciary duty, operating agreement; good faith and fair dealing, operating agreement; breach of contract, pledge agreement; breach of good faith and fair dealing, pledge agreement. Because they are all attachments to the forbearance agreement.

THE COURT: Okay.

MR. MUSHKIN: Okay. So now, wow, have we heard some testimony, Judge. It's the plaintiffs' burden to show that they have a likelihood of success on the merits of their claim with competent and admissible evidence. I will submit to the Court that they have failed to do that.

MR. GUTIERREZ: Excuse me, Counsel.

Your Honor, I don't mean to interrupt. I just wanted or maybe ask counsel what did he -- was he also going to look through the Antoses' --

THE COURT: No. We didn't --

MR. GUTIERREZ: -- answer and counterclaim?

THE COURT: No.

MR. GUTIERREZ: Okay. I just wanted to make sure that wasn't part of it.

THE COURT: I'm not doing the Antoses. They have a summary judgment motion on Friday.

MR. GUTIERREZ: Okay. All right.

THE COURT: Because I wanted to finish the evidence in here before I decide.

MR. MUSHKIN: So, Your Honor, I think that you have a pretty easy course to follow. Because if you look at the parol evidence rule, I believe that all of Mr. Bloom's testimony should be eliminated from consideration. He hasn't raised one issue, one, he hasn't pointed to one document that isn't excluded by the parol evidence rule.

Your Honor, I'm troubled by some of the pleadings in this case. I pointed out to you in a prior motion that counsel had challenged the authenticity of the documents in their pleading. When I deposed Mr. Bloom, no challenge to the authenticity. I have a problem with that, Judge. So if there is no problem with the authenticity to the documents, there has been no claim that they were vague or ambiguous, and all of this nonsense from Mr. Bloom should not be brought into the record. It should not be considered.

Plaintiffs challenge the deed of trust that was in place years before Mr. Bloom's arrival, and they claim a lack of consideration somehow. Yet both Mr. Antos and Mr. Hallberg testified that they got exactly what was anticipated. Mr. Bloom -- I mean, sorry, Mr. Antos was able to liquidate other collateral, and he replaced it with this. He received additional funding, and he put up additional collateral. Pretty straightforward stuff.

And even if there were a problem, it would not be a defense that Mr. Bloom can put forward because Mr. Bloom in the forbearance agreement contracted with the Antoses to pay that debt, contracted with CBC to pay that debt. He does not come before you and say that a single number is wrong. He just somehow claims that he doesn't have to pay.

Plaintiff is fully aware that this is a commercial loan, and I pointed out to the very first document the very first page. This individual has filed false declarations. He has testified falsely before this Court with reckless intent. He knows better. On the very first page.

Somehow this plaintiff would have to prove that the loan made to a restaurant and guaranteed by the Antoses is somehow invalid. They just argued that it's not invalid, but the deed of trust is invalid. It's the most -- they have no law, no fact. They just want to say it over and over again.

Plaintiffs' claims have been a moving target. When he testified on May 20th last year, he knew it was a commercial transaction, hadn't even come up with this crazy defense yet, just wanted to stop an eviction that hadn't been filed.

We sent a letter, Judge, that asked for information that was due, and they said, no, there can't be a default. You're not allowed. That's their counsel that did that, Judge, Mr. Gutierrez's office. But somehow they want to testify that Mr. Gutierrez wasn't his attorney even though all the emails, all of the back-and-forth, I'm going to circle back with Mr. Gutierrez. I would suggest to the Court that Mr. Bloom has perjured himself again.

First they wanted dec relief. Then they argued merger and one-action rule. Now they have fraud and misrepresentation. So they just can't have any of those claims without clear and convincing evidence.

To make a claim of fraud or misrepresentation, they have to have clear and convincing evidence. They can't even tell you what somebody did or didn't do. They want to tell you that they didn't know it was a commercial loan when it's on the first page of the first forbearance agreement. Just unbelievable.

Your Honor, we pointed out where the one-action rule had been waived in writing.

Mr. Bloom may reside in the house, but SHAC doesn't reside in the house. The Antos trust didn't reside in the house. And SJCV doesn't reside in the house. Mr. Bloom does. So all of these machinations are just that. They're just an attempt to steal the house. That's what this is. They don't want to pay.

The merger doctrine, Your Honor, does not apply to this case because, as you've pointed out, title is held by an LLC, and no one but the LLC is of title. So taking stock in an LLC does not -- does not cause the merger doctrine to apply.

I took testimony from Mr. Hallberg. Did he intend to merge? No, of course not. And the Nevada law is pretty clear. The creditor has to intend if he wants a merger to take place, and they clearly didn't.

If the merger doctrine applied as Mr. Gutierrez wants this Court to believe, then if I have an interest in the debt of MGM and I own stock in MGM, then the merger doctrine would apply to there as well. It's just a preposterous argument. There's no basis in the law. There is no basis in fact. They cannot show that equitable title. They can show that a beneficial interest, but they cannot show that an interest in title passed. No interest in title has changed.

Now, as I said earlier, this somehow claim that there was a misrepresentation to them, there simply is no evidence, and there's certainly no clear and convincing evidence. So any likelihood of success based upon that claim is completely without merit.

What did the evidence show? Well, Judge, it's pretty straightforward. And I want to specifically point out that through the course of this, these proceedings, Mr. Bloom has stood before this Court and ignored his obligation to the Antos parties. The forbearance agreement is with three folks: The Antos parties, CBC and SJCV. So he not only owes the obligations set forth in the note and deed of trust; he made a separate promise to the Antos parties to pay the debt. And it's that promise that gave him occupancy of the house. That's how he got possession. That promise was an inducement to CBC I to allow the transfer of the property from the Antos trust to SHAC. But for that promise, Mr. Bloom has nothing.

Mr. Bloom in his deposition and even I believe in front of the Court, I think I counted them for you, there were 50 some occasions where Mr. Bloom testified -- refused to answer my question and said that the documents speak for themselves. I'm sorry. It was 26 times. And he couldn't recall answers to my question on 51 occasions, including who his attorney was.

Your Honor, the relief that I request of this Court is real simple. We want you to deny the preliminary injunction, vacate the TRO, find that the notice of default and election to sell are adequate notice, and find that the note and deed of trust are valid and enforceable as a commercial obligation.

Court's indulgence for just a minute.

We have five issues: Contractual interpretation, secured promissory note; contractual interpretation, the deed of trust; contractual interpretation, forbearance agreement and amended forbearance agreement; doctrine of merger; one-action rule.

So here's what the evidence does show, Judge. The evidence shows and has been admitted to show that in 2010 Mr. Antos started a business relationship and ultimately transferred the real property to the Antos trust.

In 2012, KCI Investments and -- entered into the secured promissory note with CBC Partners. That's June of '12. The note was guaranteed by the Antoses. The note was modified a number of times, including modifications that added the trust, on three separate occasions. Exhibit --

(Pause in the proceedings.)

THE COURT: Sorry.

MR. MUSHKIN: No problem.

THE COURT: Keep going.

MR. MUSHKIN: Exhibit 26 is the first modification that references the trust.

Exhibit 34 authorizes the deed of trust.

And Exhibit 50 is a consent and reaffirmation and even a release of any other prior problem, and it adds the -- I want to make sure I give you the right cite -- the trust as a creditor.

Court's indulgence just a second.

Yes. And that is Exhibit 50, Section 8, of the agreement, applicable as though the trust were a credit party.

And, again, these are all documents -- this is about 2016 -- that happened well before Mr. Bloom arrives on the site.

So the security agreement not only granted a security interest in a settlement agreement but also concerned representations and warranties and covenants of the Antos parties, including that they would not sell or encumber the property without further consent.

KCI was acquired by Preferred Brands International. That's why you see their name that appears.

The note was assumed by Dixie, and the Antos party continuing to guarantee the obligation.

On October 31st of '14, a seventh modification and waiver of default was entered into. That's Exhibit 33. Paragraph 18F of the seventh modification sets forth the living trust and any amendments thereto. So the notion that there is not adequate documentation or disclosure is clearly belied by the documents themselves.

And then I think I've referenced that Exhibit 34 has the certificate of trust which sets forth the specific authority, and the certificate of trust provides various representations and warranties regarding the effect and the validity of the deed of trust.

We've talked about the other notes and deeds of trust on the property, and I think it's important for the Court to look at the two, if you will, smoking guns, Judge. It's the July 17th email from Bloom. And it is a part of Exhibit 104, specifically page thirty-six, eighteen. And it's pretty clear. He invented this deal. SHAC is created to allow the -- facilitate him to pay off CBC I.

And most important, at the fourth to the last paragraph,

> My thought is that this proposal gets the third lender a full recovery of its note balance plus all protective advances, past and future, interim cash flow and provides interim additional full collateral where given the current value of the property the third-position lender is currently unsecured.

Mr. Bloom knew exactly what he was doing. He knew that KCI was the lender. He designed this process, and now he falsely testifies before this Court in an attempt to avoid payment. Pure and simple.

As a part of the forbearance agreement, both the original forbearance agreement and the amended forbearance agreement, both the Antos parties and SJCV acknowledge the debt, acknowledge that there were no defaults by CBC and receive the benefit of the forbearance.

Mr. Bloom doesn't understand. He got what he bargained for. He got possession of the house. He got forbearance. And when the lender decided that a forbearance of two years and another three months -- the whole thing is almost three years because he took possession in August even though the document isn't executed until September, and he doesn't start paying until the first of the year because he gets 90 days for nothing, in spite of all of that time, he's not ready to pay. March 31. And when he's told no more extensions, now he starts making accusations.

The veracity of Mr. Bloom is what we have to deal with, Judge. I appreciate that you wouldn't grant my 50(b) motion. I went and read the case. And if you have to take a look at Mr. Bloom and his veracity, 50(b) isn't the appropriate remedy.

I probably shouldn't have questioned him at all, but I did, and now he has proven himself to be untruthful over and over, intentionally, again and again. It cannot be by accident. His refusal to answer questions yes or no, his attitude on the stand and gloating when I couldn't find KCI at first. Oh, it wasn't in the document. Imagine that. Page 1, paragraph A1, KCI, not Mr. Antos is the maker of the note, KCI.

Comes before this Court and lies within impunity.

So now we go through the documents. We get the forbearance agreement executed. Again, they affirm no default. They don't dispute the amount. The only dispute they have is that somehow the trust was not allowed to give this collateral.

So now let's take a look at the pledge agreement because the allegation is that they didn't sign it. Well, if you look at that signature page, SHAC didn't sign it either. It says SHAC, but it doesn't say SJCV as manager. It says Jay Bloom. Jay Bloom is the manager of SJCV, not the manager of SHAC. However, as the Court is well aware, under Nevada law you can ratify these types of defects, and that's exactly what they did first in the forbearance agreement, which had all of this stuff attached to it, and then in the amended forbearance agreement two years later. They acknowledge a hundred percent pledge.

He comes before this Court and says, No, that's legacy language.

Do you have any evidence of that?

No.

Got no evidence. This Court must deal with the evidence before it. The evidence before it is Mr. Bloom didn't tell the truth. Those agreements are binding.

Now, let's talk about First 100 just for a minute. I took the time to go through email after email of Mr. Bloom telling Mr. Hallberg that he was going to pay him, but somehow, even though the document was executed -- everything will be done next week. We sold this. We found this -- not a dime. Not one dime has this man paid as contracted.

And I hope after all this evidence that you've heard, Judge, it will put you in a position to grant summary judgment for the Antos parties because the Antos parties didn't get anything they bargained for. Zip. Mr. Bloom got what he wanted.

No tax returns, no reports, no quiet title, no repairs, the lien, the health and safety lien, over and over again, item after item, no performance. And it's admitted. He admits it. Didn't do it.

So the notices, Judge, Mr. Bloom received more than the statutory notice that he's required. All that is required of this loan is under the nonresidential portion because Mr. Bloom is not the maker or the obligor, and he's the occupant of the house. So we gave him the pre-notice pursuant to 107, which was not required. We did put CBC I on that notice because CBC I is the person that's on the note.

And I believe that it is clear that the notice of default and election to sell contained the proper disclosure of the assignment and that therefore the notice of default and election to sell are proper under 108.

And this party has received adequate notice. They've provided you no evidence to the contrary.

And I want to just touch base on two things, Judge. First, we started this case because they wanted a TRO and preliminary injunction to stop an eviction that hadn't been started. They had received a notice, and the notice predated Emergency Directive 008, but it did overlap, no question about it. The directive came out about a week or 10 days afterwards. And so the Court entered that order that said you can't evict him. And I appreciate that, Judge, but there wasn't on eviction proceeding pending.

Then they came back before you and sought to have the foreclosure enjoined, and I believe your exact information was that Mr. Mushkin knows how to start a foreclosure, and I'm not enjoining the foreclosure. And when he does start the foreclosure, you can come back.

I did start the foreclosure, and we've come back.

THE COURT: Darn.

MR. MUSHKIN: Darn. The governor allowed us to go forward at long last.

And so, Judge, I think you have been more than generous. You have let these people stay in this house by posting a thousand dollar bond and paying zero on the third, zero. You required them to pay the first and the second. They were required under contract after March 31st to do that, and you've let them stay there, and they have paid us bubkes.

And interestingly enough, now they come before you and they want to say we don't owe the money. At least I think that's what they want to say.

Or maybe what they want to say, Judge, is they owe it, but they don't want to pay it.

Or maybe what they're saying, Judge, is they owe it but not against the house and only against their cockamamie judgment that they've been telling people all over town that they're going to collect to billions, and they got zip.

And I apologize if I get exercise, Judge. I've been 42 years practicing law, and never in my career have I seen anyone testify intentionally falsely like this before, never, in the face of documents, in the face of contradictory witnesses, never.

The conclusions of law that we are asking for the Court is that they have not met their standard for preliminary injunction. 31.010 sets it out. They haven't even sniffed it, Judge.

> When a document is clear and unambiguous on its face, the Court must construe it from the language therein.

Southwest Trust Mortgage Company versus K&B Door. That's a 1988 case, Judge.

They have given you no opportunity to do anything but enforce these contracts. They haven't provided you a scintilla of evidence that would lead to any other conclusion.

> The Court has no power to create a new contract or new duties for the parties which they have not created or intended themselves.

That's *Old Aztec Mine versus Brown*. That's a 1981 case.

> And the parties are free to contract, and the courts will enforce the contracts if they are not unconscionable, illegal or in violation of public policy.

That's Rivera versus Rivero -- I'm sorry. *Rivero versus Rivero*. And that's a 2009 case.

The Nevada Supreme Court has held in *Pioneer Title* that

> It is not proper function of a court to rewrite or distort a contract under the guise of judicial construction. But when all -- the law will not make a better contract for the parties than they themselves have seen fit to enter into, nor 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.

Pioneer Title versus Cantrell. That's a 1955 case.

The relevant documents, including but not limited to the 2017 forbearance agreement and the amended forbearance agreement dated December of '19 are clear and unambiguous as a matter of law. They have not even alleged that they were ambiguous. The only allegation is that somehow SJCV didn't sign the pledge agreement, not that it didn't say what it said, just that somehow they didn't sign it. I submit to the Court they did sign it, Judge. Jay Bloom signed it.

There's no evidence to show you that the note isn't secured by the property. It clearly is.

The plaintiffs have waived any defects on two occasions, first in the forbearance agreement and then in the amended forbearance agreement.

They now come before you and say that CBC was in default, but they can -- they have no proof of it. CBC provided you through my office evidence of checks from January, February and March of 2020. Mr. Bloom has not provided you checks to show payment for those months. He told you that, but he didn't do it.

He told you he was going to abide by your order, but he didn't do it. You held him in contempt for failure to pay timely. Seems like a repetitive theme here, Judge.

Plaintiff agreed in the 2017 forbearance agreement to pay the amounts in question by a separate promise to the Antos parties. That's Exhibit 1 and Exhibit 16. They have provided you know defense to that obligation.

Your Honor, NRS 107.400 through 107.560 was codified by Senate Bill 321 on March 18th of 2013, the Homeowner's Bill of Rights. It does not apply to this transaction. The owner of the property is not living in the house. Pure and simple.

The doctrine of merger provides that

> Whenever a greater and a less estate coincide and meet in one and the same person without any intermediate estate, the less is immediately merged into the greater and thus annihilated.

And that is 31 CJS Estate, Section 153.

Your Honor, that is exactly the code section that shows that their allegation of merger is false. There is no merger. There is no legal title that has been consumed as a matter of law. Legal title has always been in SHAC. The only interest that CBC took was in stock, and CBC was never the holder of the note. The holder of the note was either CBC I or after the assignment 5148. But there's no evidence to show that either of those entities has any interest in the property either by way of stock or equity. Thus the doctrine of merger does not apply.

And I cite in my proposed findings several cases for the Court:

Citizens State Bank versus Countrywide. That's an Indiana case.

And the Nevada courts have held similarly to the Indiana courts in the *Aladdin Heating Corp. versus Trustees of Central States*. That's 93 Nevada 257, a '77 case. In that case the appellants argued that the respondents could not foreclose on their deed of trust because that deed had been extinguished by merger. When the respondents received the deed of sale, the court held that a merger had not occurred for two reasons: The party did not intend for the merger to take place, and the interests that said to merge were not coextensive and commensurate. They don't have facts for merger here. Pure and simple. They've never made a statement -- they've never been able to show it. They haven't shown it by way of this evidence, Judge.

