

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE ELIZABETH
GONAZLEZ, DISTRICT JUDGE

Respondents,

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

Real Parties In
Interest.

PETITIONER'S APPENDIX TO

PETITION FOR WRIT OF

MANDAMUS OR PROHIBITION

DIRECTING THE EIGHTH

JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA,

HONORABLE ELIZABETH

GONZALEZ, DISTRICT JUDGE,

TO VACATE AN (1) INJUNCTIVE

RELIEF ORDER WITH RESPECT

TO PROPERTY FORECLOSURE;

AND (2) AN ORDER APPOINTING

A RECEIVER OVER SJC

VENTURES HOLDING

COMPANY, LLC

Dist. Ct. Case No.: A-20-813439-B

ORIGINAL PETITION

From the Eighth Judicial District Court, Clark County
The Honorable Elizabeth Gonzalez, District Judge

PETITIONERS' APPENDIX VOLUME II

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DATE	DESCRIPTION	VOLUME	PAGES
9/3/2013	Amended Order from April 4, 2013 Hearing, in <i>Vion Operations LLC v. Jay L. Bloom, et al</i> (Case No. A-11-646131-C)	I	PA0009-0016
12/24/2020	Declaration of Alan Hallberg in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	I	PA0170-0172
8/12/2021	Declaration of Jay Bloom	III	PA0702-0703
12/24/2020	Declaration of Kenneth M. Antos in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0173-0178
10/11/2017	Deed of Sale of Property to SHAC	I	PA0049
4/27/2020	Defendant CBC Partners I, LLC's Answer to Complaint; and Counterclaim	I	PA0055-0078
12/24/2020	Defendants/Counterclaimaints' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0146-0169
8/6/2021	Defendants' Status Report on Compliance with the Court's Orders in <i>TGC/Farkas Funding, LLC v. First 100, LLC et al</i> (Case No. A-20-822273-C)	III	PA0657-0688
5/6/2020	Demand for Jury Trial	I	PA0079-0080
8/13/2021	Email from Candace Carlyon Dated August 13, 2021	III	PA0705-0707
8/12/2021	Email from Larry Bertsch Dated August 12, 2021	III	PA0704

4/6/2021	Findings of Fact and Conclusions of Law	II	PA0327-0347
4/7/2021	Findings of Fact, Conclusions of Law, & Order Regarding Evidentiary Hearing in <i>TGC/Farkas Funding, LLC v. First 100, LLC et al</i> (Case No. A-20-822273-C)	II	PA0348-0385
5/15/2020	First Amended Complaint	I	PA0081-0100
10/7/2010	Grant, Bargain Sale Deed to Antos Trust	I	PA0005-0008
4/5/2007	Grant, Bargain, Sale Deed	I	PA0001-0004
8/15/2017	Lease Between SHAC and SJC Ventures	I	PA0017-0048
6/24/2021	Motion for Appointment of Receiver	II/III	PA0414-0605
1/5/2021	Notice of Entry of Order	I	PA0208-0215
8/11/2021	Notice of Entry of Order (Appointing Receiver)	III	PA0694-0701
4/20/2021	Notice of Entry of Order (FFCL)	II	PA0386-0409
7/8/2021	Opposition to Defendants' Renewed Motion for Appointment of Non-Neutral Receiver	III	PA0606-0649
08/10/2021	Order Appointing Receiver	III	PA0689-0693
5/26/2021	Order Granting in Part and Denying in Part Motion for Sanctions for Violation of Automatic Stay of Bankruptcy Code Section 362(a) and Related Relief	II	PA410-0413
12/14/2020	Plaintiff's Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0117-0145
1/1/2021	Plaintiff's Reply in Support of Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	I	PA0179-0207

4/1/2020	Rent Payments to SHAC	I	PA0050-0054
7/28/2021	Status Report Regarding Lifting of Bankruptcy Stay	III	PA0650-0656
1/12/2021	Stipulation Regarding Legal Issues to be Decided by the Court at Bifurcated Trial Commencing February 1, 2021	I	PA0221-0222
5/26/2020	Summons to 5148 Spanish Heights, LLC	I	PA0101-0104
5/26/2020	Summons to CBC Partners I, LLC	I	PA0109-0112
5/26/2020	Summons to CBC Partners, LLC	I	PA0105-0108
5/26/2020	Summons to Dacia, LLC	I	PA0113-0116
1/5/2021	Temporary Restraining Order	I	PA0216-0220
3/15/2021	Transcript of Proceedings – Preliminary Injunction Hearing and Trial – Day 4, Volume II	II	PA0229-0326
2/3/2021	Voluntary Petition for Non-Individuals Filing for Bankruptcy	I	PA0223-0228
12/15/2020	Exhibits in Support of Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	IV/V	PA0708-1018

CERTIFICATE OF SERVICE

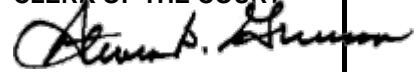
I certify that on the 20th day of September, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, TO VACATE AN (1) INJUNCTIVE RELIEF ORDER WITH RESPECT TO PROPERTY FORECLOSURE; AND (2) AN ORDER APPOINTING A RECEIVER OVER SJC VENTURES HOLDING COMPANY, LLC and VOLUMES I – V of the APPENDIX** shall be made in accordance with the Master Service List as follows:

Michael R. Mushkin, Esq.
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Attorney for Real Parties in Interest

DATED this 20th day of September, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES



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.

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

2 * * * * *

3 (Pause in the proceedings.)

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

6 THE WITNESS: Of course.

7 THE COURT: Okay.

8 **JAY BLOOM**

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

11 CONTINUED DIRECT EXAMINATION

12 BY MR. MUSHKIN:

13 Q Good afternoon, Mr. Bloom.

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

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

24 Q I'd like to direct your attention to Exhibit 39,
25 page 21. You may recall that before we left, I showed you the

1 title -- or the preliminary title report that showed the deed
2 of trust of record in '14, long before you arrived; correct?

3 A Yep.

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

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

8 A I do.

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

11 A It appears to be.

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

15 A I believe I recall that.

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

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

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

1 to a pledge agreement?