The one-action rule, very quickly, Judge, has been waived. And we cited the *Bonnecamp* (phonetic) case because the one-action rule doesn't get you out from under the note. The one-action rule requires that you get credit for whatever you get. So if the creditor sues the debtor personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor to proceed against the security first before seeking a deficiency from the debtor; or decline to assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability to proceed against the security. That's again NRS 40.435, Section 3, and this *Bonnecamp* case. Those facts do not exist here, Judge. Pure and simple. They do not have a case for the one-action rule. For one, it was waived in writing. And, two, it does not get them out from under it.

And I show you in 6.21 where the deed of trust specifically talks about NRS 40.430 and allows for the waiver of that.

And then we talked about cumulative remedies, Judge, and that's in the forbearance agreement, Section 25.

And I'm hoping, Your Honor, that you will conclude as a matter of law that the plaintiffs have not established facts or law to support the claim of the one-action barring recovery under the defaulted note and security documents. It simply does not.

Judge, it's kind of interesting what they come before this court and ask you to do. They want to steal the house. They don't want to pay. It's preposterous. They ignore the promises to the Antos parties, focus solely on this mythical defense to the note and deed of trust. Mr. Antos doesn't claim a defense to the note and deed of trust. They want to claim a defense after they entered into a forbearance agreement where they promised to pay.

They were provided a preliminary title report. It showed the first. It showed the second. It showed the third, and it showed all those goofy judgments, but they didn't do what they contracted. They didn't file a quiet-title action. They didn't adequately maintain the house. They didn't pay the real estate taxes. They didn't take care of the HOA lien. They didn't do what they contracted for in the forbearance agreement, in the amended forbearance agreement and the operating agreement. They simply ignored it.

And, Judge, the temerity of this is beyond pale. I am stunned that when they are finally, after the negotiations break down and we finally go into them and say okay, March 31st, that's it, we're not granting any more extensions to the forbearance agreement, can't be a default. Can't be a default even though the document says this is limited relief. The forbearance agreement only forebears certain defaults. You still have to do this. You still have to do that. You still have to provide the information. And the attorneys write the letter. Can't be in default. It's unbelievable. It is absolutely unbelievable, Judge.

Respectfully, Your Honor, I think, as you said, we're going to stop beating this dead horse. This -- this witness lied to you over and over. And, Judge, you should be as angry as I am.

Thank you very much for your time, Judge.

THE COURT: Thank you, Mr. Mushkin.

Mr. Gutierrez.

REBUTTAL ARGUMENT FOR THE PLAINTIFFS

MR. GUTIERREZ: Thank you, Judge.

I think the relief the defendants are asking the Court to make is a clear violation of the automatic stay. The first thing that Mr. Mushkin requested was for this Court to deny the preliminary injunction -- that would affect SHAC, the debtor and its properties, the 5148 house -- and vacate the pending TRO in place. To take action directly would violate the stay, which affects SHAC, is exactly the request, the relief that Mr. Mushkin asked this Court.

We'll be seeking relief in front of the bankruptcy court on violation of the stay, and we believe that's a clear violation.

And exactly what I pointed out earlier today is we can't go forward on this because of that. That's exactly what this whole case is about is about the Spanish Heights Acquisition Company property, the defenses to foreclosure that were raised, there was a stay in place, and now the exact action is to -- there's no way to parse it -- to remove any order from this Court that was in here previously to allow foreclosure to proceed. It's clear what the defendant's actions and intent --

THE COURT: So your position is that regardless of what factual findings I enter I can't vacate the injunction because of how the injunction is currently framed?

MR. GUTIERREZ: That's exactly it, Your Honor.

THE COURT: Okay. I just wanted to make sure it was clear on the record what you were saying.

MR. GUTIERREZ: That's exactly it. Thank you.

MR. MUSHKIN: And, Your Honor, I'd like to address that issue at some point.

THE COURT: In a little bit. I've got to let him go.

MR. MUSHKIN: No. No. Thank you.

MR. GUTIERREZ: Thank you.

Judge, the defendants want a clear path to move against the debtor's property. You hit the nail on the head as far as what the position is. That's why we believe we couldn't go forward today.

Your Honor, there was some other issues raised by Mr. Mushkin. The first of which, and he keeps raising this, was that my firm was counsel for First 100 and also counsel on this transaction in 2017 because we were CCed on an email. Well, Mr. Bloom clearly testified the reason I was CCed on an email was because, as counsel for First 100 and one of the lead attorneys out of the nine other firms that are helping on collecting on this judgment, I was the one in charge with making sure that if anything was collected pursuant to the security agreement they would be paid. That's why I was being CCed. Mr. Bloom clearly testified about that.

But Mr. Mushkin has other ideas that Mr. Bloom perjured himself by saying I wasn't counsel. Well, where's my emails with Bernie Nelson on these transactions? There are none. That is clearly a red herring, Your Honor. There is zero relevance for this, but I wanted to make sure the record is clear because Mr. Bloom clarified that during his examination.

Mr. Mushkin also said that Mr. Bloom's testimony was a moving target, and he said, quote, "He knew it was a commercial transaction when he testified in May of 2020." But again he doesn't provide a cite. He just makes it up. He just kind of pulled it out of thin air and say you said it, and if you deny it, well, then I'm just going to leave that out there. This is repeated conduct by counsel to make a statement with no factual assertion and nothing to back it up. There is nothing that shows that Mr. Bloom knew this was a commercial transaction in May of 2020.

But the evidence showed that CBC sold its note to 5148. That was only found out after the litigation started. When we were here in front of Your Honor on the TRO, we found out about it.

There's a lot of things that were found out during the first time during this because none of the documents were provided to Mr. Bloom. That was clear today. Mr. Hallberg agreed. Listen, we didn't provide the loan documents to Mr. Bloom. We didn't provide the 10 amendments to Mr. Bloom.

So there's certain things that were discovered during the course of this litigation that were never previously disclosed.

Your Honor, counsel also used an analogy about owning MGM stock and how that wouldn't apply if he had some type of loan and the merger doctrine wouldn't apply. That analogy doesn't apply at all because the merger doctrine is a real property construct. It doesn't have to do with this personal debt. So it's a real property construct, and that analogy regarding MGM stock and potentially having a loan and that would extinguish does not apply in this scenario, Your Honor.

And, Your Honor, I think it's pretty -- if the Antos trust was added as an additional borrower or guarantor, we wouldn't be here. The fact of the matter is it's undisputed; they were never added to the note. They were never added to the amendments. It was always with the Antoses individually. That testimony is clear. And it's undisputed.

And you start to look at, okay, if that's the case well, then what's the validity of this third deed of trust? You know, now that -- what is it actually securing? What debt does the Antos trust have that own the property that's actually security? That was never -- counsel and the defense never was able to articulate exactly that. They've been trying to parse things together when (indiscernible) the documents, when you review them, show that there was a commercial loan to KCI that was guarantor -- guaranteed by the Antoses individually for several years. And it was only towards the end when they try to add this as some type of guarantee, and the documents do not support them.

So, Your Honor, given that, I think we've made our position clear on the legal issues and our position as far as the effect of this hearing. And, Your Honor, we'll (indiscernible), but if you have any questions, Your Honor, you wanted to ask, I'd be happy to answer.

THE CLERK: No. You answered my questions earlier.

MR. MUSHKIN: Thank you.

THE COURT: Mr. Mushkin, you wanted to be heard related to whether a vacating -- or I'm sorry, a modification of the current existing preliminary injunction may violate the bankruptcy stay.

REBUTTAL ARGUMENT FOR THE DEFENSE

MR. MUSHKIN: So, Your Honor, it will not, and here's why. The bankruptcy stay is in place. So anything that's done by this Court will have no effect.

THE COURT: Well --

MR. MUSHKIN: One thing Mr. --

THE COURT: I don't think you understand. I'm not allowed to do anything that may violate the bankruptcy stay as well --

MR. MUSHKIN: That's correct, Your Honor.

THE COURT: -- which means that if I vacate an order that directly affects Spanish Heights Acquisition, the debtor in bankruptcy, means that I would be in trouble too.

MR. MUSHKIN: I would agree with that except Spanish Heights Acquisition Company is not a party to the agreements. The agreements are between --

THE COURT: They're a party to my preliminary injunction.

MR. MUSHKIN: You're right, Judge. But if your preliminary injunction is based upon facts that are false, then your preliminary -- your TRO, there is no preliminary injunction, which should expire of its own accord, will expire of its own accord.

So what I'm asking you to do is deny the preliminary injunction. The TRO expires of its own accord. I may have spoken a little in a -- a little off.

THE COURT: I understand what you're saying.

MR. MUSHKIN: Yes. So and because the bankruptcy stay is in place, you are not impacting the estate. The estate has a stay. They're protected.

Counsel is correct. I am trying to get a straight line to foreclose. And as soon as I get the relief that I need from the bankruptcy court, then I'll have that ability to go forward. That relief will have to go through the bankruptcy court, not through this Court, but your TRO should expire.

Your Honor, I am troubled that they stand before you and say they didn't know when the first page of the forbearance agreement says KCI. That's a real problem for me, Judge.

And my analogy about MGM is pretty simple. The bonds of MGM are secured by their real property. The stock of the company which owns that real property is the exact analogous situation to here. If I were a stockholder in MGM and a bondholder at MGM, oh, merger. That doesn't happen, Judge. Major institutions play both sides.

And, finally, this notion that they can come before you and say that the trust wasn't added as a borrower and the trust wasn't added as a party, Your Honor, I cited the documents, 34 and 50. And let's see if I can -- 26, 34 and 50. And those all took place well before Mr. Bloom comes onto the site. It's way before him by -- the last document I think is 11 months before him, and the other ones are years before him. It is simply false testimony and false argument. The trust is a party to the note and deed of trust. The party did give the deed of trust. It was specifically authorized by the trustees. And it's just not even at issue. I'm stunned that they make such a specious argument.

And I thank you again for your time, Judge.

THE COURT: Mr. Gutierrez, anything else you'd like to add?

MR. GUTIERREZ: No, Your Honor. Thank you.

THE COURT: The matter will stand submitted.

Put it on my chambers calendar for Friday.

I don't know if I'll get it done by Friday, but I'm going to do my best.

If anybody hears something from the bankruptcy court, please send a copy to Dan.

MR. GUTIERREZ: Thank you, Judge.

MR. MUSHKIN: Thank you very much, Your Honor.

THE COURT: Everybody be well.

(Proceedings concluded at 3:21 p.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

Dana P. Williams

DANA L. WILLIAMS, TRANSCRIBER

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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,

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.: XI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

a) Contractual interpretation and/or validity of the underlying "Secured Promissory Note" between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);

b) 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 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);

c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);

d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth, Seventh Cause of Action); and

e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of Action).

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

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

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

GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, appearing by and through its representative Alan Hallberg ("Hallberg"); 5148 SPANISH HEIGHTS, LLC, 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, (collectively "Defendants") all Defendants appearing by and through their counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court makes the following findings of fact and conclusions of law:

I. Procedural Posture

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

Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, 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 ("Antos Trust"); DACIA, LLC, with the First Amended Complaint being filed on May 15, 2020.

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

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

Emergency Directive 008.

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

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

On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against SJCV, which SJCV answered on September 28, 2020.[5]

II. Findings of Fact

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

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

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

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

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

6. The Property is currently owned by Spanish Heights[6] which has entered into a

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[5] The Antos have a pending motion for summary judgment.

[6] The manager of Spanish Heights is SJCV.

written lease agreement with SJCV.[7]

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

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

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

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

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

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

13. The Note was modified and amended several times.

14. On November 13, 2013, a Fourth Modification to Secured Promissory Note ("Fourth Modification") was executed.

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

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

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

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[7] The manager of SJCV is Bloom.

Agreement”).

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

> 3.3 Sale, Encumbrance or Disposition. Without the prior written consent of the Secured Party, Antos will not (a) allow the sale or encumbrance of any portion of the Collateral and (b) incur, create, assume or permit to 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…

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

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

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

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

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

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

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

24. The Certificate of Trust provides in part:

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

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

> To execute and deliver a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust"), to secure (i) obligations owing to Lender by KCI Investments, LLC, a 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 June 22, 2012, in the maximum principal amount of $3,250,000.00 (the "Note") executed by Borrower in favor of Lender, (iii) that certain Guaranty dated June 22, 2012, executed by the Grantors as individuals and not in their capacity as trustees, and (iv) the other documents and instruments executed or delivered in connection with the foregoing.

25. The Certificate of Trust further provides:

> The Deed of Trust and Lender's provision of credit under the terms of the Note will directly and indirectly benefit the Trust and its beneficiaries.
>
> The Trustees of the Trust have the authority to enter into the transactions with respect to which this Certificate is being delivered, and such transactions will create binding obligations on the assets of the Trust.

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

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

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

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

and Waiver of Defaults ("Ninth Modification") was executed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> My thought is that this proposal gets the 3rd lender:
> - a full recovery of its Note balance plus all protective advances past and future,
> - interim cash flow and
> - provides interim additional full collateral where, given the current value of the property, the 3rd position lender is currently unsecured.
>
> As to the Seller, he:
> - gets out from under a potential deficiency judgment from the 3rd position lender and
> - unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

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

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

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

43. Mr. Bloom testified that he was not provided with a complete set of documents reflecting the prior transactions between the Antos and KCI[8] and that misrepresentations were made regarding the prior transactions by CBCI.

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

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

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

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

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

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

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

extensions.

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

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

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

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

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

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

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

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

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[9] The Pledge Agreement states in pertinent part:

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

57. The Pledge Agreement provides in pertinent part, "Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default … to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral."

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

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

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

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

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

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Living Trust (the Antos Trust"), SJC Ventures, LLC ("SJCV")(collectively the "Pledgors") to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

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

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

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

63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements, dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCV[10] acknowledged that it pledged its membership interest in Spanish Heights as collateral for the 2017 Forbearance Agreement.[11]

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

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

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

***

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

***

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

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

66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security Agreement "shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Security Agreement…"

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

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

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

1. Evidence of homeowner's insurance coverage Pursuant to Paragraph 1(A)(6) of Amendment to Forbearance Agreement and Related Agreements;
2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to Forbearance Agreement;
3. Evidence of Bank of America account balance of $150,000.00 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
4. Opinion letter from SJC Ventures and 1st One Hundred Holdings counsel regarding the Judgment and Security Agreement pursuant to Paragraph 1(A)(12) of Amendment to Forbearance Agreement and Related Agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***

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

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

From the Pledge Agreement:

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

From the Amendment to the 2017 Forbearance Agreement:

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

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

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

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

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

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

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

III. Conclusions of Law

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

> Cases in which injunction may be granted. An injunction may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
>
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

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

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

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

4. The Note is secured by the Property.

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

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

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

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

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

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

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

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

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

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

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

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

17. The "One-Action Rule" was specifically waived by the debtor. The Deed of Trust paragraph 6.21(a) states:

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

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

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

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

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

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

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

JUDGMENT

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing obligation of SJCV.

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

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

Dated this 6th day of April, 2021

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

/s/ *Dan Kutinac*
Dan Kutinac, JEA

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC, Plaintiff/Judgment Creditor, vs. FIRST 100, LLC, a Nevada Limited Liability Company; FIRST ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company aka 1st ONE HUNDRED HOLDINGS LLC, a Nevada Limited Liability Company, Defendants/ Judgment Debtors.	CASE NO. A-20-822273-C DEPT. 13 **FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER RE EVIDENTIARY HEARING** **Hearing Date: March 3 and 10, 2021**

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

The above-captioned matter has involved motion practice regarding several items: 1) the December 18, 2020 order to show cause why Defendants/Judgment Debtors, First 100, LLC ("First 100") and First One Hundred Holdings aka 1st One Hundred Holdings LLC ("1st 100," and together with First 100, "Defendants") and Jay Bloom ("Bloom") should not be found in contempt of court (the "OSC") for their failures to comply with the Order Confirming Arbitration Award, Denying Countermotion to Modify, and Judgment entered November 17, 2020 (the "Order"), 2) the January 19, 2021 motion to enforce settlement and vacate post-judgment discovery proceedings filed by Defendants (the "Motion to Enforce"), which was denied without prejudice pending the resolution of outstanding questions of fact following the evidentiary hearing, 3) the January 26, 2021 countermotion for sanctions ("Countermotion for Sanctions") filed by Plaintiff/Judgment Creditor TGC/Farkas Funding, LLC ("Plaintiff") in conjunction with its opposition to the Motion to Enforce, which was denied without prejudice pending the evidentiary hearing, and 4) the February 19, 2021 motion for sanctions filed by Plaintiff in conjunction with Plaintiff's motion to compel that was reserved for resolution following the evidentiary hearing (the "Motion for Sanctions"). The Court held the evidentiary hearing on March 3, 2021 and March 10, 2021 (the "hearing") to resolve the Claims. Erika Pike Turner, Esq. of the law firm of Garman Turner Gordon LLP ("GTG") appeared on behalf of Plaintiff, Joseph Gutierrez, Esq. ("Gutierrez") of the law firm of Maier Gutierrez & Associates ("MGA") appeared on behalf of Defendants and Bloom, and evidence was presented by the parties through exhibits and testimony. Based thereon, the Court finds and concludes, as follows:

FINDINGS OF FACT

1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in Defendants consisting of $1 million from 50% member TGC 100 Investor, LLC, managed by Adam Flatto ("Flatto"), and services (aka sweat equity) from 50% member Matthew Farkas ("Farkas").[1] In exchange for Plaintiff's contributions, Plaintiff received a 3% membership interest in Defendants.[2]

2. Defendants are affiliated Nevada limited liability companies governed by nearly identical operating agreements.[3] At the hearing, Bloom identified himself as a "director" of Defendants who "participated in the management."[4] The Secretary of State documents filed by Bloom on behalf of Defendants do not identify any "directors."[5] Defendants' operating agreements and the Secretary of State records show that since formation, both Defendants have been single manager-managed with SJ Ventures Holding Company, LLC ("SJV") appointed the sole manager with Bloom as the sole manager of SJV.[6]

3. The business of Defendants was to acquire HOA liens and then acquire the underlying properties at foreclosure.[7] Defendants' active business concluded in 2016, except for attempts to monetize a judgment obtained in favor of Defendants against Raymond Ngan and his

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[1] Exhibit 20, PLTF_154, 170.

[2] Exhibit 2, PLTF_006.

[3] Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 ("3/3 Trans."), 8:10-16.

[4] 3/3 Trans., 160:3-7.

[5] Exhibits 25-26.

[6] Exhibit 7, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF_055; Exhibit 8, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF_082; see also 3/3 Trans., 221:18-23.

[7] 3/3 Trans., 159:23-160:2.

affiliated entities in 2017 (the "Ngan Judgment"). As Plaintiff did not receive any accounting to show what happened to Defendants' business or its assets and had questions, on May 2, 2017, Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of Defendants' operating agreements and NRS 86.241.[8] Defendants did not provide any documents in response to Plaintiff's demand, resulting in Plaintiff filing an arbitration demand under a provision of Defendants' operating agreements requiring that such matters be determined through arbitration with the party bringing the matter required to pay all the upfront costs of the arbitration, subject to reimbursement in the event said party prevailed.[9]

4. On September 15, 2020, a 3-arbitrator panel entered a "Decision and AWARD of Arbitration Panel (1) Compelling Production of Company Records; and Ordering Reimbursement of [Plaintiff's] Attorneys' Fees and Costs" (the "Arb. Award").[10] The Arb. Award cited the May 2, 2017 demand as the "initial request for company records that is the subject of the arbitration demand filed by Plaintiff," and found that Defendants' response to that May 2, 2017 demand was the "first in a long and bad faith effort by [Defendants] to avoid their statutory and contractual duties to a member to produce requested records."[11]

5. After moving to Las Vegas in 2013, Farkas (Bloom's brother-in-law)[12] started working with Bloom on behalf of Defendants and was provided a title of Vice President of Finance and the primary role of raising capital for Defendants consistent with his background experience on Wall Street (investment banker, operating a hedge fund, buying and selling securities).[13] Farkas left his employment with Defendants in the summer of 2016, and thereafter had very little involvement with Defendants' operations.[14] During the course of Plaintiff's efforts

[8] Exhibit 1.

[9] Exhibit 2, PLTG_006; Exhibits 7 and 8, § 13.9 (any dispute arising out of or relating to the Operating Agreements "shall solely be settled by arbitration").

[10] Exhibits 2 and II.

[11] Exhibit 2, PLTF_006.

[12] 3/3 Trans., 123:2-13.

[13] *Id.*, 84:15- 85:5, 15-21, 89:3-5, 123:14-23.

[14] *Id.*, 124:1-125:21, 141:10-15, 152:6-24.

to obtain books and records Bloom has requested and Farkas has signed a series of documents purporting to bind Plaintiff to its detriment and then argued for enforcement of those documents based on the fact a signature of Farkas is affixed. This was done despite Plaintiff's affirmative notice that Farkas did not have authority to bind Plaintiff without Flatto's consent delivered on July 13, 2017, to Defendants and MGA, as counsel for Defendants, as well as the registered agent for Defendants,[15] which notice attached a prior notice to Defendants emailed on April 18, 2017, and explained to Defendants that Farkas is not the Plaintiff's manager and Farkas does not have the authority to bind Plaintiff.[16]

6. The Arb. Award conclusively resolved Defendants' multiple arguments that they were not required to produce the records, including Defendants' argument that Farkas had signed a form of redemption agreement that released Defendants from any responsibility to make company records available to Plaintiff.[17] The redemption agreement was deemed irrelevant by the arbitrators, as Farkas did not have the authority to bind Plaintiff without the consent of Flatto, as well as there being a lack of performance by Defendants.[18]

7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all respects" on the claim for books and records of Defendants arising from Defendants' operating agreements and NRS 86.241[19] and ordered Defendants to "forthwith, but no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying."[20] Fees and costs were awarded Plaintiff.[21] The Arb. Award further provided that the "Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby

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[15] Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

[16] Exhibit 22.

[17] Exhibit 2, PLTF_007.

[18] *Id.*

[19] *See* Exhibit 1, PLTF_002.

[20] Exhibit 2, PLTF_009.

[21] *Id.*

denied."[22]

8. Plaintiff commenced this case for the purpose of confirming the Arb. Award. In response to Plaintiff's motion to confirm Arb. Award, Defendants filed a countermotion to modify the Arb. Award and provide for the imposition of expenses to be paid by Plaintiff as a condition of Defendants furnishing the books and records. Attached to Defendants' countermotion was Bloom's declaration contending that Defendants had no funds or employees, and the only way for Defendants to obtain and furnish the records in compliance with the Arb. Award would be to have the Court order Plaintiff to first pay expenses.[23] Defendants had an obligation to arbitrate its request for Plaintiff to pay expenses associated with the production of the books and records under the arbitration provision of their operating agreements.[24] The Court analyzed Defendants' attempt to alter the merits of the Arb. Award to award Defendants' relief that was absent from the Arb. Award, and denied the countermotion to modify the Arb. Award as part of the Order.[25]

9. The Order was entered November 17, 2020, constituting a final, appealable judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon Plaintiff's application citing no compliance or communicated intention to comply with the Order. The OSC scheduled a hearing for January 21, 2021.[26] The OSC was served on MGA on December 18, 2020; in addition, Bloom was personally served with the OSC on December 22, 2020.[27] On December 21, 2020, notices of judgment debtor examinations for each of Defendants and post-judgment discovery were served on MGA.[28] Bloom was also personally

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[22] *Id.*

[23] Exhibit 3.

[24] Exhibits 7 and 8, § 13.9.

[25] Exhibit 4, PLTF_019, ll. 15-27.

[26] Exhibit 5.

[27] *See* OSC Certificate of Service (MGA served through Odyssey e-service); Declaration of Service of the OSC on Bloom, filed December 30, 2020.

[28] *See* the December 21, 2020 Notice of Entry of Order for Judgment Debtor Examinations.

served with post-judgment discovery under NRCP 69(2) on December 29, 2020.[29]

10. On January 19, 2021, Defendants filed the Motion to Enforce on an order shortening time, arguing that a written settlement agreement dated January 6, 2021 (the "Settlement Agreement") executed by Farkas, purportedly on behalf of Plaintiff, and by Bloom, on behalf of Defendants, mooted the OSC hearing and post-judgment discovery because it provides for immediate dismissal of the Order, the underlying Arb. Award and other motions pending in this case, with prejudice. In opposition to the Motion to Enforce, Plaintiff argued that the Settlement Agreement is not valid and enforceable for multiple reasons, including that it was executed by Farkas without Flatto's knowledge or consent and therefore could not bind Plaintiff, and that the circumstances surrounding the Settlement Agreement, including those underlying the Motion to Compel, are further evidence of Defendants' and Bloom's contempt of this Court's Order, warranting sanctions against Defendants and Bloom.

11. Defendants' and Bloom's response to the OSC filed January 20, 2021 incorporated the Motion to Enforce and reiterated the previously denied argument that no production of books and records should be required until Plaintiff first pays demanded expenses associated with the production. Bloom also argued immunity from penalties for contempt as a non-party to the Order.

12. The purported Settlement Agreement expressly provides that upon execution of the Settlement Agreement, Plaintiff "will file a dismissal with prejudice of the current actions related to this matter, including the arbitration award and all relation [sic] motions and actions pending in the District Court."[30] In exchange, Defendants agreed to pay Plaintiff $1 million, plus 6% per annum since the date of investment, but contingent on its collection of proceeds from a sale of the Ngan Judgment.[31] Defendants' Motion to Enforce seeks specific performance of Plaintiff's obligation under the Settlement Agreement to effectuate dismissal of this case, with prejudice.

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[29] *See* the Declarations of Service of Subpoena on Bloom, filed January 5 and January 7, 2021.

[30] Exhibit 13, PLTF_106.

[31] *Id.*

13. On the evening of January 14, 2021, Raffi Nahabedian, Esq. ("Nahabedian") made the first mention of a settlement to Plaintiff in connection with his demand for substitution of counsel for Plaintiff in the case,[32] and by the next day, January 15, 2021, even before the Settlement Agreement was disclosed to Plaintiff, Plaintiff immediately sent notice of repudiation to Defendants through its counsel of record, GTG.[33] On January 19, 2021, the Motion to Enforce was filed, attaching the Settlement Agreement- the first time that the Settlement Agreement was provided Plaintiff after its execution.[34] On January 26, 2021, Plaintiff filed an Opposition to the Motion to Enforce, reiterating its repudiation upon the declarations of both Flatto and Farkas.[35]

14. From the January 7, 2021 execution of the Settlement Agreement through the time of Plaintiff's repudiation (and continuing to the date of the hearing), Defendants did not ever pay, or make any attempt to tender payment to Plaintiff in performance of its obligations under the Settlement Agreement.[36] To the contrary, the only evidence of Defendants' performance pursuant to the Settlement Agreement was Bloom's efforts in conjunction with his counsel to secure dismissal of the Order and underlying Arb. Award to Plaintiff's detriment.[37]

15. Farkas, as the purported agent, testified clearly that he did not believe he had authority to enter into the Settlement Agreement (or that he was signing a Settlement Agreement on behalf of Plaintiff), and that Bloom understood that.[38]

16. Under the operating agreement for Plaintiff dated October 21, 2013, Farkas was designated the "Administrative Member" with authority to bind Plaintiff, but only "after consultation with, and upon the consent of, all Members [to wit: Flatto for TGC Investor]."[39] Farkas testified that once Farkas left his employment with Defendants, he effectively stepped out

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[32] Exhibit 11, PLTF_097.

[33] Exhibit 25.

[34] *See* Exhibit 38, PLTF_405 (Nahabedian's email).

[35] Exhibits FF and J.

[36] 3/3 Trans., 71:14-72:3, 138:19-21, 140:7-141:15, 215:15-18, 216:2-4, 18-21, 217:3-13.

[37] *See, e.g.*, Exhibit 28.

[38] Exhibit FF, ¶ 17, 3/3 Trans., 118:19-119:2, 128:18-131:4, 154:13-15.

[39] Exhibit 20, §§ 3.4(a), 4.1(c).

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of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that was reflected in a formal amendment to Plaintiff's operating agreement.[40] Further, whether Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically addressed in multiple communications to Defendants. First, there was the April 18, 2017 email,[41] then the July 13, 2017 letter[42] (attaching the April 18, 2017 email and further stating "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.[43]

17. Following the entry of the Arb. Award, on September 17, 2020, Farkas delivered his written consent to an amended operating agreement governing Plaintiff, which amendment provides that TGC 100 managed by Flatto had "full, exclusive, and complete discretion, power and authority" . . . "to manage, control, administer and operate the business and affairs of the [Plaintiff]."[44] Pursuant to the amendment, Farkas was expressly prevented from taking *any* action on behalf of Plaintiff, and Flatto had exclusive authority to bind Plaintiff. The purpose of the amendment was to alleviate pressure on Farkas as a result of his feeling uncomfortable being adverse to his brother-in-law, Bloom.[45]

18. The circumstances surrounding how the Settlement Agreement was prepared and executed are also relevant. The Settlement Agreement was drafted by Bloom[46] and executed by Bloom, as manager of Defendants.[47] It is dated January 6, 2021 but was executed by Farkas on January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

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[40] 3/3 Trans., 108:5-17.

[41] Exhibit 21.

[42] Exhibit 22, PLTF_, 179, 190.

[43] Exhibit 2, PLTF_007

[44] Exhibit 23.

[45] 3/3 Trans., 67:16-68:23; 131:7-13.

[46] Id., 193:25-194:2.

[47] Exhibit 13, PLTF_108.

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store for Farkas' signing and return.[48] Farkas did not know he was signing a Settlement Agreement when he signed it,[49] and there is no evidence he intended to bind Plaintiff to anything when he executed the documents. Notwithstanding the express terms of the Settlement Agreement providing that the signatories were duly authorized,[50] Farkas did not read that provision (or any provision)[51] and testified he never otherwise represented to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.[52] Farkas testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is corroborated by the lack of evidence of any back and forth on terms prior to the agreement being finalized by Bloom.[53] There is no evidence Bloom provided Farkas a copy of the Settlement Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other documents to be signed.[54] Farkas testified he believed that the documents he signed at the UPS store related to resolution of a threatened claim against him by Defendants in connection with his prior employment and included the retention of personal counsel for him.[55] This testimony was corroborated by Nahabedian's January14, 2021 correspondence referencing a threat of adverse action against Farkas from Defendants[56] and the fact that a form of Release between Farkas and Defendants was executed at the same time as the Settlement Agreement.[57]

19. Flatto was clear in his testimony at the hearing that he understood his consent was required for all decisions made by Plaintiff and he did not hold Farkas out as having authority to bind Plaintiff without his consent,[58] particularly after Plaintiff made its May 2, 2017 demand for

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[48] See, e.g., 3/3 Trans., 137:16-24.

[49] Exhibit FF, ¶ 16. *See* 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137:16-24, 156:13-18.

[50] Exhibit 13, PLTF_107, § 14.

[51] 3/3 Trans., 103:22, 118:3-9, 119:4-7.

[52] *Id.*, 136:16-19.

[53] 3/3 Trans., 137:1-8, 13-15.

[54] *Id.*, 211:17-25; 213:15-23.

[55] *See* 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137: 16-24, 143:21-25, 156:13-18.

[56] Exhibit 11, PLTF_097.

[57] Exhibit 28, PLTF_247-253; *see also* Exhibit 16 (text from Bloom threatening adverse action).

[58] 3/3 Trans., 35:23-36:20, 69:1-70:5.

books and records. This is corroborated by the 2017 communications to Defendants, his declaration in the arbitration, the Arb. Award, and the September 2020 amendment to Plaintiff's operating agreement.[59] Given the communications from Plaintiff in 2017, the Arb. Award, and no communications to the contrary subsequent to the Arb. Award from Flatto to Defendants, the Court concludes it was unreasonable for Defendants to believe any agreement entered into with Plaintiff without Flatto's consent would be valid and enforceable.

20. The circumstances surrounding the execution and attempts to enforce the Settlement Agreement, known to Defendants, further demonstrate that Farkas did not have apparent authority to bind Plaintiff to the terms of the agreement, which circumstances were actively concealed from Plaintiff and its counsel of record until the Motion to Compel was granted and records were produced by Nahabedian. Bloom did not act in good faith in his dealings with Plaintiff, nor did he give heed to any of the opposing restrictions brought to his notice.

It was revealed from Nahabedian's records:

- On January 4, 2021, Bloom contacted Nahabedian, Bloom's personal counsel on another matter,[60] via phone to discuss Nahabedian representing Plaintiff.[61] Within minutes of hanging up the phone, Nahabedian emailed Bloom an attorney retainer agreement for Farkas to execute ***on behalf of Plaintiff*** for Nahabedian to represent Plaintiff in this case.[62] Farkas was never advised Nahabedian was being hired to be Plaintiff's lawyer and he thought Nahabedian was going to be his personal counsel.[63] Farkas did not understand that Nahabedian was Bloom's

[59] Exhibits 2, 21-23, E, ¶ 5; 3/3 Trans. 59:23-60:20.

[60] *See Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing Nahabedian represented Bloom in the relevant January 2021 time period), 3/3 Trans., 13-15; 3/10 Trans., 45:11-19. Nahabedian was also former counsel for Defendants. 3/10 Trans., 20-22. Further, MGA is Nahabedian's personal counsel. 3/10 Trans., 45:23-46:1.

[61] Exhibit 30; 3/10 Trans., 48:6-21.

[62] Exhibit 28, PLTF_240-244.

[63] 3/3 Trans., 149:25-150:7.

personal counsel.[64] Bloom was even planning to advance the retainer to Nahabedian (although Nahabedian did not charge one notwithstanding his attorney retainer agreement provides its payment is a condition of his employment).[65]

- On January 7, 2021, at 1:58 pm, Bloom emailed the following documents (collectively, the "Bloom Documents") to a UPS store near Farkas' home: 1) the Settlement Agreement, 2) the Nahabedian attorney retainer agreement, 3) a letter, dated January 6, 2021, directed to Plaintiff's counsel, GTG, with Farkas purporting to terminate them,[66] and 4) a Release, Hold Harmless and Indemnification Agreement ("Release"). Together with the attached Bloom Documents, Bloom emailed directions to the UPS store that Farkas would be in, they should print one copy of each of the four documents, and once Farkas signs them, they should scan the signed documents, email than back to Bloom, and mail the hard copies to Bloom.[67] The Bloom Documents were ***not*** emailed or otherwise delivered to Farkas (let alone Flatto or GTG) at any time, before or after the UPS store was emailed the Bloom Documents, despite that Bloom knew Farkas' email address.[68]
- On January 7, 2021, at 2:40 pm (less than 45 minutes after they were first sent by Bloom), the UPS Store emailed Bloom a copy of the scanned, signed Bloom Documents.[69] On January 7, 2021, at 2:48 pm, Bloom forwarded the executed Bloom Documents to MGA attorneys Gutierrez and Jason Maier, Esq. ("Maier"), and Nahabedian via email with an exclamation "Here you go!" and follow-up

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[64] 3/3 Trans., 150:25-151:1; 3/10 Trans., 48:6-49:2.