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

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

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

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

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

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

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

22 A Yes. Correct.

23 Q Thank you.

24 Anything else that you have that supports your claim?

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

1 Q Thank you.

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

5 A It is.

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

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

10 Q Sir, I'm not talking about --

11 MR. GUTIERREZ: Objection, Your Honor.

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

14 MR. MUSHKIN: Okay.

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

17 You can finish, Mr. Bloom.

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

25 The extension -- the title of the extension of the

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

4 BY MR. MUSHKIN:

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

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

11 Q Sir --

12 A -- by SJC.

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

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

17 A I don't believe there is.

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

20 A Not from recollection.

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

24 A The contract itself includes legacy language that's
25 in contradiction to the document signature block and lack of a

1 signature by the SJC party.

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

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

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

14 A I acknowledge that on behalf of SJC as the manager,
15 it ratified the Antos's ability to pledge their 49 percent
16 interest.

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

21 Antos parties and SJCVC parties acknowledge.

22 Do you see that?

23 A I do.

24 Q No breach by CBC. Do you see that?

25 A I do.

1 Q Interest fees and other charges. Do you see that?

2 A I do.

3 Q So you've agreed to the amounts; is that fair?

4 A Referencing the amounts stated elsewhere in the
5 agreement, yes.

6 Q Yeah, the note.

7 Now let's look at 8, their representations and
8 warranties, 8.3:

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

14 Do you see that?

15 A I do.

16 Q Let's take a look at the next section of Section 9.
17 9.3:

18 There's no waiver.

19 Do you see that?

20 A I do not. It's off the page. If you could slide the
21 page --

22 Q I'm sorry. I'm getting better.

23 Is it on there now?

24 A Yes. Yes, I see that.

25 Q 9.6, The loan balance is true and correct.

1 Do you see that?

2 A I do.

3 Q 9.7, Fair consideration.

4 Do you see that?

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

6 Q Do you see that?

7 A I do.

8 Q Thank you.

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

11 A I do.

12 Q And you signed this agreement, did you not?

13 A In an official capacity, yes.

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

16 A Correct.

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

19 A Correct.

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

21 A I believe so.

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

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

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

4 A I do.

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

7 A Yes.

8 Q Did anybody else help you?

9 A No.

10 Q Now let's go to --

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

13 Q I didn't hear a word you said.

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

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

18 THE COURT: Well, that was his --

19 THE WITNESS: That was my testimony.

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

22 MR. MUSHKIN: I asked if anybody helped.

23 THE COURT: I was like a read-back.

24 MR. MUSHKIN: I asked if anybody helped him.

25 THE COURT: And that was what he said when he

1 modified his answer.

2 BY MR. MUSHKIN:

3 Q Okay. So now we go to the --

4 THE COURT: Did I get it right, sir?

5 THE WITNESS: Yes. Yes, that is correct.

6 BY MR. MUSHKIN:

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

9 A I believe so.

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

12 A Correct.

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

15 A Correct.

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

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

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

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

24 THE CLERK: 8.

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

1 BY MR. MUSHKIN:

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

4 A Correct.

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

8 A Correct.

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

11 A No.

12 Q Why?

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

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

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

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

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

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

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

1 is.

2 Oh. No.

3 Q Why?

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

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

10 A Good -- good question.

11 Q Thank you.

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

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

15 A Yes.

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

21 Do you see -- do you recall that?

22 A If you could put it on the --

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

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

1 Q Do you recall that the pledge agreement was between
2 CBC and the Antoses and SJCVC?

3 A I believe so.

4 Q So there it is.

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

6 MR. MUSHKIN: Oops. Sorry.

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

8 BY MR. MUSHKIN:

9 Q Do you see that?

10 A I do.

11 Q And is it your testimony that SJCVC did not agree to
12 pledge its stock?

13 A Yes.

14 Q What was your answer?

15 A My answer was, "Yes."

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

20 A Those are some of the relevant documents, yes.

21 Q Let's take a look at Exhibit 16, 5148 Spanish Heights
22 00014, the amendment to the forbearance agreement. Do you
23 recall signing that?

24 A If you could show me the document.

25 Q I'm just asking you if you recall signing the amended

1 forbearance agreement, sir.

2 A I believe so.

3 Q Does that document refresh your recollection?

4 A Yes.

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

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

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

11 A I do after reviewing that document.

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

15 A Yes.

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

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

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

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

23 Q '17.

24 A Yeah. That was the initial proposal.

25 Q And within that document, it specifically said

1 additional collateral for the loan, didn't it?

2 A I think that was part of the initial proposal.

3 Q Thank you.

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

6 THE COURT: Exhibit number?

7 BY MR. MUSHKIN:

8 Q -- right?

9 THE COURT: 16.

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

11 MR. MUSHKIN: Yes.

12 THE COURT: Thank you.

13 MR. MUSHKIN: 000156.

14 THE COURT: Great.

15 BY MR. MUSHKIN:

16 Q Do you see paragraph 12 there, sir?

17 A I do.

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

20 A It does.

21 Q And you signed this agreement?

22 A Which agreement is this?

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

25 A Yes.

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

3 A No. That misstates what my testimony was.

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

5 A No.

6 Q Tell me what that says, sir.

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

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

13 A That's my understanding of what it says.

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

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

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

18 THE COURT: There you go.

19 Thank you, Mr. Mushkin.

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

23 BY MR. MUSHKIN:

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

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

4 A All of that --

5 Q Do you see that?

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

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

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

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

17 A Correct.

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

20 THE COURT: Thank you.

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

24 MR. GUTIERREZ: I do, Your Honor.

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

1 clean.

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

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

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

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

10 MR. GUTIERREZ: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GUTIERREZ:

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

17 A I think so, yes.

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

21 A Yes.

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

24 A I do.

25 Q And can you tell me what this letter is?

1 A This is a letter to Mr. Mushkin on behalf of Spanish
2 Heights Acquisition Company addressing a special meeting under
3 the operating agreement and calling that meeting in SJC's
4 capacity as a managing member for April 13th, 2020, at
5 1:00 p.m.