[65] 3/10 Trans., 35:5-16

[66] The letter was not written by Farkas, and he did not review or approve of its contents. 3/3 Trans., 148:25-149:24.

[67] Exhibit 28, PLTF_245.

[68] *See* Exhibit 17, PLTF_123.

[69] Exhibit 28, PLTF_245-261.

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instructions to "get the Substitution of Attorney and Stip to Dismiss filed ***for [Plaintiff]*** and put this to bed in the next day or two…"[70] Bloom was directing action on behalf of both Defendants and Plaintiff to effectuate dismissal of the case, despite that he and Defendants were adverse to Plaintiff.

- On January 8, 2021, Nahabedian informed Bloom and Gutierrez that he needed a substitution of counsel to be executed by Farkas and GTG so that he could effectuate the dismissal, and Bloom explained that getting Farkas to "sign stuff is a pain in the ass."[71] The next day, Bloom explained to Nahabedian and Gutierrez (together with other MGA attorneys Maier and Danielle Barraza) that his intention was to "put in front of [Farkas]" further documents "for a second set of signatures." Bloom followed, "I'll have [Farkas] sign everything tomorrow."[72]
- Nahabedian started to question Farkas' authority to bind Plaintiff, but only to Bloom and MGA.[73] Notwithstanding that Nahabedian had still not had any email, text or one-on-one communication with Farkas in order to confirm his authority,[74] on January 14, 2021, Nahabedian sent correspondence to GTG as counsel for Plaintiff,[75] representing that he was hired to replace GTG. This correspondence was the first time it was disclosed to Plaintiff that there was an executed settlement agreement,[76] although the agreement was not attached to Nahabedian's correspondence. Farkas did not participate in the drafting of Nahabedian's January 14, 2021 correspondence, and he did not approve it before it was sent.[77] The correspondence was drafted by Maier (Defendants and Bloom's counsel in

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[70] *Id.* at PLTF_245 (emphasis added).

[71] *Id.* at PLTF_266.

[72] *Id.* at PLTF_278.

[73] *Id.* at PLTF_281, 284, 288.

[74] Exhibits 28-30; 3/10 Trans., 85:1-9.

[75] Exhibit 11.

[76] *Id.* at PLTF-097.

[77] 3/3 Trans.,144:22-148:24.

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this case), revised by Nahabedian (Bloom's counsel in another matter purporting to be acting on behalf of Plaintiff), and then approved by Bloom and Gutierrez (also Defendants and Bloom's counsel) before it was sent.[78]

21. Farkas and Flatto were conspicuously absent from any communications with Nahabedian for the purpose of effectuating dismissal of the case pursuant to the Settlement Agreement's terms or confirming authority to bind Plaintiff. Confronted at the hearing with the fact that Nahabedian did not communicate with Plaintiff's representative, but communicated with Plaintiff's adversaries, MGA and Bloom, relating to his purported representation of Plaintiff, Nahabedian testified that he took direction from Bloom because Bloom was Farkas' brother-in-law and his "conduit."[79] This exemplifies the lack of apparent authority from Plaintiff. At all relevant times, Bloom and his companies, Defendants, were adverse to Plaintiff with pending contempt proceedings against them, and under no circumstances should he have been directing Plaintiff's counsel without any member of Plaintiff's participation.

22. Although there is dispute between Farkas and Bloom regarding when Bloom was specifically informed that Farkas was removed from having *any* management interest in Plaintiff in September 2020,[80] Bloom and Nahabedian both knew that Farkas had officially resigned his management position in September 2020 by at least the time the Motion to Enforce was filed.[81] Despite learning of the restriction on Farkas' authority, Bloom and his counsel[82] were unfazed and moved forward on their enforcement efforts.

23. Bloom's refusal to recognize inconvenient limitations on Farkas' authority was shown to be pervasive and reckless. Given the arbitrators' expressly stated determination that

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[78] PLTF_311, 316-317, 318, 323, 328-332.

[79] 3/10 Trans., 51:17-20.

[80] Exhibit FF, ¶¶ 8, 17, 3/3 Trans.,136:12-21,198:2-21, 212:21-22; Exhibit 15, ¶¶ 19-21. At the Hearing, Bloom testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas' authority. Exhibit 28, PLTF_281.

[81] Exhibit 15, ¶¶ 19-21; Exhibit 28, PLTF_366.

[82] Maier is the only declarant in the Motion to Enforce.

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Flatto's consent was required to bind Plaintiff (before the September 2020 amendment was entered), the Court finds that no reasonably intelligent person with knowledge of that Arb. Award would once again attempt to enforce an agreement without Flatto's consent. In the hearing, Bloom testified he did not heed the Arb. Award because the evidence relied upon by the arbitrators in the arbitration hearing, to wit: a declaration provided by Farkas, was false.[83] Farkas testified unequivocally in rebuttal at the hearing that the contents of the declaration submitted to the arbitrators was reviewed by him, approved, and the contents were truthful.[84] Farkas' testimony, as well as the arbitrator's decision, is corroborated by the other documents in evidence, and the Court finds there is no support for Bloom's allegation of perjury.[85]

24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb. Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.[86] Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA[87] representing Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind [Plaintiff]."[88] Bloom did not heed any of the notices of Farkas' restricted authority to bind Plaintiff.

25. In the Motion to Enforce, Maier testified[89] that Farkas had authority based on Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and

[83] 3/3 Trans., 201:1-6; *see also* 200:10-20 (disregarding notices of restricted authority of Farkas), 203:2-11 (limiting the holding to the authority to execute the redemption agreement without limitation of a settlement agreement).

[84] 3/10 Trans., 87:25-88:14.

[85] *See, e.g.*, Exhibit 21-22 (the 2017 communications to Defendants) and Exhibit A, FIRST0031-32 (the redemption agreement including Farkas' signature as "VP Finance"- the title he had with Defendants, and no reference to Plaintiff).

[86] Exhibit 2, PLTF_007.

[87] At the Hearing, Defendants argued that no notice was effective without being sent certified mail pursuant to the Subscription Agreement. However, MGA has been counsel for Defendants even since before the subject disputes arose in May 2017, and MGA was the registered agent for Defendants in July 2017 when the letter was sent. Exhibit 26, PLTF_218.; Exhibit 27, PLTF_235.

[88] Exhibit 22.

[89] Motion to Enforce, 3:1-6.

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also interlineated a restriction of no litigation against First 100." Flatto executed the engagement letter along with Farkas as a "member,"[90] and the interlineation on the engagement letter was made by Flatto's lawyer and not Farkas, and the interlineation did not restrict litigation, only served to place a cap on fees except to the extent the scope expanded to include litigation.[91]

26. In addition, Maier testified in support of the Motion to Enforce[92] that Plaintiff's operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to September 2020, provides that the Administrative Member (Farkas) could not act without first obtaining the consent of the other members (Flatto).[93] At Section 4.4, it provides that persons dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the Administrative Member (Farkas until September 2020).[94] However, by the time of the Motion to Enforce, Defendants and Bloom had received notice of the amendment executed in September 2020 that changed the Administrative Member to Flatto and Flatto was the only person with authority to bind Plaintiff subsequent to that date.[95] In addition, the entry of the Arb. Award and 2017 communications providing notice of a restriction on Farkas' authority post-dated the operating agreement, negating Defendants' ability to conclusively rely upon Farkas' signature as binding authority under Section 4.4.

27. Finally, there was a lack of good faith in Bloom's dealings with his brother-in-law in order to obtain the signed Bloom Documents with haste and in intentional disregard of the restrictions set forth in the Arb. Award, the April 13, 2017 email and July 13, 2017 letter. At a minimum, Bloom was placed on notice that Plaintiff would dispute any document signed by Farkas without Flatto's knowledge and consent. Further, given that the Bloom Documents were

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[90] Exhibit 28, PLTF_299-300.

[91] 3/3 Trans., 33:1-19; Exhibit 28, PLTF_298.

[92] Motion to Enforce, 3:6-11.

[93] Exhibit 20, PLTF_159.

[94] *Id.* at Exhibit 20, PLTF_162.

[95] *See* fn. 81 above.

sent by Bloom to the UPS store for execution and they were returned by the UPS Store in less than an hour signed by Farkas, it was not reasonable for Bloom to believe that that was sufficient time for Farkas to review them, understand what he was signing, somehow communicate the matters to Flatto, receive the benefit of counsel regarding the terms, and receive Flatto's consent.

28. Under all the circumstances, the Court finds it was unreasonable for Bloom to ignore the notices of the restrictions that Farkas did not have authority to bind Plaintiff without Flatto's consent, and the Court thus concludes that there was a lack of apparent authority for Farkas to bind Plaintiff to the Settlement Agreement.

29. The Settlement Agreement expressly provides that, in exchange for dismissal, if Defendants sell the Ngan Judgment, Defendants will pay Plaintiff $1,000,000.00, plus 6% interest.[96] There is no evidence of any actual sale, or even ability to sell[97] the Ngan Judgment for a sufficient sum to pay Plaintiff $1,000,000.00 plus interest. Further, Defendants' promise for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the concession that the Ngan Judgment has not resulted in any collections since its entry in 2017, despite diligent collection efforts from MGA and other collection counsel.[98]

30. Further, per Defendants' operating agreements, Plaintiff is already entitled to *pro rata* distributions with the other members of the net proceeds from any sale.[99] Given the "if" qualifier of payment, and no sale amount that could be used to calculate whether Plaintiff would ostensibly receive more or less with the Settlement Agreement than with a distribution as a member, the Settlement Agreement does not support a finding of consideration beyond what Plaintiff could ostensibly already be entitled to recover from Defendants following a sale of the Ngan Judgment if it were to ever occur.

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[96] Exhibit 13, PLTF_106.

[97] Under Defendants' operating agreements, the sale of the only remaining asset of Defendants would require approval of Defendants' members. Exhibits 7 and 8, §6.1(B)(1).

[98] 3/3 Trans., 217:18-24. 218:9-15.

[99] Exhibits 7 and 8, Article V.

31. Additionally, the Release was not disclosed until after the hearing on the Motion to Compel. After its discovery, Defendants and Bloom were conspicuously silent on the Release's application, which under the plain terms would eliminate any consideration provided Plaintiff under the Settlement Agreement, by virtue of the express, broad release of the parties to the Release (Farkas and Defendants) as well as their representatives ***and affiliates*** from any and all claims, promises, damages or liabilities of every kind and nature whatsoever from the beginning of time until the January 6, 2021 effective date of the Release, covering any future liability under the Settlement Agreement also dated January 6, 2021.

32. "A meeting of the minds exists when the parties have agreed upon the contract's essential terms." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012).

Neither Plaintiff, Flatto, nor Plaintiff's known counsel, GTG, saw or reviewed the Settlement Agreement before it was executed by Farkas.[100] Farkas had not even reviewed it. The only time that Farkas had to review the Settlement Agreement's terms was during those minutes he was at the UPS store and the Settlement Agreement was provided with the other documents for his signature. Even after the Settlement Agreement was executed, Bloom, MGA and Nahabedian did not forward the Settlement Agreement to Farkas, Flatto or GTG. The first time Plaintiff received a copy of the Settlement Agreement was when it was attached to the Motion to Enforce.

33. Conceding that Bloom never negotiated the Settlement Agreement with Plaintiff, Bloom's testimony relating to a meeting of the minds on the terms was that Bloom had discussions with Flatto in 2017 and was in receipt of a communication from Flatto to Farkas dated January 23, 2017 (before the May 2, 2017 initial demand for Defendants' books and records), which Farkas forwarded to Bloom on April 27, 2017 asking for a return of his investment.[101] The Court finds this email and any related 2017 discussions with Flatto cannot be

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[100] 3/3 Trans., 72:15- 73:5.

[101] 3/3 Trans., 203:16-25; Exhibit C, FIRST0188.

reasonably construed as Flatto's agreement to the terms of the Settlement Agreement, as there had been the passage of over three years' time, and in that time, Plaintiff was forced to file the arbitration and obtain the Order for the production of Defendants' books and records, and the Settlement Agreement provided for immediate dismissal of the fruits of that litigation, with prejudice, a term not subject of Flatto's April 2017 email. Further, the Settlement Agreement does not provide for the payment of funds in exchange for the dismissal of the Order, Arb. Award and other pending matters. Rather, it provides for the payment of funds if they are ever received from a sale of the Ngan Judgment, a sale that is speculative as there is no evidence of any actual sale agreement or proof of funds. The Court finds there was insufficient evidence to establish a meeting of the minds on the Settlement Agreement's essential terms.

34. The Motion to Enforce was filed for the express purpose of avoiding the consequence of Defendants and Bloom's contempt of the Order. Given the timing, the Court gives special care to determine if the equities support an order for specific performance. In addition to those inequities discussed above (lack of consideration, claim and issue preclusion, concealment of material facts and bad faith), the Court also finds that there are indicia of duress and fraud here that would prevent specific performance.

35. In addition to being the manager of Defendants, Farkas' prior employer, Bloom is within Farkas' family. Even though the parties stood in an adversarial relationship *vis a vis* this case, Bloom and Farkas continued to have their familial connection. Under the circumstances, at a minimum, Bloom had a duty to act with the utmost good faith when dealing with Farkas. Even though the parties stood in an adversarial relationship here, the circumstances surrounding Farkas' execution of the Settlement Agreement demonstrate that the documents sent to the UPS Store for Farkas' execution would not have occurred but-for Bloom's familial relationship with Farkas. As Farkas testified, "[Bloom] is my brother-in-law. He's family. I didn't think he would-he would try to do this…"[102] "I trust him as-a brother in law, and as somebody who was representing to me that he was just trying to help in this part of what was going on….I believe

[102] 3/3 Trans., 116:1-21, 119:9-16.

that he took advantage of a nuance in the law....I think the way Jay treated me was wrong and manipulative. And I think he knew exactly what he was doing."[103]

36. Farkas was self-effacing throughout his testimony at the Hearing, explaining that it was his fault for trusting Bloom and not reading the documents before signing them.[104] If this was a typical arms' length transaction with no special duties owed between the persons signing the subject agreement, Farkas' admitted failure to even review the documents before signing them could be a real issue (assuming he had authority in the first place). However, here, the Court finds that there was a special confidence as a result of a familial relationship that resulted in Farkas' blind trust in Bloom and Bloom's representations to him about the Bloom Documents' contents.[105]

37. Farkas was threatened by Bloom with civil action by Defendants and/or their members if he did not sign the Settlement Agreement and other documents provided to him by Bloom, his family member.[106] Farkas felt that he had no choice but to sign any document that Bloom put in front of him. Farkas involuntarily accepted the Bloom Documents and executed them without diligence because he believed otherwise he would suffer adverse action he could not afford to address— a belief that is completely subjective. Where Defendants were only able to procure Farkas' signature through the abuse of special confidences, the threat of adverse action and concealment of the true nature and substance of the Bloom Documents being signed, enforcement of the Settlement Agreement against the innocent Plaintiff would be inequitable.

38. By its OSC, Plaintiff seeks an order compelling Defendants and their principal, Bloom, to comply with the Order, and to require them to pay the fees and costs incurred in the enforcement of the Order as necessary to redress the non-compliance. This requested relief is authorized pursuant to NRS Chapter 22 (Contempts). *See* NRS 22.010(3) (disobedience or resistance to any lawful writ, order, rule or process issued by the court constitutes contempt) and

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[103] *Id.*, 154:16-155:23, 156:13-18.

[104] *See, e.g.*, 3/3 Trans., 101:7-9, 141:20-25.

[105] *Id.* at 102:17-20.

[106] 3/3 Trans., 100:19-101:6, 116:15-21, 117:7-8, 119:17-18, 132:3-22, 134:18-21.

NRS 22.100-110 (penalties for contempt). The Court is addressing and treating the contempt proceedings as civil contempt proceedings.

39. The Order required Defendants to produce "all the requested documents and information available from both companies to Plaintiff for inspection and copying, as set forth in the [Arb. Award] and Exhibit 13 to Claimant's Appendix to Claimant's Arbitration Brief."[107] "Exhibit 13 to Claimant's Appendix to Claimant's Arbitration Brief"[108] provides the following list of documents to be produced by each of the Defendants:

> 1) The Company's company books, inclusive of any and all agreements relating to the Company's governance (Company operating agreements, amendments, consents and resolutions)
> 2) Financial Statements, inclusive of balance sheets and profit & loss statements
> 3) General ledger and back up, inclusive of invoices
> 4) Documents sufficient to show the Company's assets and their location
> 5) Documents relating to value of the Company and/or the Company's assets
> 6) Documents sufficient to show the Company's members and their status, inclusive of any redeemed members
> 7) Tax returns for the Company
> 8) Documents sufficient to show the accounts payable incurred by the Company, paid by the Company, and remaining due from the Company
> 9) Documents sufficient to show payments made to the Company managers, members and/or affiliates of any managers or members
> 10) Company insurance policies
> 11) Documents sufficient to show the status of any Company lawsuits
> 12) Documents sufficient to show the use of the Investors' funds (and any other members' investment) with the Company

40. It is undisputed that Defendants have not produced to Plaintiff one record or document within this list since entry of the Order. [109]

41. The evidence shows that MGA has custody of certain books and records for Defendants, and no excuse was provided for the failure of counsel to deliver what is in their custody to Plaintiff in compliance with the Order.[110] Bloom denied having any documents, and

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[107] Exhibit 4, p. 3.

[108] Exhibit 6.

[109] 3/3 Trans., 219:4-9.

[110] *See* Exhibit 32; 3/10 Trans., 17:2-18:20.

said they are all in the custody of Farkas and/or Defendants' former controller, Henricksen (the "Controller").[111]

42. Farkas denies taking any books and records of Defendants with him when he left his employment with Defendants (indeed, if he had taken books and records with him, that would have eliminated the need for Plaintiff to request the production of Defendants' books and records in May 2017).[112] There is no record of any request from Defendants to produce documents subsequent to May 2, 2017 or any evidence that Farkas was properly designated a custodian of Defendants' records. To the contrary, Bloom is the only person listed in the Operating Agreement or the records of the Secretary of State as having the managerial responsibilities as well as the duties of the registered agent.[113]

43. Moreover, the failure to produce even one record demonstrates that the cost of production is not a credible excuse for Defendants' disobedience of the Order. Relatedly, lack of funds is no defense to Defendants' performance where there is no evidence of Defendants' compliance with their own governing documents for the purpose of raising funds to meet the Order obligations. As set forth at Section 4.2 of the Defendants' respective Operating Agreements:[114]

> If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital demand shall be made on each Class A Member in proportion to its Class A Membership Interest....

Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to comply with the Order.[115] Bloom's affiliated SJC is the 45.625% Class A Member of First 100. [11

[111] 3/10 Trans., 14:9-18.

[112] 3/3 Trans., 125:9-21, 126:11-25; 3/10 Trans., 87:10-24.

[113] Exhibits 26 and 27.

[114] Exhibits 7 and Exhibit 8, p. 8.

[115] 3/3 Trans., 74:15-20; 3/10 Trans., 7:13-19.

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The 23.709% Class A Member of 1st 100, and Bloom's other affiliates, SJC 1, LLC and SJC 2, LLC, have further Class A Member interests of 6.708% and 12.208% in 1st 100, respectively.[117] Therefore, Bloom's affiliates have the lion's share of any capital call obligation for either entity to meet their performance obligation.

44. There is no question here that Bloom had notice of the Order, and he even filed a response to the OSC in conjunction with Defendants. Bloom is the only person appointed under Defendants' operating agreements and with the Nevada Secretary of State to act as the Manager of the companies.[118] Throughout Bloom's testimony, he attempted to distance himself from this manager role and its responsibilities to Defendants. However, Defendants are manager-managed, and Bloom is expressly the only person with authority or power under the Defendants' operating agreements to do any act that would be binding on Defendants, or incur any expenditures on behalf Defendants.[119] Bloom is not only the only Manager listed in the operating agreements and with the Nevada Secretary of State; he is also the "Registered Agent" with the Nevada Secretary of State.

45. In his Response to the OSC, Bloom argues he is absolutely immune from contempt proceedings under NRS 86.371, which provides that no member or manager of a Nevada LLC is individually liable for the debts or liabilities of the company. The subject contempt is not to address the non-payment of the monetary award that is included in the Order; it is solely for disobedience and/or resistance of a Court order requiring certain action solely within Bloom's responsibilities under the Defendants' Operating Agreements and as designated with the Nevada Secretary of State for each of the Defendants.

If any of the foregoing Findings of Fact would be more appropriately deemed to be Conclusions of Law, they shall be so deemed.

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[116] Exhibit 7, p. 28.

[117] Exhibit 8, p. 29.

[118] Exhibits 7-8, 26-27.

[119] Exhibits 7 and 8, Sects. 3.17, 6.1(A).

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FROM the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. "A settlement agreement, which is a contract, is governed by principles of contract law." *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) (internal citations omitted). "As such, a settlement agreement will not be an enforceable contract unless there is 'an offer and acceptance, meeting of the minds, and consideration.'" *Id.*

Because requests to enforce settlement agreements seek "specific performance," the actions are equitable in nature. *Park W. Companies, Inc. v. Amazon Constr. Corp.*, 473 P.3d 459 (Nev. 2020) (unpublished disposition) (citing *Calabi v. Gov't Emps. Ins. Co.*, 728 A.2d 2016, 208 (Md. 1999), 81A C.J.S. *Specific Performance* § 2 (2015) ("The remedy of specific performance is equitable in nature" and therefore "governed by equitable principles")). In addition to the elements of an enforceable contract being required, specific performance as a remedy under the subject contract is available only when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the movant has tendered performance; and (4) the court is willing to order specific performance. *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008) (citing *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991)).

2. Repudiation of a contract prior to performance by either party excuses any performance under the contract by either party. *See Kahle v. Kostiner*, 85 Nev. 355, 358, 455 P.2d 42, 44 (1969) (repudiation requires "a definite unequivocal and absolute intent not to perform" under the contract). Under the circumstances, the Court concludes that Plaintiff's repudiation prior to any performance excused any further performance obligation under the Settlement Agreement by either party.

3. To bind Plaintiff in an enforceable settlement agreement, Farkas must have had Plaintiff's actual or apparent authority. *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014) (citing *Dixon v. Thatcher,* 103 Nev., 414, 417, 742 P.2d 1029, 1031 (1987)).

4. "An agent acts with actual authority when, at the time of taking action that has

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legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." *Simmons Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)). When examining whether actual authority exists, the courts are to focus on an agent's reasonable belief. *Id.* (citing § 2.02 & cmt. e ("Whether an agent's belief is reasonable is determined from the viewpoint of a reasonable person in the agent's situation under all of the circumstances of which the agent has notice.")).

5. Without any appreciation for all that he was signing at the UPS store, Farkas did not consult with Flatto or counsel for Plaintiff regarding the Settlement Agreement.[120] Farkas' belief he lacked consent to bind Plaintiff to the terms of the Settlement Agreement was reasonable under the circumstances. In particular, at all times, actions taken on behalf of Plaintiff required Flatto's consent and the failure to obtain the consent of Flatto is conclusive evidence that Farkas' belief that he lacked authority to bind Plaintiff when he executed the Settlement Agreement was reasonable. Accordingly, the Court concludes Farkas did not have actual authority to bind Plaintiff under the Settlement Agreement.

6. An agent has apparent authority where the "principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing" and "there must also be evidence of the principal's knowledge and acquiescence." *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 550, 331 P.3d 850, 857 (2014)(quoting *Ellis v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951)). Thus, "[a]pparent authority (when in excess of actual authority) proceeds on the theory of equitable estoppel; it is in effect an estoppel against the [principal] to deny agency when by his conduct he has clothed the agent with apparent authority to act." *Ellis v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951). Moreover, to be clothed with apparent authority, there "must also be evidence of the principal's knowledge and acquiescence in them." *Id.* There is no authority "simply because the party claiming has acted upon his conclusions." *Id.* There can only be apparent authority, "where a person of ordinary prudence, conversant with business usages and the nature of the particular business, ***acting in good faith,***

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[120] 3/3 Trans., 72:19-23.

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and giving heed not only to opposing inferences but also to all restrictions which are brought to his notice, would reasonably rely." *Id.* (emphasis added) (noting that where inferences against the existence of apparent authority are as equally reasonable as those supporting it, a party may not rely on apparent authority).

7. "[A] party claiming apparent authority of an agent as a basis for contract formation must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable." *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997). Reasonable reliance on the agent's authority "is a necessary element." *Id.; Forrest Tr. v. Fid. Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009). In determining reasonableness, "***the party who claims reliance must not have closed his eyes to warnings or inconsistent circumstances***." *Great Am. Ins. Co.*, 113 Nev. at 352, 934 P.2d at 261, (*citing Tsouras v. Southwest Plumbing and Heating,* 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978)) (emphasis added). As the Nevada Supreme Court has explained, "***the reasonable reliance requirement [includes] the performance of due diligence" to learn the voracity of representations of authority***. *In re Cay Clubs*, 130 Nev. 920, 932–33, 340 P.3d 563, 571–72 (2014) (emphasis added).

8. The Settlement Agreement is not the first time that Bloom has directed Farkas to sign a document and then taken the position that Farkas' signature bound Plaintiff to its detriment. The question of Farkas' authority to bind Plaintiff without Flatto's consent was raised in the arbitration, and it was resolved ***against Defendants*** as part of the Arb. Award. Thus, even before Plaintiff amended its operating agreement in September 2020 to remove Farkas, it was clearly established by the arbitrators that Farkas had no authority to bind Plaintiff without the consent of Flatto.

9. *Res judicata* precludes Defendants' reiterated argument that Farkas' signature on a document is sufficient to bind Plaintiff to its detriment. *Univ. of Nev. v. Tarkanian,* 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994) (defining *res judicata* as encompassing both issue and claim preclusion doctrines). The issue of Farkas' authority to bind Plaintiff without Flatto's

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consent- the same issue at bar–was previously raised and decided in the Arb. Award, confirmed by the Order. As the Order is a final judgment that was appealable, the finality of the determination is concrete and immutable here. *See Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018) (defining "final judgment" for the purpose of analyzing *res judicata* as being procedurally definite without any reservation for future determination following the parties having an opportunity to be heard, a reasoned opinion supporting the determination, and that the determination having been subject to appeal) (citing *Univ. of Nev. v. Tarkanian,* 110 Nev. at 598, 879 P.2d at 1191, *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.,* 114 Nev. 823, 963 P.2d 465 (1998)).

10. As a matter of law, as established by the Order confirming the Arb. Award, Farkas did not have apparent authority to bind Plaintiff absent Flatto's consent, and here, the failure to obtain Flatto's consent to the Settlement Agreement is undisputed. On this basis alone, Farkas did not have actual or apparent authority to bind Plaintiff under the Settlement Agreement.

11. The Court therefore concludes there was no good faith basis for Bloom's intentional disregard of the Arb. Award and Order thereon and reliance by Bloom on Farkas' signature on the Settlement Agreement was not reasonable.

12. "Consideration is the exchange of a promise or performance, bargained for by the parties." *Jones v. SunTrust Mortg., Inc.,* 128 Nev. 188, 191, 274 P.3d 762, 764 (2012). In addition to consideration being an essential element of any contract, gross inadequacy of consideration may be relevant to issues of capacity, fraud, mistake, misrepresentation, duress, or undue influence in addition to being relevant to whether there is an essential element of a contract. *Oh v. Wilson*, 112 Nev. 38, 41–42, 910 P.2d 276, 278–79 (1996) (*citing* Restatement (Second) of Contracts § 79 cmt. c (1979)). Inadequacy of consideration is often said to be a "badge of fraud," justifying a denial of specific performance. *Id.*

13. The Court concludes that there is such inadequacy of consideration to Plaintiff in exchange for dismissal of its hard-fought rights under the Order that it justifies denial of the requested specific performance.

14. A special relationship arises in any situation where "kinship or professional, business, or social relationships between the parties" results in one party gaining the confidence of another and purporting to advise or act consistently with the other party's interest. *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337–338 (1995) (citations omitted). An equitable duty is owed as a result of such a confidential relationship, which is akin to a fiduciary duty. *See Executive Mgmt., ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 841, 963 P.2d 465, 477 (1998) (citing *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982)). Constructive fraud is the breach of that equitable duty, which the law declares fraudulent because of its tendency to deceive others to violate confidence. *Id.*

15. In equity and good conscience, Bloom was bound to act in good faith and with due regard to the interests of Farkas who was reposing his confidence in Bloom. *Perry*, 111 Nev. at 946–47, 900 P.3d 337 (citing *Long*, 98 Nev. at 13, 639 P.2d at 529–30). Particularly in light of the Arb. Award, Bloom had a duty to at least disclose to Farkas (as well as Flatto) his plan to settle this case under the Settlement Agreement and have the Order, underlying Arb. Award and pending OSC dismissed, with prejudice. Bloom should have emailed or otherwise provided a copy of the documents to Farkas so Farkas could consult with Flatto and counsel. Not only did Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would never have to be revealed until after the case was dismissed, inclusive of hiring Farkas separate counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement.

16. Duress is a valid basis to set aside a contract or avoid specific performance. *Kaur v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362 (2020); *Levy v. Levy*, 96 Nev. 902, 903–04, 620 P.2d 860, 861 (1980) (recognizing duress as a basis to set aside a settlement). "The coercion or duress exception applies when "(1) . . . one side involuntarily accepted the terms of another; (2) . . . circumstances permitted no other alternative; and (3) . . . circumstances were the result of coercive acts of the opposite party." *Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 956, 338 P.3d 1250, 1255 (2014).

17. An improper threat can exist when a party is threatened with civil action, especially when there are circumstances of emotional consequences. Restatement (Second) of

Contracts § 175, cmt. b (1981). "[A] party's manifestation of assent is induced by duress if the duress substantially contributes to his decision to manifest his assent. *Id.*, cmt. c. "The test is subjective and the question is, did the threat actually induce assent on the part of the person claiming to be the victim of duress." *Id.* In making the determination, courts consider, "the age, background and relationship of the parties" and the rule is designed to protect "persons of a weak or cowardly nature." *Id.*; *see also Schmidt v. Merriweather,* 82 Nev. 372, 376, 418 P.2d 991, 993 (1966).

18. A threat is improper if "what is threatened is the use of civil process and the threat is made in bad faith." Restatement (Second) of Contracts § 176 (1)(c). Accordingly, when evaluating duress, bad faith of one party is relevant as to another party's capacity to contract. *Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 587, 356 P.3d 1085, 1088 (2015); Restatement (Second) of Contracts § 205 cmt. c (1981) ("Bad faith in negotiation, although not within the scope of [the implied covenant of good faith and fair dealing], may be subject to sanctions. Particular forms of bad faith in bargaining are the subjects of rules as to capacity to contract, mutual assent and consideration and of rules as to invalidating causes such as fraud and duress.").

19. Defendants' contempt of the Order through resistance and/or disobedience of the Order is clearly established.

20. Bloom, as the sole natural person legally associated with Defendants, did not testify to any efforts to marshal Defendants' books and records for production to Plaintiff, except to obtain a letter dated February 12, 2021 (nearly two months after the OSC was entered), providing that the Controller was seeking payment to compile and produce Defendants' records.[121] Defendants' requested condition of Plaintiff's payment of expenses incurred by Defendants to comply with its Order obligation is barred by *res judicata*. Again, the Order confirming the Arb. Award, a final judgment, precludes a second action on the underlying claim or any part of it. *Univ. of Nev.,* at 599, 879 P.2d at 1191. Issue preclusion applies to any issue

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[121] Exhibit V.

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actually raised and decided in the judgment. *Id.* Claim preclusion "embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus, [it] has a broader reach" than the issue preclusion doctrine. *Id.* at 600, 879 P.2d at 1192.

21. The very purpose of the issue preclusion doctrine is "to prevent multiple litigation causing vexation and expense to the parties and wasted judicial resources by precluding parties from relitigating issues." *Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018); *see also Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.,* 130 Nev. 252, 258, 321 P.3d 912, 916 (2014) (issue preclusion is appropriately applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party (citing *Berkson v. LePome,* 245 P.3d 560, 566 (Nev. 2010)).

22. Plaintiff's demand for Defendants' books and records under the terms of Defendants' operating agreements and NRS 86.241 resulting in the Order was arbitrated, and the arbitrators ruled in favor of Plaintiff and against Defendants on the entirety of the claim, and even awarded Plaintiff fees and costs.[122] Defendants' claimed expenses associated with the demand for production was required to be arbitrated,[123] and there was clearly no award of expenses in favor of Defendants following the arbitration. Ignoring their obligation to arbitrate any request for expenses associated with the production of documents in the arbitration, Defendants waited until Plaintiff's Motion to Confirm Arb. Award to seek to modify the Arb. Award to include a condition for production of the ordered books and records on Plaintiff's prior payment for Defendants' expenses associated with production.[124] The Court made reasoned conclusions regarding the procedural infirmity of bringing the request for relief to the Court when the relief was not awarded by the arbitrators, and DENIED it as part of the Order.[125] The Order is a final judgment not subject to any appeal, and as it specifically addressed and resolved Defendants' argument for a condition of Plaintiff's payment of expenses of production, the Order

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[122] Exhibit 4.

[123] Exhibits 7 and 8, Sect. 13.9 (Dispute Resolution provision).

[124] Exhibit 3 (the Declaration of Bloom in support of the Countermotion to Modify Arbitration Award).

[125] Exhibit 4, p. 2:11-25; 3:15-16.

itself defeats any argument from Defendants that production of the documents pursuant to the Order is in any way conditioned on payment of any purported expenses demanded by Defendants.

23. Under the circumstances, the Court concludes that Plaintiff's non-payment of expenses demanded on February 12, 2021 is not a valid excuse for Defendants' disobedience and/or resistance of the subject Order. The books and records must be produced forthwith and without the imposition of any conditions.

24. Bloom argues that since he is not a party to the Order in his individual capacity, he should not be a party to these contempt proceedings. The relevant authority provides otherwise. The Nevada contempt statutes (NRS Chapter 22) as well as relevant Nevada Rules of Civil Procedure ("NRCP") are directed ***to conduct*** of persons resisting or disobeying enforceable Court orders and does not limit its reach to the defendants alone. Limited liability companies such as Defendants engage in conduct through responsible persons- here, there is only Bloom and his counsel working at his direction. *See, e.g.*, NRCP 69 (describing procedures for execution on judgment to include obtaining discovery from any person); NRCP 71 ("When an order grants relief . . . [that] may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party."); NRCP 37(b) (providing for orders compelling compliance and sanctions for failure of a "party or its officers, directors or managing agents" to comply with court discovery orders).