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

7 A I believe I did, yes.

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

10 A I do.

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

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

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

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

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

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

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

23 Come on. Get your mask back on.

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

1 THE COURT: I do too, but I'm trying to comply.
2 All right.

3 MR. GUTIERREZ: Thank you, Judge.

4 BY MR. GUTIERREZ:

5 Q Mr. Bloom, we were looking at page 945 of this
6 Exhibit 92. Can you tell me what this document is?

7 A This is the agenda for the special meeting of the
8 members of Spanish Heights Acquisition Company.

9 Q And can you look -- and I'm on page 946 -- that Item
10 Number 7, and tell me what that is.

11 A Item 6?

12 Q Item 7.

13 A Item 7. Oh.

14 Yes, one of the agenda items was to address the
15 validity of the pledge agreement claim.

16 Q Okay. So as of April 10th, 2020, SJC was disputing
17 the validity of the pledge agreement and gave notice to CBC
18 about that dispute; correct?

19 A Right. Subsequent to the note sale, Mr. Mushkin
20 became involved, and that's the first time the pledge agreement
21 was tried to -- was attempted to be asserted against SJC, and
22 we raised the issue on April 10th.

23 Q That was after -- and let me show you Exhibit 74,
24 Mr. Bloom.

25 Have you seen this letter before? April 1st, 2020.

1 A Yes.

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

4 A Correct.

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

8 A Yes.

9 Q And tell us, when was that done?

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

11 Q And what was the reason for the capital call?

12 THE COURT: March 1st of this year?

13 THE WITNESS: Yeah, I'm sorry. Yes, March 1st of
14 2021.

15 THE COURT: Thank you.

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

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

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

6 BY MR. GUTIERREZ:

7 Q How much money was being requested?

8 A SJC requested capital contributions of \$100,000,
9 \$51,000 from SJC as the investor member and \$49,000 from
10 whoever the Antos Trust successor is for its 49 percent.

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

13 A Yes.

14 Q And what was that response?

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

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

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

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

1 letters.

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

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

6 THE COURT: Mr. Mushkin, any objection?

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

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

11 THE CLERK: I have them.

12 THE COURT: Okay. Sweet.

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

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

16 THE WITNESS: They did not.

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

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

21 MR. MUSHKIN: No argument.

22 BY MR. GUTIERREZ:

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

1 A No.

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

4 A No.

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

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

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

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

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

18 A Yes.

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

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

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

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

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

7 A Yes.

8 Q What was that document?

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

15 Q And when was that?

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

18 Q Okay. And if the invoice stated it was October 5th,
19 2019, does that sound right?

20 A Yeah.

21 Q Okay. And was that paid, that invoice?

22 A Yes.

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

25 A There were two invoices. The work was done in two

1 phases. One was in the 50-something thousand and the second
2 one was 40-something thousand.

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

7 MR. MUSHKIN: Your Honor --

8 THE COURT: Have you ever seen them before?

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

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

13 MR. MUSHKIN: Never saw them before.

14 THE COURT: Okay.

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

18 THE COURT: Okay.

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

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

23 MR. GUTIERREZ: Yes.

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

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

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

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

7 THE COURT: Sure.

8 MR. MUSHKIN: -- proof of payment.

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

11 BY MR. GUTIERREZ:

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

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

21 Then there was a 5148 notice of breach and election
22 to sell. Then there was a 5148 notice of sale. Each of those
23 notices predicated on the prior. I believe this Court
24 ordered -- found the notices improper. And then I think 5148
25 issued, for the first time, a notice of default as the most

1 recent notice. And then there were no subsequent notice of
2 breaches or notice of sale from 5148. They just wanted to jump
3 straight to sale without the statutory required notices.

4 Q Is there a pending sale date notice now?

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

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

10 THE COURT: Anything further?

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

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

13 REDIRECT EXAMINATION

14 BY MR. MUSHKIN:

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

17 A The payment was made by credit card --

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

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

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

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

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

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

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

7 THE COURT: Thank you.

8 Ramsey --

9 Sir, you can step down.

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

12 THE MARSHAL: Yes.

13 THE COURT: Your next witness.

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

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

18 MR. HALLBERG: Okay. Will do.

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

21 MR. HALLBERG: Thank you.

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

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

1 THE COURT: That's fine.

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

4 MR. GUTIERREZ: No, Your Honor.

5 THE COURT: Okay.

6 MR. GUTIERREZ: We can go to closing arguments.

7 (Pause in the proceedings.)

8 THE COURT: Mr. Hallberg, are you there?

9 MR. HALLBERG: Hello. I am here.

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

11 MR. MUSHKIN: There he is.

12 THE COURT: Now we've got video.

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

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

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

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

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

25 MR. HALLBERG: That's correct.

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

2 **ALAN HALLBERG**

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

5 THE CLERK: Thank you.

6 Please state and spell your name for the record.

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

9 THE CLERK: Thank you.

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

11 DIRECT EXAMINATION

12 BY MR. MUSHKIN:

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

15 A Yes.

16 Q Do you believe that Mr. Bloom testified truthfully?

17 A No.

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

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

25 Q And just to follow up --

JD Reporting, Inc.

1 A Secondly --

2 Q Sorry. Go ahead.

3 A No, it's okay. Go ahead.

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

6 A Just a minute, please.

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

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

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

12 THE WITNESS: Yes, I've got it.

13 BY MR. MUSHKIN:

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

18 A That's correct.

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

20 A The second one, when we were -- Mr. Bloom and I were
21 negotiating, you know, we talked about what would happen if the
22 judgment -- if monies from that judgment were not to come
23 through that he would not, you know, receive any liquidity.
24 And Mr. Bloom's answer was: Well, it's simple. We'll form an
25 LLC. We're going to pledge the equity in the LLC as security

1 for the obligation. So if, you know, there's no liquidity from
2 this judgment, then the equity in SHAC, you know, reverts to
3 CBC.