25. The "responsible party" rule is longstanding, providing that the contempt powers of the Courts reach through the corporate veil to command not only the entity, but those who are officially responsible for the conduct of its affairs. If a person is apprised of the Order directed to the entity, prevents compliance or fails to take appropriate action within their power for the performance of the corporate duty, they are guilty of disobedience and may be punished for contempt. *Wilson v. United States*, 221 U.S. 361, 377 (1911) ("When a copy of the writ which has been ordered is served upon the clerk of the board, it will be served on the corporation, and be equivalent to a command that the persons who may be members of the board shall do what is required. If the members fail to obey, those guilty of disobedience may, if necessary, be

punished for the contempt . . . . While the board is proceeded against in its corporate capacity, the individual members are punished in their natural capacities for failure to do what the law requires of them as representatives of the corporation."); *Electrical Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Service Co.*, 340 F.3d 373, 380 (6th Cir. 2003) (holding that sole officer of the defendant, who was not himself a party, could be held in contempt for the defendant's failure to obey the court's judgment and order). In order to hold an officer, director or other managing agent in contempt, the movant must show that he had notice of the order and its contents. *Id.*

26. A non-party who fails to produce documents in compliance with a Court order will be jointly and severally liable for disobedience when he is found to have abetted the disobedience or is legally identified with the responsible party. *See Luv n Care Ltd. v. Laurain*, 2019 WL 4279028, at * 4 (D. Nev. Sept. 10, 2019) (finding the managing member jointly and severally liable for contempt and payment of fees and costs), (*citing United States v. Wilson; Electrical Workers Pension Trust Fund of Local Union #58; United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988) ("A nonparty may be liable for contempt if he or she either abets or is legally identified with the named defendant...***An order to a corporation binds those who are legally responsible for the conduct of its affairs***.") (emphasis added)); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1323–24 (9th Cir. 1988); *NLRB v. Sequoia Dist. Council of Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977); *1st Tech, LLC v. Rational Enter., Ltd.*, 2008 WL 4571057, at *8 (D. Nev. July 29, 2008). Put another way, an order to an entity binds those who are legally responsible for the conduct of its affairs. *Luv n Care Ltd.,* at *4 (citing *Laurins*).

27. As such, once Bloom had notice of the Order, he could not delegate the responsibility for performance on a third party, but he himself had to take reasonable steps to provide the records in compliance with the Order in his capacity as the sole person legally associated with Defendants and responsible for the books and records of Defendants, as manager of Defendants' manager.

28. As set forth above, the "responsible party" rule applies to contempt proceedings; otherwise there would never be a consequence for an entity's non-compliance, particularly here

when there are no formalities being followed and, at least at this juncture, Bloom is the *alter ego* of Defendants. Bloom ignores the holding of the Nevada Supreme Court in *Gardner on Behalf of L.G. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 730, 735, 405 P.3d 651, 655–56 (2017), which explained that those bases for corporate veil piercing, such as *alter ego*, illegality or other unlawfulness, will equally apply to a Nevada LLC. "As recognized by courts across the country, LLCs provide the same sort of possibilities for abuse as corporations, and creditors of LLCs need the same ability to pierce the LLCs' veil when such abuse exists." *Id.*, 133 Nev. at 736, 405 P.3d 656.

Related to *alter ego*, NRS 86.376 then specifically provides, as follows:

> 1. Except as otherwise specifically provided by statute or agreement, no person other than the limited-liability company is individually liable for a debt or liability of the limited-liability company unless the person acts as the alter ego of the limited-liability company.
> 2. A person acts as the alter ego of a limited-liability company only if:
> (a) The limited-liability company is influenced and governed by the person;
> (b) There is such unity of interest and ownership that the limited-liability company and the person are inseparable from each other; and
> (c) Adherence to the notion of the limited-liability company being an entity separate from the person would sanction fraud or promote manifest injustice.
> 3. The question of whether a person acts as the alter ego of a limited-liability company must be determined by the court as a matter of law.

29. Both Defendants are in "default" status with the Nevada Secretary of State. The testimony of Bloom demonstrated that Defendants have no continued operations, there are no employees, there are no bank accounts, there are no records being maintained as required under the operating agreements or NRS 86.241, and there is no active governance of any kind.[126] While Bloom self-servingly represents that there are "directors" and "officers" of Defendants, he concedes, as he must, that there were no writings to reflect that any director or officer has any authority to bind Defendants instead of Bloom. In addition, equity must be applied such that Bloom will not be immune from consequences for his intentional conduct for the purpose of

[126] *See, e.g.*, 3/3 Trans., 220:9-11, 226:2-4, 3/10 Trans., 12:10-19, 14:9-17, 15:16-25; Exhibits 7-8, § 2.3 (providing the company shall maintain records, including at the principal office or registered office, both c/o Bloom); Exhibits 26-27.

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disobeying and/or resisting the Order. Therefore, in addition to the "responsible party" rule that applies to contempt, there should be no immunity for liability when, as here, Bloom is Defendants' *alter ego*.

30. Furthermore, the Nevada Supreme Court has explained the broad, independent authority of the Court to enforce its decrees independent of the rules or statutes, including sanctions for non-compliance by non-parties with its orders and legal processes. *See Halverson v. Hardcastle*, 123 Nev. 245, 261–62, 163 P.3d 428, 440–441 (2007) ("the court has inherent power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction . . . for litigation abuses. Further, courts have inherent power to prevent injustice and to preserve the integrity of the judicial process . . .").

31. Under the Court's inherent authority to enforce its decrees against those appearing and demonstrating disregard for its Order, the "responsible party" rule recognized in the common law, Nevada's contempt statutes, Nevada's Rules of Civil Procedure, as well as NRS 86.376, Bloom is a proper party to the subject contempt proceedings.

32. The Settlement Agreement was a sham, never designed to result in any fair benefit to Plaintiff, and, if effectuated with the dismissal of the Order, underlying Arb. Award and pending contempt motions, with prejudice, the ramifications to Plaintiff would have been unacceptable under law or equity. The Eighth Judicial District Court has enacted its own rule, EDCR 7.60(b) to provide the Court further express authority to impose sanctions upon a party, including attorneys' fees, when a party, without just cause, presents a motion to the Court that is "obviously frivolous, unnecessary or unwarranted," or "so multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

33. The Court determines that sanctions are properly awarded against Defendants inclusive of the reasonable fees and costs expended by Plaintiff relating to the Motion to Enforce and Response to OSC.

34. The expenses associated with addressing the re-litigated defenses asserted by Defendants and Bloom were then unnecessarily increased by Bloom's wrongful direction to not

permit the disclosure of any communications between or among Nahabedian and Bloom and/or MGA, regardless of whether they related to Plaintiff and this action.[127]

35. Sanctions are awardable under NRCP 37 for failure to provide discovery.

Any of the foregoing Conclusions of Law that would more appropriately be deemed to be Findings of Fact shall be so deemed.

ORDER

NOW, THEREFORE, based upon the Foregoing Findings of Fact and Conclusions of Law, the Court makes the following rulings:

1) The Court declines to reverse its prior denial of the Motion to Enforce.

2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order in contempt of Court (civil), the Court orders immediate compliance. In order to purge their contempt, Defendants, and any manager, representative or other agent of Defendants receiving notice of this order shall take all reasonable steps to comply with the Order, and within 10 days of notice of entry of this order, shall produce the following books and records for Defendants to Plaintiff[128] at their expense:[129]

> 1) Each of Defendants' company books, inclusive of any and all agreements relating to governance (operating agreements, amendments, consents and resolutions);
> 2) Financial Statements, inclusive of balance sheets and profit & loss statements;
> 3) General ledger and back up, inclusive of invoices;
> 4) Documents sufficient to show each of Defendants' assets and their location;
> 5) Documents relating to value of each of each of Defendants and/or their assets;
> 6) Documents sufficient to show Defendants' members and their status, inclusive of any redeemed members;
> 7) Tax returns for each of Defendants;
> 8) Documents sufficient to show the accounts payable incurred, paid and remaining due for each of Defendants;

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[127] Exhibit 28, PLTF_480, and the Motion to Compel.

[128] The list of documents ordered to be produced in the Arbitration Award is set forth at Exhibits 6 and QQ, and was expressly incorporated into the Order.

[129] There are indemnification provisions in Defendants' operating agreements that Bloom and anyone "serving at his direction" to comply with the Order could ostensibly enforce. Exhibits 7-8, Article VII.

9) Documents sufficient to show payments made to each of Defendants' managers, members and/or affiliates of any managers or members;
10) Each of Defendants' insurance policies
11) Documents sufficient to show the status of any lawsuits involving either of Defendants; and
12) Documents sufficient to show the use of investors' funds (and any other members' investment) for each of Defendants.

For any documents not produced within 10 days of entry of this order, there shall be certification from Bloom establishing all steps taken to marshal and produce the documents, where the documents are located, why they were not provided by the deadline and when they will be provided.

3) Also, the Court orders reimbursement of Plaintiff's reasonable fees and costs incurred in connection with the finding of contempt pursuant to the OSC, the Countermotion for Sanctions, and the Motion for Sanctions, as follows:

Based on the determination that Defendants and Bloom disobeyed and resisted the Order in contempt of Court (civil), and the Motion to Enforce was a tool of that contempt as orchestrated by Bloom in disregard of the Arb. Award confirmed by the Order, the Court orders Defendants and Bloom are jointly and severally responsible for the payment of all the reasonable fees and costs incurred by Plaintiff since entry of the Order for the purpose of coercing compliance with the Order in order to make them whole, inclusive of responding to the Motion to Enforce and bringing the Motion to Compel.

Within 10 days of entry of this order, counsel for Plaintiff shall provide a declaration and supporting documentation as necessary to meet the factors outlined in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 55 P.2d 31 (1969), and delineating the fees and costs expended in relating to the Motion to Compel, Motion to Enforce and OSC, following which, there will be an opportunity to respond to Plaintiff's submission within 10 days of service of Plaintiff's supplement, and Plaintiff can file a reply within 7 days thereof. The Court will then consider the submissions and enter its further order on the amount of fees and costs to be awarded, and payment will be due within thirty (30) days thereafter.

4) Any failure to comply with the Order compelling compliance and requiring payment of the expenses incurred shall be subject to appropriate consequences. A status check is

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DEPARTMENT THIRTEEN
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scheduled for May 24, 2021 at 9:00 a.m.

Dated this 7th day of April, 2021

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Mark R. Denton
District Court Judge

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

TGC/Farkas Funding, LLC, Plaintiff(s) vs. First 100, LLC, Defendant(s)	CASE NO: A-20-822273-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/7/2021

Dylan Ciciliano	dciciliano@gtg.legal
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Tonya Binns	tbinns@gtg.legal
Bart Larsen	blarsen@shea.law
Max Erwin	merwin@gtg.legal

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/8/2021

Joseph Gutierrez

Maier Gutierrez & Associates
Attn: Joseph A. Gutierrez
8816 Spanish Ridge Avenue
Las Vegas, NV, 89148

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Steven D. Grierson
CLERK OF THE COURT

NEO
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC, a Delaware Limited Liability Company, Plaintiffs, vs. CBC PARTNERS I, LLC, a foreign Limited Liability Company; CBC PARTNERS, LLC, a foreign Limited Liability Company; 5148 SPANISH HEIGHTS, LLC, a Nevada Limited Liability Company; KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust; DACIA, LLC, a foreign Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-20-813439-B Dept. No.: XI **NOTICE OF ENTRY OF ORDER**
AND RELATED CLAIMS.	

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that a **FINDINGS OF FACT AND**

CONCLUSIONS OF LAW was hereby entered on the 6th day of April, 2021. A copy of which is attached hereto.

DATED this 20th day of April, 2021.

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

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER** was electronically filed on the 20th day of April, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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

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FFCL

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.: XI **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

a) Contractual interpretation and/or validity of the underlying "Secured Promissory Note" between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
b) 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 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth, Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of Action).

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

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

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

GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, appearing by and through its representative Alan Hallberg ("Hallberg"); 5148 SPANISH HEIGHTS, LLC, 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, (collectively "Defendants") all Defendants appearing by and through their counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court makes the following findings of fact and conclusions of law:

I. Procedural Posture

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

Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, 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 ("Antos Trust"); DACIA, LLC, with the First Amended Complaint being filed on May 15, 2020.

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

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

Emergency Directive 008.

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

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

On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against SJCV, which SJCV answered on September 28, 2020.[5]

II. Findings of Fact

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

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

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

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

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

6. The Property is currently owned by Spanish Heights[6] which has entered into a

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[5] The Antos have a pending motion for summary judgment.

[6] The manager of Spanish Heights is SJCV.

written lease agreement with SJCV.[7]

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

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

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

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

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

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

13. The Note was modified and amended several times.

14. On November 13, 2013, a Fourth Modification to Secured Promissory Note ("Fourth Modification") was executed.

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

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

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

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[7] The manager of SJCV is Bloom.

Agreement").

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

> 3.3 Sale, Encumbrance or Disposition. Without the prior written consent of the Secured Party, Antos will not (a) allow the sale or encumbrance of any portion of the Collateral and (b) incur, create, assume or permit to 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…

18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie Foods International, Inc. ("Dixie").

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

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

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

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

> Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto (the "Antos Trust") to Lender 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.

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

24. The Certificate of Trust provides in part:

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

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

> To execute and deliver a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust"), to secure (i) obligations owing to Lender by KCI Investments, LLC, a 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 June 22, 2012, in the maximum principal amount of $3,250,000.00 (the "Note") executed by Borrower in favor of Lender, (iii) that certain Guaranty dated June 22, 2012, executed by the Grantors as individuals and not in their capacity as trustees, and (iv) the other documents and instruments executed or delivered in connection with the foregoing.

25. The Certificate of Trust further provides:

> The Deed of Trust and Lender's provision of credit under the terms of the Note will directly and indirectly benefit the Trust and its beneficiaries.
>
> The Trustees of the Trust have the authority to enter into the transactions with respect to which this Certificate is being delivered, and such transactions will create binding obligations on the assets of the Trust.

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

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

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

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

and Waiver of Defaults ("Ninth Modification") was executed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> My thought is that this proposal gets the 3rd lender:
> - a full recovery of its Note balance plus all protective advances past and future,
> - interim cash flow and
> - provides interim additional full collateral where, given the current value of the property, the 3rd position lender is currently unsecured.
>
> As to the Seller, he:
> - gets out from under a potential deficiency judgment from the 3rd position lender and
> - unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

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

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

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

43. Mr. Bloom testified that he was not provided with a complete set of documents reflecting the prior transactions between the Antos and KCI[8] and that misrepresentations were made regarding the prior transactions by CBCI.

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

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

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

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

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

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

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

extensions.

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

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

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

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

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

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

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

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

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[9] The Pledge Agreement states in pertinent part:

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

57. The Pledge Agreement provides in pertinent part, "Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default … to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral."

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

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

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

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

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

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Living Trust (the Antos Trust"), SJC Ventures, LLC ("SJCV")(collectively the "Pledgors") to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

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

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

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

63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements, dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCV[10] acknowledged that it pledged its membership interest in Spanish Heights as collateral for the 2017 Forbearance Agreement.[11]

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

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

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

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

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

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

66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security Agreement "shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Security Agreement…"

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

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

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

1. Evidence of homeowner's insurance coverage Pursuant to Paragraph 1(A)(6) of Amendment to Forbearance Agreement and Related Agreements;
2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to Forbearance Agreement;
3. Evidence of Bank of America account balance of $150,000.00 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
4. Opinion letter from SJC Ventures and 1st One Hundred Holdings counsel regarding the Judgment and Security Agreement pursuant to Paragraph 1(A)(12) of Amendment to Forbearance Agreement and Related Agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

From the Pledge Agreement:

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

From the Amendment to the 2017 Forbearance Agreement:

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

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

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

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

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

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

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

III. Conclusions of Law

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

> Cases in which injunction may be granted. An injunction may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
>
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual.

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

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

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

4. The Note is secured by the Property.

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

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

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

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

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

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

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

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

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

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

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

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

17. The "One-Action Rule" was specifically waived by the debtor. The Deed of Trust paragraph 6.21(a) states:

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

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

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

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

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

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

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

JUDGMENT

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing obligation of SJCV.

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

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

Dated this 6th day of April, 2021

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

/s/ Dan Kutinac
Dan Kutinac, JEA

Honorable Natalie M. Cox
United States Bankruptcy Judge

Entered on Docket
May 26, 2021

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: SPANISH HEIGHTS ACQUISITION COMPANY, LLC, Debtor.	Bankruptcy No. BK-S-21-10501-NMC Chapter 11 **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS FOR VIOLATION OF AUTOMATIC STAY OF BANKRUPTCY CODE SECTION 362(a) AND RELATED RELIEF** **Hearing Date: May 18, 2021** **Hearing Time: 10:00 a.m.**

Debtor's Motion for Sanctions for Violation of the Automatic Stay of Bankruptcy Code §362(a) and Related Relief ("Sanctions Motion") came on for hearing at the above date and time, the Honorable Natalie M. Cox, United State Bankruptcy Judge, presiding. Debtor was represented by James D. Greene, Esq. of Greene Infuso, LLP and Danielle J. Barraza, Esq. of Maier Gutierrez & Associates. Parties 5148 Spanish Heights, LLC, CBC Partners I, LLC and CBC Partners, LLC (collectively "CBC Parties") were represented by Michael R. Mushkin Esq. of Mushkin & Coppedge. No other appearances were entered. For the reasons stated on the record at the hearing and incorporating those findings of fact and conclusions of law herein pursuant to Federal Rule of Bankruptcy Procedure 7052, and with good cause appearing,

IT IS HEREBY ORDERED that the Motion is Granted in part and the Court finds that the CBC Parties violated the automatic stay of 11 U.S.C. §362(a) with respect to the items designated as issues (a), (b), and (c) on ECF No. 79-2, page 3, note 1, lines 17-20;

IT IS FURTHER ORDERED that the Motion is Denied with respect the issues designated as issues (d) and (e) on ECF 79-2, page 3, note 1, lines 21-23;

IT IS FURTHER ORDERED that the Debtor is entitled to an award of sanctions against the CBC Parties for their stay violations under the standards of *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019);

IT IS FURTHER ORDERED that Debtor's counsel shall submit briefing and evidence supporting its claims for damages as a result of the CBC Parties' stay violations on or before May 28, 2021;

IT IS FURTHER ORDERED that the CBC Parties may file any opposition and related documents or evidence relating to the Debtor's damage claims on or before June 29, 2021;

IT IS FURTHER ORDERED that the Debtor may file a reply in support of its damages claim on or before July 6, 2021;

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IT IS FURTHER ORDERED that a hearing regarding Debtor's request for sanctions shall be held on July 13, 2021 at 10:00 a.m.

Submitted by:

GREENE INFUSO, LLP

/s/ James D. Greene
JAMES D. GREENE, ESQ.
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Approved by:

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle Barraza
Danielle Barraza
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Approved by:

MUSHKIN & COPPEDGE

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LOCAL RULE 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐ I certify that this is a chapter 7 or 13 case, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

# # #

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

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC, a Delaware Limited Liability Company, Plaintiffs, v. CBC PARTNERS I, LLC, a foreign Limited Liability Company; CBC PARTNERS, LLC, a foreign Limited Liability Company; 5148 SPANISH HEIGHTS, LLC, a Nevada Limited Liability Company; KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust; DACIA, LLC, a foreign Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-20-813439-B Dept. No.: 11 **HEARING REQUESTED** **MOTION FOR APPOINTMENT OF RECEIVER OF SJC VENTURES HOLDING COMPANY, LLC d/b/a SJC VENTURES, LLC, A DELAWARE LIMITED LIABILITY COMPANY**
CAPTION CONTINUES BELOW	

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

Counterclaimants,

v.

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

Counterdefendants.

MOTION FOR APPOINTMENT OF RECEIVER OF SJC VENTURES HOLDING COMPANY, LLC d/b/a SJC VENTURES, LLC, A DELAWARE LIMITED LIABILITY COMPANY

Defendants/Counterclaimants, 5148 Spanish Heights, LLC and CBC Partners I, LLC ("Counterclaimants") by and through their attorney, Michael R. Mushkin, of the law firm of Mushkin & Coppedge, hereby moves for appointment of receiver of SJC Ventures, LLC d/b/a SJC Ventures, LLC, a Delaware limited liability company ("SJCV").

This Motion is made and based upon the following Memorandum of Points and Authorities, the papers, pleadings, and records on file herein, and any and all arguments that may be allowed at the time of hearing of this motion.

POINTS AND AUTHORITIES

I. Introduction

Counterclaimants move this Court for an appointment of receiver. As discussed below, Manager Member of Spanish Heights Acquisition Company, ("SHAC") has defaulted under a certain $2,935,000.00 Promissory Note and associated Deed of Trust, together with an

Assignment of Rents, Security Agreement and Pledge Agreement.

SHAC has been in default under the Loan Documents (as defined below) since the first Forbearance Agreement in September of 2017. The Forbearance Agreements were entered into evidence during the Preliminary Injunction Hearing and Consolidated Non-Jury Trial held on February 1, 2021, February 2, 2021, February 3, 2021 and March 15, 2021 ("Trial"), as Exhibits 1-16. All extensions have expired. Under the terms of the Loan Documents, upon default, Counterclaimants are authorized "to do and perform any acts necessary or proper to preserve the value of the Trust Property…"

Counterclaimants propose the appointment of a receiver who, as discussed herein, has extensive experience as a receiver in commercial real estate cases and has been appointed by Nevada Courts on multiple occasions. Accordingly, Counterclaimants respectfully request that the Court appoint a receiver to act in accordance with the terms and conditions set forth in the proposed Order submitted herewith.

II. Statement of Facts

A. The Initial Promissory Note

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

2. On or about June 22, 2012, Antos with nonparties KCI Investments, LLC a Nevada limited liability company ("KCI"), entered into a Secured Promissory Note with CBC Partners I, LLC, a Washington limited liability company ("CBCI").

3. The June 22, 2012, Secured Promissory Note (the "Note") was modified and amended several times.

4. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") was recorded against the Property in the Clark County Recorder's Office as Instrument No. 201412290002856, for the purpose of securing the

Note. The balance due is approximately $6,297,333.49 ($2,935,001.14 for principal, pre-forbearance protection payments of $1,326,744.55, interest and late charges of $1,315,105.24 and interest accrued at the rate of 20% in the amount of $1,608.22 per day from April 1, 2020). Trial Exhibit 1 5148SH 000003 – 5148SH 000004.

5. This Deed of Trust is subordinate to two (2) additional Deeds of Trust recorded against the Property. The First Mortgage to City National is in the principal amount of $3,240,000.00 with monthly payments of $19,181.07. The Second Mortgage to Northern Trust Bank is in the principal amount of $599,000.00 with monthly payments of $3,034.00.

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

7. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law Ordering that the Note is a valid existing obligation and that the Deed of Trust is a valid and existing obligation against the Property. See **Exhibit A,** attached hereto.[1]

B. The Forbearance Agreement

8. On or about September 27, 2017, Antos, SHAC and Counterdefendant SJCV entered into a Forbearance Agreement of the Note, acknowledging default and affirming CBCI has fully performed.

9. As part of the Forbearance Agreement, Antos conveyed the Property to SHAC and SHAC leased the property to SJCV.

10. As part of the Forbearance Agreement, SHAC would lease the Property to SJCV. The Lease Agreement contained a Consent to Lease between SHAC and CBCI.

11. Paragraph 2 of the Consent to Lease states: "In the event CBCI… or otherwise exercises its rights under the Forbearance Agreement, CBCI may terminate the Lease." Trial Exhibit 15, attached hereto as **Exhibit B,** specifically Bates No. 5148SH 000152.

12. Pursuant to the terms of the Forbearance Agreement, SHAC was to make certain

[1] This FFCL has been appealed, but no stay has been sought.

payments to CBCI and other parties. In addition, a balloon payment of the total amount owing was due on August 31, 2019.

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

14. On December 1, 2019, an Amendment to Forbearance Agreement was entered into, extending the balloon payment to March 31, 2020.

15. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law, Finding that the Forbearance Agreement and Amendment to Forbearance Agreement "are clear and unambiguous as a matter of law." See **Exhibit A.**

C. The Pledge Agreement

16. On or about August 4, 2017, SHAC was organized with the initial members being SJCV, nonparty CBC Partners, LLC ("CBC Partners"), and Antos.

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

18. In addition to the certain requirements of the Forbearance Agreement, there was certain pledged collateral. Among the pledged collateral, Antos and SJCV pledged 100% of the membership interest in SHAC, the Pledge Agreement. Trial Exhibit 8, attached hereto as **Exhibit C,** Bates No. 5148SH 000089 – 5148SH 000097.

19. The Pledge Agreement was between Antos and SJCV as Pledgors and CBCI as the Secured Party and was dated September 27, 2017.

20. Pursuant to the Pledge Agreement, Antos and SJCV pledged all right, title and interest in and to 100% of their membership interest of SHAC to CBCI.

21. In addition to pledging membership interest, the Pledgors agreed to not "sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral…" See **Exhibit C,** specifically Bates No. 5148SH 000091.

22. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law, Ordering that the "Pledge Agreement is a valid existing obligation of SJCV." See **Exhibit A.**

D. SHAC's Operating Agreement

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

24. On or about August 10, 2017, SJCV signed a resignation of member of SHAC.

25. SHAC's Operating Agreement was purportedly effective as of September 30, 2017, with the members being SJCV as Investor or Investor Member and Antos being the Seller Member.

26. SHAC's Operating Agreement states that the "management and control of the Company shall be vested exclusively and irrevocably with the Investor Member." Trial Exhibit 5, attached hereto as **Exhibit D,** specifically Bates No. 5148SH 000536 – 5148SH 000537.

27. Pursuant to Exhibit B of SHAC's Operating Agreement, SJCV's commitment was to be $150,000.00.

28. Upon information and belief, SJCV never made the initial commitment.

29. In addition, Pursuant to Paragraph 8.02(a) of SHAC's Operating Agreement, SJCV, among other things, was to:

a. "Provide for the funding of a (sic) **annual** expense reserve account in the amount of $150,000.00 within ninety days from which non member CBCI is authorized to issue payment against its obligations due from Seller Member should Investor Member fail to effect such payments…" (emphasis added).

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

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

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

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

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

See **Exhibit D,** specifically Bates No. 5148SH 000546 – 5148SH 000548.

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

E. The Security Agreement

31. In addition to the certain requirements of the Forbearance Agreement, there was certain pledged collateral. Among this pledged collateral, SJCV granted a security interest in collateral described as:

> SJCV represents that First 100, LLC and 1st One Hundred·Holdings, LLC, obtained a Judgment in the amount of $2,221,039,718,46 against Raymond Ngan and other Defendants in the matter styled First 100, LLC, Plaintiff(s) vs, Raymond Ngan, Defendant(s), Case No, A-17-753459-C in the 8th Judicial District Court for Clark County, Nevada (the "Judgment"), SJCV represents It holds a 24.912% Membership Interest in 1st One Hundred Holdings, LLC. SJCV represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment, have a priority to receive net Judgment proceeds attributable to SJCV before SJCV; and that SJCV shall receive Its interest at a minimum in pari passu with other parties who hold interests in the Judgment, 1st One Hundred Holdings, LLC represents and warrant that no party, other, than the Collection Professionals engaged to collect the Judgment and certain other creditors of 1st One Hundred Holdings, have a priority to receive net Judgment proceeds prior to distributions to 1st One Hundred Holdings Members; and that SJCV shall receive Its interest at a minimum in pari passu with other parties who hold interests in the Judgment.

Trial Exhibit 10, attached hereto as **Exhibit E,** Bates No. 5148SH 000101-5148SH 000107.

32. This Security Interest is in jeopardy.

33. While the instant dispute was ongoing, Jay Bloom and SCJV were litigating a similar case pending before the Eighth Judicial District Court, Clark County, Nevada, Case No. A-20-822273-C, filed by TGC/Farkas Funding LLC (the "Plaintiff LLC") which is an entity owned half by Bloom's brother-in-law (who contributed "sweat equity") ("Farkas") and half by a third-party investor, TGC 100 Investor ("Investor Member") who acted through Flatto as its manager ("Flatto"). See **Exhibit F,** *Denton FFCLO* at ¶1, p. 2. [2]

34. The Investor Member brought suit against First 100, LLC, First One Hundred Holdings LLC, two companies both managed by SJCV and in turn majority owned and controlled by Jay Bloom (the "Denton Contempt Litigation").

35. In connection with the Denton Contempt Litigation, the Honorable Mark Denton held an evidentiary hearing on why the named Defendants and Jay Bloom "should not be found in contempt of court... for their failures to comply with the Order Confirming Arbitration Award, Denying Countermotion to Modify, and Judgment entered on November 17, 2020..." and further issued Findings of Fact and Conclusions of Law & Order on April 7, 2021 (the "Denton FFCLO") that, among other things, found Bloom to be the alter-ego of SJCV (the "Alter-Ego Finding").

36. As background to the Denton Contempt Litigation, in 2013, The Investor Member contributed $1,000,000 to the Plaintiff LLC which was formed to facilitate investments in a group of LLCs managed by Jay Bloom, the alter ego of SCJV (the "LLCs" or the "Defendants"). *Denton FFCLO* at p. 2.

37. The litigation began when the Investor Member, after the LLCs business wound down, requested an accounting from the LLCs to show what happened to the business or its assets and had related questions and made a written demand for the books and records pursuant to the operating agreements of the LLCs and NRS 86.241. *Denton FFCLO* at p. 3:1-4.

38. Bloom/SJVC did not provide any information to the Investor Member. The Investor Member filed an arbitration demand under the operating agreements. Three years later, a three- arbitrator panel ("Arbitrator") entered a Decision and Award wholly in favor of the

[2] The Defendants have appealed the Denton FFCLO, but no stay has been sought.

Investor Member, compelling production of the Company records and ordering reimbursement of the Plaintiff's attorney's fees and costs (the "Arb. Award") finding that Bloom/ SJVC's response to the May 2, 2017, demand was the "first in a long and bad faith effort by [Defendants] to avoid their statutory and contractual duties to a member to produce requested records" (the "Arbitrator Bad Faith Finding"). *Id*. at ¶4, p. 3.

39. Following the Arb. Award, Farkas was no longer involved in the Plaintiff LLC. Shortly after the Arb. Award was entered, Farkas had consented in writing to an amendment of the Plaintiff LLC operating agreement and gave the Investor Member through Flatto complete discretion to manage and operate the Plaintiff LLC. *Id.* at ¶17, p. 8.

40. Jay Bloom, on behalf of the LLCs, argued for the enforcement of the Farkas Documents, representing that Farkas was the manager of the Plaintiff LLC. One of the documents was a purported "redemption agreement" which declared Bloom released from any responsibility to make company records available to the Investor Member. *Id.* at ¶6, p. 4:10.

41. Jay Bloom, as manager of the LLCs, did not comply with the Arb. Award and did not turn over any books and records to the Investor Member. The Arb. Award was entered November 1, 2020, and it was not appealed. In order to enforce the Arb. Award, the Investor Member filed the Denton Contempt Litigation.

42. In response, Bloom/SJVC filed a countermotion for the modification of the Arb. Award and a request for expenses, filing the Bloom Declaration which contended that the LLCs had "no funds or employees, and the only way for Defendants to obtain and furnish the records in compliance with the Arb. Award would be for the Court order Plaintiff [TGC/Farkas Funding, LLC, the Investor Member] to first pay expenses." *Id.* at ¶8. The Court denied Bloom/SJVC's countermotion and affirmed the Arb. Award (the "Denton Award Order") which was entered November 17, 2020. *Id*. A month later, on Dec. 18, 2020, the Investor Member moved for an Order to Show Cause ("OSC") citing no compliance or communicated intention by Bloom to comply with the Arb Award. *Id*. at ¶9, p. 5-6. Bloom was personally served with the OSC and post-judgment discovery. *Id.*

43. Following the issuance of the OSC and the existence of the post-judgment

discovery, the Court found that despite Farkas no longer being active in the Plaintiff LLC and having given full authority to the Investor Member, Bloom convinced his brother-in-law, Farkas, to sign a series of documents on behalf of the Plaintiff LLC, purporting to bind the Plaintiff LLC and the Investor Member to their detriment (the "Farkas Documents"). *Id.* at ¶20, p. 10-13.

44. One of the Farkas Documents was a settlement agreement executed on Jan. 6, 2021 (the "Settlement Agreement"), purportedly on behalf of the Investor Member, which Bloom then asserted mooted the OSC and the post-judgment discovery. *Id*. at ¶10, p. 6. Bloom filed with the Court a Motion to Enforce the Settlement Agreement which provided for the immediate dismissal of the Order affirming the Arb. Award and the Arb. Award with prejudice. *Id*. Bloom also argued that he was a non-party to the dispute and again reiterated the need for expenses to comply. *Id*. at ¶11, p. 6. Bloom did not disclose the existence of the Settlement Agreement to the Investor Member. *Id.* at ¶13, p. 7. When the Investor Member found out about the Settlement Agreement it immediately sent notice repudiating it. The brother-in-law Farkas testified that he did not believe he had the authority to execute the Settlement Agreement on behalf of the Plaintiff LLC and that Bloom understood that. *Id.* at ¶ 15, p. 7. Ultimately, the court found that "[t]he Settlement Agreement was a sham, never designed to result in any fair benefit to Plaintiff [LLC], and, if effectuated with dismissal of the Order, the underlying Arb. Award… the ramifications to Plaintiff [LLC] would have been unacceptable under law or equity." *Id.* at ¶32.

45. Judge Denton found that "Bloom disobeyed and resisted the Order in contempt of Court (civil) (the "Contempt Finding"), and further found that the Motion to Enforce was a tool of that contempt as orchestrated by Bloom in disregard of the Arb. Award confirmed by the Order." *Id*. at p. 35:11. As the manager of the Debtor, disclosure of such contempt finding due to an abject refusal to provide books and records to a member should be included in the Disclosure Statement as a material fact related to at the very least feasibility and good faith.