4 Q And it was always your --

5 A And that was always the agreement.

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

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

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

15 A I recall the testimony, yes.

16 Q Are you aware of any such legacy language?

17 A No.

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

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

23 Q In fact --

24 A The security agreement, you know, is additional
25 collateral. We, in no way, shape, or form, would release, you

1 know, any portion of that original collateral that we already
2 have in the form of the third position on a house.

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

5 A Correct.

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

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

9 A Yes, I believe so.

10 Q And it was intentionally drafted that way; correct?

11 A Yes.

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

14 A Yes.

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

17 A Yes.

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

21 A No.

22 Q You never discussed merger with Mr. Bloom?

23 A No.

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

1 A Correct.

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

4 THE COURT: Cross-examination.

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

8 MR. MUSHKIN: I'm sorry.

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

11 Thank you.

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

15 Sorry. I'm losing it here.

16 MR. GUTIERREZ: Just briefly, Your Honor.

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

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

21 MR. GUTIERREZ: Just briefly, Your Honor.

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

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

1 THE WITNESS: Exactly.

2 CROSS-EXAMINATION

3 BY MR. GUTIERREZ:

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

5 A Hello?

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

7 A Yes, yes.

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

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

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

13 Q My question is, though --

14 A And Mr. Bloom --

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

17 A Not personally, no.

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

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

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

25 A I don't believe so.

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

3 A I -- I don't remember.

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

7 A Yes.

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

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

13 Q Sure will.

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

16 A That's my understanding, yes.

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

20 A Yes, yes.

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

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

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

1 questions.

2 THE COURT: Anything else, Mr. Mushkin?

3 MR. MUSHKIN: No, Your Honor.

4 Defendant/counter-claimant rests.

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

7 THE WITNESS: Okay. Thank you, Your Honor.

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

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

12 MR. MUSHKIN: I believe so, Your Honor.

13 THE COURT: Okay.

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

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

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

18 THE CLERK: (Indiscernible.)

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

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

24 MR. GUTIERREZ: No, Your Honor.

25 THE COURT: Okay. Before you start arguing, because

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

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

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

18 And do you have your counterclaim with you?

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

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

22 MR. MUSHKIN: Thank you, Your Honor.

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

1 of time to do arguments.

2 Do you anticipate being done with argument today?

3 MR. GUTIERREZ: I don't think I'll be more than
4 20 minutes, Your Honor.

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

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

9 (Pause in the proceedings.)

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

11 (Pause in the proceedings.)

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

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

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

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

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

25 MR. GUTIERREZ: 1 would apply to SHAC.

1 THE COURT: But we are not worrying about 1.

2 MR. GUTIERREZ: Understood.

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

5 MR. GUTIERREZ: The same with Number 2.

6 THE COURT: Okay.

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

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

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

12 THE COURT: It does.

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

21 THE COURT: Okay.

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

25 THE COURT: Okay.

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

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

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

10 THE COURT: Right.

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

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

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

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

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

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

25 THE COURT: Okay.

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

4 THE COURT: So that's D. Okay.

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

8 THE COURT: Okay.

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

11 THE COURT: Okay.

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

14 THE COURT: Okay.

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

17 THE COURT: We're not on that yet.

18 Contribution also not. That's 12.

19 MR. GUTIERREZ: Yes. That's correct.

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

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

24 MR. GUTIERREZ: Closing argument, Your Honor?

25 THE COURT: Yes, please.

1 MR. GUTIERREZ: Thank you.

2 **CLOSING ARGUMENT FOR THE PLAINTIFFS**

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

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

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

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

24 But with the note never amended to add the Antos
25 trust as a guarantor prior to the issuance of the deed of

1 trust, the notes, the amendments and the guarantees were all
2 drafted by CBC.

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

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

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

14 The second issue, Your Honor, goes to the
15 interpretation and validity of the third position deed of
16 trust, including the modifications and whether consideration
17 was provided. Your Honor, for this issue, you have to look at
18 the timing of when the deed of trust was issued in December of
19 '14 and what guarantee was provided by the Antos trust at that
20 time. And the testimony was there was nothing. Even Alan
21 Hallberg testified that the December 2014 document signed by
22 the Antos trust was not a guarantee.

23 When you look at the validity of the deed of trust,
24 Your Honor, you have to look at the purpose of a deed of trust,
25 which is (indiscernible) a deed or legal title, and the

1 property is transferred to a trustee which holds that as
2 security to a borrowing lender.

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

5 The third position deed of trust issued on December
6 29th, 2014.

7 The amended deed of trust was issued on December
8 19th, 2016.

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

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

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

23 And, Your Honor, that brings us to our third issue
24 which is the contractual interpretation or validity of the
25 forbearance agreement, the amended forbearance agreement and

1 all contracts associated to that.

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

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

9 The December 1st, 2019, amended forbearance
10 agreement states CBC was to pay the first and second mortgage
11 on the property. CBC, Your Honor, it's our position breached
12 these agreements when it failed to make the payments to the
13 first and second lien holders in January, February, March of
14 2020.

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

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

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

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

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

25 Mr. Hallberg testified that CBC owned 49 percent

1 interest in SHAC. And it's our position CBC could look to the
2 Antoses or the Antos trust or KCI for any deficiencies.

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

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

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

23 And, alternatively, if the Antos trust is found to be
24 liable as a guaranty for the KCI debt, that the merger doctrine
25 applies for the reasons we stated, and the one-action rule

1 would prevent any foreclosure.

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

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

9 MR. GUTIERREZ: Heights. Heights.

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

13 MR. MUSHKIN: Yeah. And I understand --

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

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

22 THE COURT: A lot like First 100, huh?

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

24 THE COURT: (Indiscernible) know that.

25 MR. GUTIERREZ: First --

1 THE COURT: Sorry.

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

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

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

15 THE COURT: Okay.

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

24 THE COURT: Okay.

25 MR. GUTIERREZ: I believe that had things been

1 done -- this is a sloppy transaction. If you go back to look
2 at the history, I think that's undisputed. You're having a
3 commercial loan that's never disclosed, 10 amendments that are
4 never disclosed. And you get to the position where now, CBC,
5 the one change they have, the one material change they have is
6 to make sure that they are not included as both a lender and
7 the equity holder.

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

12 THE COURT: Okay.

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

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

17 THE COURT: No.

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

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

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

25 THE COURT: Okay.

1 Mr. Mushkin.

2 **CLOSING ARGUMENT FOR THE DEFENSE**

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

7 Plaintiffs carry the burden --

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

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

10 THE COURT: -- to go through the counterclaim.

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

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

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

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

19 MR. MUSHKIN: No, they are. This is against SJCv.

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

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

25 THE COURT: So you're asking me to include that under

1 the contractual interpretation and/or validity of the
2 underlying secured promissory note?

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

5 THE COURT: Okay.

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

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

15 Unjust enrichment is a damage claim.

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

19 MR. MUSHKIN: Yes, ma'am.

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

22 MR. MUSHKIN: The other breach of contract claims
23 would also be affected because the agreements are part of the
24 forbearance agreement. It has all those attachments and
25 exhibits. So all of those -- the operating agreement, pledge

1 agreement and the good faith and fair dealing -- all flow out
2 of the same thing.

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

5 MR. MUSHKIN: As to SJCv, sure.

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

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

17 THE COURT: Okay.

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

23 MR. GUTIERREZ: Excuse me, Counsel.

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

1 through the Antoses' --

2 THE COURT: No. We didn't --

3 MR. GUTIERREZ: -- answer and counterclaim?

4 THE COURT: No.

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

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

9 MR. GUTIERREZ: Okay. All right.

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

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

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

1 record. It should not be considered.

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

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

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

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

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

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

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

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

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

25 Mr. Bloom may reside in the house, but SHAC doesn't

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

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

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

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

22 Now, as I said earlier, this somehow claim that there
23 was a misrepresentation to them, there simply is no evidence,
24 and there's certainly no clear and convincing evidence. So any
25 likelihood of success based upon that claim is completely

1 without merit.

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

14 Mr. Bloom in his deposition and even I believe in
15 front of the Court, I think I counted them for you, there were
16 50 some occasions where Mr. Bloom testified -- refused to
17 answer my question and said that the documents speak for
18 themselves. I'm sorry. It was 26 times. And he couldn't
19 recall answers to my question on 51 occasions, including who
20 his attorney was.

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

1 obligation.

2 Court's indulgence for just a minute.

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

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

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

17 (Pause in the proceedings.)

18 THE COURT: Sorry.

19 MR. MUSHKIN: No problem.

20 THE COURT: Keep going.

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

23 Exhibit 34 authorizes the deed of trust.

24 And Exhibit 50 is a consent and reaffirmation and
25 even a release of any other prior problem, and it adds the -- I

1 want to make sure I give you the right cite -- the trust as a
2 creditor.

3 Court's indulgence just a second.

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

6 And, again, these are all documents -- this is about
7 2016 -- that happened well before Mr. Bloom arrives on the
8 site.

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

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

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

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

24 And then I think I've referenced that Exhibit 34 has
25 the certificate of trust which sets forth the specific

1 authority, and the certificate of trust provides various
2 representations and warranties regarding the effect and the
3 validity of the deed of trust.

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

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

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

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

24 As a part of the forbearance agreement, both the
25 original forbearance agreement and the amended forbearance

1 agreement, both the Antos parties and SJCV acknowledge the
2 debt, acknowledge that there were no defaults by CBC and
3 receive the benefit of the forbearance.

4 Mr. Bloom doesn't understand. He got what he
5 bargained for. He got possession of the house. He got
6 forbearance. And when the lender decided that a forbearance of
7 two years and another three months -- the whole thing is almost
8 three years because he took possession in August even though
9 the document isn't executed until September, and he doesn't
10 start paying until the first of the year because he gets
11 90 days for nothing, in spite of all of that time, he's not
12 ready to pay. March 31. And when he's told no more
13 extensions, now he starts making accusations.

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

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

1 Comes before this Court and lies within impunity.

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

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

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

19 Do you have any evidence of that?

20 No.

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

24 Now, let's talk about First 100 just for a minute. I
25 took the time to go through email after email of Mr. Bloom

1 telling Mr. Hallberg that he was going to pay him, but somehow,
2 even though the document was executed -- everything will be
3 done next week. We sold this. We found this -- not a dime.
4 Not one dime has this man paid as contracted.

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

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

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

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

25 And this party has received adequate notice. They've

1 provided you no evidence to the contrary.

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

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

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

17 THE COURT: Darn.

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

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

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

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

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

10 And I apologize if I get exercise, Judge. I've been
11 42 years practicing law, and never in my career have I seen
12 anyone testify intentionally falsely like this before, never,
13 in the face of documents, in the face of contradictory
14 witnesses, never.

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

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

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

24 They have given you no opportunity to do anything but
25 enforce these contracts. They haven't provided you a scintilla

1 of evidence that would lead to any other conclusion.

2 The Court has no power to create a new
3 contract or new duties for the parties which
4 they have not created or intended themselves.
5 That's *Old Aztec Mine versus Brown*. That's a 1981
6 case.

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

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

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

15 It is not proper function of a court to
16 rewrite or distort a contract under the guise
17 of judicial construction. But when all --
18 the law will not make a better contract for
19 the parties than they themselves have seen
20 fit to enter into, nor alter it for the
21 benefit of one party and to the detriment of
22 the other. The judicial function of a court
23 of law is to enforce the contract as it is
24 written.

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

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

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

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

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

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

23 Plaintiff agreed in the 2017 forbearance agreement to
24 pay the amounts in question by a separate promise to the Antos
25 parties. That's Exhibit 1 and Exhibit 16. They have provided

1 you know defense to that obligation.

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

7 The doctrine of merger provides that

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

13 And that is 31 CJS Estate, Section 153.

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

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

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

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

16 The one-action rule, very quickly, Judge, has been
17 waived. And we cited the *Bonnecamp* (phonetic) case because the
18 one-action rule doesn't get you out from under the note. The
19 one-action rule requires that you get credit for whatever you
20 get. So if the creditor sues the debtor personally on the
21 debt, the debtor may then either assert the one-action rule,
22 forcing the creditor to proceed against the security first
23 before seeking a deficiency from the debtor; or decline to
24 assert the one-action rule, accepting a personal judgment and
25 depriving the creditor of its ability to proceed against the

1 security. That's again NRS 40.435, Section 3, and this
2 *Bonnecamp* case. Those facts do not exist here, Judge. Pure
3 and simple. They do not have a case for the one-action rule.
4 For one, it was waived in writing. And, two, it does not get
5 them out from under it.