46. The Court particularly called out the circumstances of the execution of the Settlement Agreement by Farkas in 2021. Apparently, despite Farkas' having resigned and given all authority to the Investor Member, Jay Bloom had sent several documents to a UPS store to be executed by his brother-in-law Farkas. Jay Bloom sent the Settlement Agreement, and he also

sent documents purporting to fire the Plaintiff LLC's counsel, Garman Turner Gordon ("GTG"), to hire Bloom's personal counsel instead, and a release releasing and indemnifying Bloom, on behalf of the Plaintiff LLC (collectively, the "Farkas Documents"). *Id.* at p. 11. Based on those documents and relying on Bloom's representations as to Farkas' authority, Bloom's personal counsel sent correspondence to GTG representing that he was hired to replace GTG and disclosing the existence of the purported settlement agreement. *Id.* at p. 12:17.

47. Jay Bloom's personal counsel, in attempting to substitute in, did not contact either of the members of his client, but relied solely on Bloom's (his adversary's) representations, testifying that he took direction from Bloom because Bloom was Farkas' brother-in-law and his "conduit." *Id*. at p. 13:10. The Court points out that at all relevant times Bloom and the LLCs (the Defendants) were adverse to the Plaintiff LLC *with pending contempt proceedings against them*, and under no circumstances should Bloom have been directing Plaintiff LLCs counsel without any member of Plaintiff LLC's participation. *Id*. at p. 13:13.

48. The Court found that Bloom and his personal counsel (now purporting to act for the Plaintiff LLC) knew about Farkas ceding his authority to Flatto following the issuance of the Arb. Award and "were unfazed and moved forward in their enforcement efforts" with respect to the Settlement Agreement executed by Farkas, without any authority. *Id.* at ¶22, p. 13. The Court further held that "Bloom's refusal to recognize inconvenient limitations on Farkas' authority was shown to be pervasive and reckless" and that "no reasonably intelligent person with knowledge of that Arb. Award would once again attempt to enforce an agreement without Flatto's consent." *Id.* at ¶23. Bloom tried to convince the Court that the Arb. Award was based on a declaration in which Farkas committed perjury. Farkas provided rebuttal testimony that his declaration was truthful and the "Court finds there is no support for Bloom's allegation of perjury." *Id*.

49. Despite having received notice of Farkas' consent to the revised operating agreement giving Flatto authority, Bloom then argued that certain old documents executed by Farkas provided apparent authority, which argument the court dismissed. *Id*. at ¶26, p. 15. The Court held "there was a lack of good faith in Bloom's dealings with his brother-in-law in order to obtain the signed [Farkas] Documents with haste and in an intentional disregard of the restrictions

set forth in the Arb Award" *Id*. at ¶27. The court found that Bloom's actions in making Farkas sign the documents amounted to duress by threatening his brother-in-law Farkas with civil action, especially where there are circumstances of emotional consequences, (*Id*. at ¶¶16, 17, p. 27), and that such threats amounted to bad faith subject to sanctions. *Id*. at p. 28:13.

50. The Court further found that Bloom's Motion to Enforce the Settlement Agreement "was filed for the express purpose of avoiding the consequence of Defendant's and Blooms contempt of the Order." *Id.* at ¶34 p. 18. The Court found that due to their familial relationship "Bloom had a duty to act with the utmost good faith when dealing with Farkas" which he breached. *Id.* at p. 18:20. Farkas testified that "[Bloom] is my brother-in-law. He's family. I didn't think he would-he would try to do something like this..." "I trust him as a brother-in-law, and as somebody who was representing to me that he was just trying to help in this part of what was going on… I believe that he took advantage of a nuance in the law… I think the way Jay treated me was wrong and manipulative. And I think he knew exactly what he was doing." *Id.* at p. 18:23 – 19:2. Rather than acting with the utmost good faith, Bloom actually threatened Farkas with civil action if he did not sign the Settlement Agreement and the other Bloom Documents. *Id.* at p. 19:11.

51. The Court stated that Bloom was only able to procure Farkas' signature through the abuse of special confidences, the threat of adverse action and concealment of the true nature and substance of the Bloom Documents being signed. *Id.* at p. 19:16.

52. It is no surprise that the court granted the OSC and found Bloom in contempt holding that Bloom was not incapable of abiding by the Court's order affirming the Arb. Award, "Bloom merely determined to do nothing to comply with the order". *Id.* at p. 21:21-22. The court further concluded "there was no good faith basis for Bloom's intentional disregard of the Arb. Award and Order thereon" and reliance by Bloom on Farkas' signature was not reasonable. *Id.* at ¶11, p. 26:15.

53. The Denton Court found Bloom's testimony demonstrated that the LLCs (like the Debtor here) had no continued operations, no employees, no bank accounts, no records being maintained as required under the operating agreements or NRS 86.241 and no active governance

of any kind (the "Breach of Entity Duties"). *Id.* at p. 32. The court held that "equity must be applied such that Bloom will not be immune from consequences from his intentional conduct for the purpose of disobeying and/or resisting the Order. Therefore, in addition to the "responsible party" rule that applies to contempt, there should be no immunity for liability when, as here, Bloom is [the LLCs] *alter ego*." *Id.* at p. 33:1.

54. The Denton FFCLO found that Bloom intentionally concealed the true facts of the subject of the dispute, and that Bloom made threats to a party who he was bound to act toward in good faith and with due regard. Judge Denton found that "Farkas was threatened by Bloom with civil action by Defendants and/or their members if he did not sign the Settlement Agreement and other documents provided to him by Bloom, his family member" (Id. at ¶37); that "[n]ot only did Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would never have to be revealed until the case was dismissed, inclusive of hiring Farkas separate counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement" (collectively, the "Duress and Bad Faith Acts") (id. at ¶15 at p. 27).

55. In addition, as part of the Breach of Entity Duties, the Denton FFCLO found as a matter of law that "[Bloom's[3]] contempt of the [Court] Order through resistance and /or disobedience [was] clearly established." *Id*. at ¶ 19.

56. Further, the Denton FFCLO states that Bloom followed "no corporate formalities" with regard to his entities, and "that at this juncture, Bloom is the alter ego of the named corporate Defendants" (previously defined herein as the Alter Ego Finding). *Id*. at p. 31-32.

III. Argument

Under applicable Nevada law, it is well recognized that a lender is entitled to the appointment of a receiver to protect the collateral which secures a borrower's obligations. In this case, the obligated party is SJCV, who has possession of all the collateral including SJCV's interest in the Judgment encumbered by the debt. SJCV has now encumbered the very same collateral by way of the Denton FFCLO. Bloom has been found to be the alter ego of SJCV and committed acts of deceit and fraud. Bloom has been found to have acted recklessly. Alternatively,

[3] Bloom was found to be the "sole natural person legally associated with Defendants." *Denton FFCLO* at ¶20, p. 28.

NRS §32.010(6) provides that a receiver may be appointed in all other cases where receivers have heretofore been appointed by courts of equity. Such authority, combined with the default and express agreement to such relief, unquestionably entitles Counterclaimants to the appointment of a receiver in the present case.

A. Legal Standard

> **NRS 32.010 Cases in which receiver may be appointed.** A receiver may be appointed by the court in which an action is pending, or by the judge thereof:
>
> 1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
>
> . . .
>
> 5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
> 6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

In general, "a receiver is a neutral party appointed by the court to take possession of property and preserve its value for the benefit of the person or entity subsequently determined to be entitled to the property." *Anes v. Crown Partnership, Inc.,* 113 Nev. 195, 199, 932 P.2d 1067, 1069 (*citing Lynn v. Ingalls,* 100 Nev. 115, 120, 676 P.2d 797, 800-01 (1984)). A court-appointed receiver acts as an officer of the court. *Bowler v. Leonard,* 70 Nev. 370, 383, 269 P.2d 833, 839 (1954). Nevada law allows for the appointment of a receiver upon the application of a creditor who seeks to subject any property or fund to a claim when the property or a fund is in danger of being dissipated. *See* NRS 32.010. Nevada law also allows for the appointment of a receiver upon the application of a party who has a probable claim to property or a fund. The property or fund is in danger of being lost, removed or materially injured. NRS 32.010 also provides that a receiver may be appointed in all other cases where receivers have heretofore been appointed by courts of equity.

"The appointment of a receiver is an action within the trial court's sound discretion and will not be disturbed absent a clear abuse." *Medical Device Alliance, Inc. v. Ahr,* 116 Nev. 851, 862, 8 P.3d 135, 142 (2000) (citing *Nishon's Inc. v. Kendigian,* 91 Nev. 504, 505, 538 P.2d 580, 581 (1975); *Peri-Gil Corp. v. Sutton,* 84 Nev. 406, 411, 442 P.2d 35, 37 (1968); *Bowler v, Leonard,* 70 Nev. 370, 383, 269 P.2d 833, 839 (1954)). The appointment of a receiver does not require the posting of a bond. *Bowler v. First Judicial Dist. Court,* 68 Nev. 445, 234 P.2d 593 (1951).

In this case, this Court should exercise its discretion and appoint a receiver to collect the business records of SJCV, determine the efforts made to collect upon the Judgment and report the financial condition of SJCV to the Court. Jay Bloom, the alter ego of the manager of the Debtor, SJCV, has a pattern of breaching contracts, breaching his fiduciary duties as a manager, misrepresenting facts and law, using litigation to frustrate the expectations of partners and creditors by among other things disobeying and resisting lawful court orders resulting in a judgment for contempt, using manufactured agreements obtained under duress as a tool of the contempt and refusing to perform the most basic of governance obligations, such as keeping and producing accurate books and records or filing tax returns, which pattern has continued and will continue. Accordingly, Counterclaimants easily satisfy the statutory requirements of Sections 32.010, 107.100, and 107 A.260 of the Nevada Revised Statutes for the appointment of a receiver.

B. Counterclaimants have Standing to Seek Appointment of a Receiver

Pursuant to NRS 32.010(1), Counterclaimants have standing to seek the appointment of a receiver. Nevada allows for the appointment of a receiver upon the application of a creditor. See Trial Exhibit 1, Forbearance Agreement. The Loan is secured by the Security Agreement. See **Exhibit E,** attached hereto. The Note, Deed of Trust, Assignment of Rents, and all of the other Loan Documents were assigned by Counterclaimant CBC Partners I, LLC to Counterclaimant 5148 Spanish Heights, LLC. See Recorded Assignment of Interest in Deed of Trust, Trial Exhibit 100, attached hereto as **Exhibit G.**

C. Larry Bertsch is Well Qualified to Serve as Receiver

Attached hereto as **Exhibit H** is a statement of the qualification of Larry Bertsch. As can be seen by the attachment, Mr. Bertsch is easily qualified, given his vast experience and familiarity with the real estate market in Nevada, to serve as receiver for the Property, to possess and control the accounts, funds, monies, books and records of the Property, upon such terms and provisions as the Court deems appropriate. Indeed, Mr. Bertsch has been appointed by courts as receiver on numerous separate occasions. Mr. Bertsch is able and willing to act as receiver for the Property in this action should the Court grant this Motion.

D. There Exists a Conflict of Interest for SJC Ventures

SJCV claims to be the irrevocable manager of SHAC. See Trial Exhibit 5, attached hereto as **Exhibit D,** specifically Bates No. 5148SH 000536, Operating Agreement of SHAC. SJCV is also the tenant in the sole property owned by SHAC. The ownership of SJCV rights in SHAC are in question and SJCV has defaulted under the terms of the various forbearance agreements. As such, the rights of the true members are unrepresented, a receiver is necessary to protect those interests.

IV. Conclusion

On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law Ordering that the Note is a valid existing obligation and that the Deed of Trust is a valid and existing obligation against the Property. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law Ordering that the "Pledge Agreement is a valid existing obligation of SJCV." On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law Finding that the Forbearance Agreement and Amendment to Forbearance Agreement "are clear and unambiguous as a matter of law." In addition, the Denton FFCLO states that Bloom followed "no corporate formalities" with regard to his entities, and "that at this juncture, Bloom is the alter ego of the named corporate Defendants". Bloom has refused to answer all questions regarding SJCV's finances and SJCV's ability to meet its contractual obligations.

Pursuant to NRS 32.010, 107.100, or 107A.260, the Court should appoint a receiver to protect Counterclaimants' collateral in accordance with the loan documents. Due to his extensive background and experience in finance and commercial real estate and as a receiver for this Court, Counterclaimants request that this Court appoint Larry Bertsch, as receiver in this case and that the Court authorize the receiver to exercise the powers set forth more specifically in the Proposed Order, attached hereto as **Exhibit I.**

DATED this 24th day of June, 2021

MUSHKIN & COPPEDGE

/s/Michael R. Mushkin
MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
6070 South Eastern Ave Ste 270
Las Vegas, NV 89119

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion for Appointment of Receiver** was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 24th day of June, 2021. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list.

/s/K.L. Foley
An Employee of
MUSHKIN & COPPEDGE

EXHIBIT “A”

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT

FFCL

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.: XI **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

a) Contractual interpretation and/or validity of the underlying "Secured Promissory Note" between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
b) 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 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth, Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of Action).

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

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

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

GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, appearing by and through its representative Alan Hallberg ("Hallberg"); 5148 SPANISH HEIGHTS, LLC, 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, (collectively "Defendants") all Defendants appearing by and through their counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court makes the following findings of fact and conclusions of law:

I. Procedural Posture

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

Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, 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 ("Antos Trust"); DACIA, LLC, with the First Amended Complaint being filed on May 15, 2020.

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

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

Emergency Directive 008.

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

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

On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against SJCV, which SJCV answered on September 28, 2020.[5]

II. Findings of Fact

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

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

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

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

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

6. The Property is currently owned by Spanish Heights[6] which has entered into a

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[5] The Antos have a pending motion for summary judgment.

[6] The manager of Spanish Heights is SJCV.

written lease agreement with SJCV.[7]

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

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

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

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

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

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

13. The Note was modified and amended several times.

14. On November 13, 2013, a Fourth Modification to Secured Promissory Note ("Fourth Modification") was executed.

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

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

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

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[7] The manager of SJCV is Bloom.

Agreement").

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

> 3.3 Sale, Encumbrance or Disposition. Without the prior written consent of the Secured Party, Antos will not (a) allow the sale or encumbrance of any portion of the Collateral and (b) incur, create, assume or permit to 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…

18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie Foods International, Inc. ("Dixie").

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

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

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

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

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

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

24. The Certificate of Trust provides in part:

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

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

> To execute and deliver a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust"), to secure (i) obligations owing to Lender by KCI Investments, LLC, a 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 June 22, 2012, in the maximum principal amount of $3,250,000.00 (the "Note") executed by Borrower in favor of Lender, (iii) that certain Guaranty dated June 22, 2012, executed by the Grantors as individuals and not in their capacity as trustees, and (iv) the other documents and instruments executed or delivered in connection with the foregoing.

25. The Certificate of Trust further provides:

> The Deed of Trust and Lender's provision of credit under the terms of the Note will directly and indirectly benefit the Trust and its beneficiaries.
>
> The Trustees of the Trust have the authority to enter into the transactions with respect to which this Certificate is being delivered, and such transactions will create binding obligations on the assets of the Trust.

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

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

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

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

and Waiver of Defaults ("Ninth Modification") was executed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> My thought is that this proposal gets the 3rd lender:
> - a full recovery of its Note balance plus all protective advances past and future,
> - interim cash flow and
> - provides interim additional full collateral where, given the current value of the property, the 3rd position lender is currently unsecured.
>
> As to the Seller, he:
> - gets out from under a potential deficiency judgment from the 3rd position lender and
> - unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

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

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

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

43. Mr. Bloom testified that he was not provided with a complete set of documents reflecting the prior transactions between the Antos and KCI[8] and that misrepresentations were made regarding the prior transactions by CBCI.

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

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

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

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

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

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

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

extensions.

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

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

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

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

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

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

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

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

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[9] The Pledge Agreement states in pertinent part:

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

57. The Pledge Agreement provides in pertinent part, "Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default … to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral."

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

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

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

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

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

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Living Trust (the Antos Trust"), SJC Ventures, LLC ("SJCV")(collectively the "Pledgors") to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

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

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

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

63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements, dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCV[10] acknowledged that it pledged its membership interest in Spanish Heights as collateral for the 2017 Forbearance Agreement.[11]

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

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

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

***

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

***

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

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

66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security Agreement "shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Security Agreement…"

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

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

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

1. Evidence of homeowner's insurance coverage Pursuant to Paragraph 1(A)(6) of Amendment to Forbearance Agreement and Related Agreements;
2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to Forbearance Agreement;
3. Evidence of Bank of America account balance of $150,000.00 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
4. Opinion letter from SJC Ventures and 1st One Hundred Holdings counsel regarding the Judgment and Security Agreement pursuant to Paragraph 1(A)(12) of Amendment to Forbearance Agreement and Related Agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***

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

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

> From the Pledge Agreement:
>
> WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests") of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.
>
> From the Amendment to the 2017 Forbearance Agreement:
>
> WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

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

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

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

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

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

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

III. Conclusions of Law

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

> Cases in which injunction may be granted. An injunction may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
>
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

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

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

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

4. The Note is secured by the Property.

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

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

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

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

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

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

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

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

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

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

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

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

17. The "One-Action Rule" was specifically waived by the debtor. The Deed of Trust paragraph 6.21(a) states:

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

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

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

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

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

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

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

JUDGMENT

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing obligation of SJCV.

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

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

Dated this 6th day of April, 2021

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

/s/ *Dan Kutinac*
Dan Kutinac, JEA

EXHIBIT “B”

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:

Lease Month	Monthly Base Rent
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
ACQUISITON 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
ACQUISITON 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 of 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 Tenants 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 untenantable, 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