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

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

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

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

24 They were provided a preliminary title report. It
25 showed the first. It showed the second. It showed the third,

1 and it showed all those goofy judgments, but they didn't do
2 what they contracted. They didn't file a quiet-title action.
3 They didn't adequately maintain the house. They didn't pay the
4 real estate taxes. They didn't take care of the HOA lien.
5 They didn't do what they contracted for in the forbearance
6 agreement, in the amended forbearance agreement and the
7 operating agreement. They simply ignored it.

8 And, Judge, the temerity of this is beyond pale. I
9 am stunned that when they are finally, after the negotiations
10 break down and we finally go into them and say okay, March
11 31st, that's it, we're not granting any more extensions to
12 the forbearance agreement, can't be a default. Can't be a
13 default even though the document says this is limited relief.
14 The forbearance agreement only forebears certain defaults. You
15 still have to do this. You still have to do that. You still
16 have to provide the information. And the attorneys write the
17 letter. Can't be in default. It's unbelievable. It is
18 absolutely unbelievable, Judge.

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

23 Thank you very much for your time, Judge.

24 THE COURT: Thank you, Mr. Mushkin.

25 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?

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

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

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

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

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

8 MR. MUSHKIN: No. No. Thank you.

9 MR. GUTIERREZ: Thank you.

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

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

25 But Mr. Mushkin has other ideas that Mr. Bloom

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

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

17 But the evidence showed that CBC sold its note to
18 5148. That was only found out after the litigation started.
19 When we were here in front of Your Honor on the TRO, we found
20 out about it.

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

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

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

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

17 And you start to look at, okay, if that's the case
18 well, then what's the validity of this third deed of trust?
19 You know, now that -- what is it actually securing? What debt
20 does the Antos trust have that own the property that's actually
21 security? That was never -- counsel and the defense never was
22 able to articulate exactly that. They've been trying to parse
23 things together when (indiscernible) the documents, when you
24 review them, show that there was a commercial loan to KCI that
25 was guarantor -- guaranteed by the Antoses individually for

1 several years. And it was only towards the end when they try
2 to add this as some type of guarantee, and the documents do not
3 support them.

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

9 THE CLERK: No. You answered my questions earlier.

10 MR. MUSHKIN: Thank you.

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

15 **REBUTTAL ARGUMENT FOR THE DEFENSE**

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

19 THE COURT: Well --

20 MR. MUSHKIN: One thing Mr. --

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

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

25 THE COURT: -- which means that if I vacate an order

1 that directly affects Spanish Heights Acquisition, the debtor
2 in bankruptcy, means that I would be in trouble too.

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

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

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

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

16 THE COURT: I understand what you're saying.

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

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

25 Your Honor, I am troubled that they stand before you

1 and say they didn't know when the first page of the forbearance
2 agreement says KCI. That's a real problem for me, Judge.

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

9 And, finally, this notion that they can come before
10 you and say that the trust wasn't added as a borrower and the
11 trust wasn't added as a party, Your Honor, I cited the
12 documents, 34 and 50. And let's see if I can -- 26, 34 and 50.
13 And those all took place well before Mr. Bloom comes onto the
14 site. It's way before him by -- the last document I think is
15 11 months before him, and the other ones are years before him.
16 It is simply false testimony and false argument. The trust is
17 a party to the note and deed of trust. The party did give the
18 deed of trust. It was specifically authorized by the trustees.
19 And it's just not even at issue. I'm stunned that they make
20 such a specious argument.

21 And I thank you again for your time, Judge.

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

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

25 THE COURT: The matter will stand submitted.

1 Put it on my chambers calendar for Friday.

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

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

6 MR. GUTIERREZ: Thank you, Judge.

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

8 THE COURT: Everybody be well.

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

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CERTIFICATION

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

AFFIRMATION

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

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

03/16/2021

DATE

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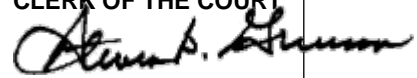
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<p>unsecured [2] 48/13 65/19</p> <p>until [3] 16/5 66/9 66/10</p> <p>untruthful [1] 66/20</p> <p>up [20] 3/4 10/5 16/7 20/9 21/13 21/15 29/6 31/17 33/10 33/25 34/4 36/19 37/14 37/25 52/14 52/18 59/8 60/3 79/10 79/14</p> <p>update [2] 26/20 26/22</p> <p>updates [1] 27/1</p> <p>upon [5] 5/14 49/3 51/7 61/25 82/9</p> <p>us [10] 21/19 23/9 29/12 31/17 40/5 48/13</p>	<p>48/23 54/24 69/18 69/25</p> <p>use [3] 12/18 13/16 34/7</p> <p>used [3] 28/21 29/3 80/3</p> <p>V</p> <p>vacate [4] 62/23 77/7 77/24 81/25</p> <p>vacating [1] 81/12</p> <p>vague [1] 58/24</p> <p>valeting [1] 18/25</p> <p>valid [3] 51/17 51/20 62/25</p> <p>validity [11] 20/14 20/20 22/15 22/17 46/15 47/15 47/23 48/24 56/1 65/3 80/18</p> <p>value [1] 65/18</p> <p>various [1] 65/1</p> <p>VEGAS [4] 3/1 26/15 32/14 85/12</p> <p>Ventures [6] 10/15 14/19 19/23 41/2 43/15 44/9</p> <p>veracity [2] 66/14 66/17</p> <p>verbally [1] 27/2</p> <p>Vernon [3] 11/11 11/14 38/12</p> <p>versus [10] 49/19 53/4 53/4 70/22 71/5 71/11 71/12 71/25 74/1 74/4</p> <p>very [7] 24/20 59/17 59/17 59/20 74/16 76/23 84/7</p> <p>video [4] 31/17 31/19 32/12 32/23</p> <p>violate [3] 77/8 81/13 81/22</p> <p>violation [4] 71/10 77/4 77/12 77/13</p> <p>VISUAL [1] 85/4</p> <p>VOLUME [1] 1/16</p> <p>W</p> <p>Wait [1] 32/19</p> <p>waive [1] 4/19</p> <p>waived [6] 51/5 54/10 60/24 72/11 74/17 75/4</p> <p>waiver [8] 4/9 9/18 36/7 51/4 51/14 53/23 64/19 75/7</p> <p>walk [1] 29/12</p> <p>walking [1] 42/21</p> <p>want [25] 5/10 5/20 29/10 32/14 32/15 32/19 37/12 40/11 53/18 59/25 60/8 60/19 61/5 62/3 62/22 64/1 69/2 70/2 70/3 70/4 70/5 75/17 75/18 75/21 78/10</p> <p>wanted [13] 26/9 30/2 57/24 58/5 58/10 60/4 60/13 68/9 69/3 78/2 79/4 81/8 81/11</p> <p>wants [2] 61/12 61/14</p>	<p>warranted [1] 14/6</p> <p>warranties [3] 9/8 64/11 65/2</p> <p>was [176]</p> <p>wasn't [15] 6/3 6/19 13/17 26/8 39/8 39/21 43/3 57/6 58/6 60/9 66/24 69/9 79/1 83/10 83/11</p> <p>watching [1] 30/12</p> <p>water [2] 21/20 21/22</p> <p>way [9] 23/16 35/10 35/25 36/10 44/4 73/22 74/15 77/19 83/14</p> <p>we [79] 3/25 4/14 4/22 11/1 12/3 12/20 12/20 13/2 15/5 19/14 20/4 20/5 20/6 22/5 22/22 23/10 25/3 26/7 26/8 26/9 26/15 27/1 27/2 28/5 28/24 29/9 32/6 33/21 34/20 34/21 35/10 35/25 36/1 42/13 42/16 42/23 43/1 43/14 44/20 45/5 46/4 46/7 46/8 46/9 46/17 46/17 46/22 51/16 51/25 54/19 57/18 58/2 60/5 60/23 62/22 63/3 66/14 67/2 67/2 68/3 68/3 68/18 68/19 69/3 70/2 70/15 74/17 75/9 76/10 77/12 77/14 78/12 78/12 78/17 79/19 79/19 79/24 79/25 80/12</p> <p>we'd [2] 24/24 28/3</p> <p>we'll [9] 12/7 31/19 31/25 32/17 34/24 41/19 46/23 77/11 81/6</p> <p>we're [23] 7/13 17/10 21/18 21/21 28/24 31/16 34/25 35/9 42/23 45/17 48/14 48/15 51/17 53/9 53/14 53/16 53/16 53/17 53/22 54/20 54/20 76/11 76/19</p> <p>we've [14] 23/24 23/24 23/25 25/9 32/12 41/25 43/19 46/3 49/16 49/17 51/3 65/4 69/16 81/4</p> <p>wear [1] 37/22</p> <p>week [5] 7/14 25/4 37/17 68/3 69/7</p> <p>weeks [1] 30/7</p> <p>well [39] 3/22 5/2 8/5 8/10 11/1 11/11 11/18 12/18 18/4 32/17 34/24 40/16 42/7 43/10 43/11 44/19 44/20 44/22 45/16 47/12 52/16 52/18 53/4 54/9 55/8 57/6 61/17 62/2 64/7 67/7 67/11 78/18 79/1 79/12 80/18 81/19 81/23 83/13 84/8</p> <p>went [6] 11/1 12/20 41/2 42/13 46/6 66/16</p> <p>PA0325</p>
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<p>W</p> <p>were [42] 4/13 13/2 22/5 25/23 26/16 26/19 27/4 27/5 27/25 30/1 31/4 34/20 34/20 34/22 38/12 39/5 42/17 46/11 46/23 47/1 56/17 57/4 58/24 59/10 62/15 64/5 66/2 69/24 72/4 74/11 75/24 77/18 78/3 78/17 79/19 79/21 79/22 80/1 80/2 80/14 80/14 83/6</p> <p>weren't [2] 26/8 29/4</p> <p>what [65] 7/5 10/24 11/20 11/25 12/18 12/22 13/25 15/14 16/22 18/3 18/4 18/6 18/7 18/13 20/25 21/20 22/6 22/10 23/11 24/14 27/8 27/11 30/7 33/22 34/21 41/7 41/8 43/3 46/7 46/8 47/19 50/12 53/5 53/22 54/20 54/21 55/5 57/25 59/5 60/19 61/4 62/2 63/8 65/20 66/4 66/14 67/12 68/8 70/3 70/4 70/6 72/6 75/16 76/2 76/5 77/14 77/15 77/21 77/24 78/3 78/12 80/19 80/19 82/13 82/16</p> <p>what's [2] 31/3 80/18</p> <p>whatever [2] 29/9 74/19</p> <p>when [35] 11/25 23/9 26/7 27/15 28/15 28/16 32/21 34/20 45/22 47/18 47/23 49/12 49/20 49/22 50/8 50/18 53/3 54/8 58/21 60/1 60/20 66/6 66/12 66/23 69/14 70/19 71/17 74/8 76/9 79/9 79/19 80/23 80/23 81/1 83/1</p> <p>Whenever [1] 73/8</p> <p>where [18] 4/12 6/9 6/9 6/19 6/19 7/2 10/17 23/24 35/13 35/18 41/2 46/6 54/4 60/23 62/16 65/17 75/6 75/22</p> <p>where's [1] 79/1</p> <p>whether [8] 20/14 20/18 28/20 47/16 49/6 49/15 53/3 81/12</p> <p>which [38] 3/21 14/6 14/16 15/17 15/18 17/22 18/8 18/10 19/7 19/12 24/19 24/25 26/10 28/4 29/3 37/13 42/14 43/14 44/2 45/6 45/9 47/8 47/25 48/1 48/12 48/24 51/7 54/10 55/20 64/25 67/13 68/19 71/3 77/9 78/15 81/25 82/11 83/5</p> <p>while [1] 41/3</p> <p>who [5] 37/22 38/21 42/19 48/20 62/19</p>	<p>whoever [1] 24/10</p> <p>whole [3] 37/17 66/7 77/16</p> <p>whose [1] 37/25</p> <p>why [14] 13/12 14/3 26/5 37/17 39/8 39/8 39/21 52/14 52/18 53/18 64/15 78/12 78/23 81/17</p> <p>will [20] 17/5 28/24 31/10 31/18 39/13 49/6 49/7 57/10 57/21 65/6 68/2 68/6 71/8 71/18 75/11 81/16 81/18 82/11 82/23 83/25</p> <p>WILLIAMS [2] 85/12 85/16</p> <p>wipe [2] 20/2 37/5</p> <p>wipes [2] 31/10 37/10</p> <p>wiping [1] 30/11</p> <p>wired [1] 24/15</p> <p>within [2] 16/25 67/1</p> <p>without [5] 30/3 60/16 62/1 64/13 73/10</p> <p>witness [8] 3/9 19/19 31/6 31/13 31/23 33/3 37/2 76/20</p> <p>witnesses [2] 2/7 70/14</p> <p>wonderful [1] 37/23</p> <p>word [1] 11/13</p> <p>work [1] 27/25</p> <p>worked [1] 27/12</p> <p>working [1] 26/16</p> <p>worry [1] 42/23</p> <p>worrying [2] 42/24 43/1</p> <p>would [60] 3/21 3/22 5/7 11/12 11/14 13/6 13/13 13/18 14/4 14/6 16/22 16/22 19/23 23/21 24/21 26/12 26/15 26/22 27/1 27/2 27/16 31/14 33/1 34/4 34/21 34/23 35/25 36/3 36/15 36/15 37/19 39/15 42/15 42/25 44/5 44/16 44/23 50/21 51/13 52/1 52/14 52/18 55/23 56/3 56/7 56/13 56/13 56/23 59/10 59/21 60/11 61/16 64/12 71/1 77/6 77/8 78/23 80/10 82/2 82/3</p> <p>wouldn't [5] 24/21 66/15 80/4 80/5 80/13</p> <p>wow [1] 57/18</p> <p>write [1] 76/16</p> <p>writing [2] 60/24 75/4</p> <p>written [3] 4/9 20/14 71/24</p> <p>wrong [2] 7/13 59/14</p> <hr/> <p>X</p> <hr/> <p>XI [1] 1/6</p> <hr/> <p>Y</p> <hr/> <p>yeah [7] 9/6 13/21 16/24 23/13 27/20</p>	<p>44/23 52/13</p> <p>year [9] 6/21 16/22 23/12 24/1 24/4 26/10 37/14 60/2 66/10</p> <p>years [8] 47/3 59/3 66/7 66/8 67/15 70/11 81/1 83/15</p> <p>Yep [1] 4/3</p> <p>yes [57] 5/21 5/22 6/23 9/5 9/24 9/24 10/13 11/7 12/5 12/5 14/15 15/13 15/15 15/20 16/4 16/8 16/15 17/10 17/11 17/25 20/17 20/21 21/7 22/14 23/1 23/8 23/13 24/13 25/3 26/18 26/22 27/7 27/22 28/23 29/15 30/18 31/12 33/15 34/9 34/12 35/15 36/9 36/11 36/14 36/17 38/7 38/7 39/7 39/16 39/20 39/20 45/19 45/25 56/19 64/4 66/22 82/17</p> <p>Yes-or-no [1] 30/18</p> <p>yet [3] 45/17 59/4 60/3</p> <p>you [302]</p> <p>you'd [3] 40/6 45/21 83/22</p> <p>you're [20] 3/5 12/10 12/13 12/16 16/19 18/1 20/8 21/15 23/2 33/10 35/21 42/10 42/12 52/17 53/10 54/2 55/25 60/7 82/8 82/16</p> <p>you've [14] 3/14 6/12 7/8 9/3 21/17 32/23 36/6 36/18 37/5 37/6 55/5 61/7 68/5 69/25</p> <p>your [153]</p> <hr/> <p>Z</p> <hr/> <p>zero [3] 69/22 69/23 79/4</p> <p>zeros [1] 34/11</p> <p>zip [2] 68/8 70/9</p> <p>zoom [1] 15/5</p>		<p>PA0326</p>
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3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 v.

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

24 Defendants.

Case No. A-20-813439-B

Dept. No.: XI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

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

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

15 **I. Procedural Posture**

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

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

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

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

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 SJCVC, which SJCVC 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 Heights⁶ which has entered into a

⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

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

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

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

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

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

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

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

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

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

22 6.12 Antos Debt. Permit guarantor Kenneth M. Antos ("Antos") to incur,
23 create, assume or permit to exist any debt secured by the real property
24 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

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

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

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

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

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

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

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

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

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

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

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

27 24. The Certificate of Trust provides in part:

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

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

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

15 25. The Certificate of Trust further provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 As to the Seller, he:

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

40. Spanish Heights was created to facilitate this transaction.

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

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

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

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

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

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

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

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

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

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

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ***

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

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

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

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

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

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

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

25 ***

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

28 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ***

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

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

23 From the Pledge Agreement:

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

28 From the Amendment to the 2017 Forbearance Agreement:

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

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

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

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

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

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

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

13 **III. Conclusions of Law**

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

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

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

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

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

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

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

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

5 4. The Note is secured by the Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 JUDGMENT

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

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


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

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

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

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

Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

/s/ *Dan Kutinac*
Dan Kutinac, JEA

Heather S. Smith
CLERK OF THE COURT

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

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

PA0348

1 hearing on March 3, 2021 and March 10, 2021 (the “hearing”) to resolve the Claims. Erika Pike
2 Turner, Esq. of the law firm of Garman Turner Gordon LLP (“GTG”) appeared on behalf of
3 Plaintiff, Joseph Gutierrez, Esq. (“Gutierrez”) of the law firm of Maier Gutierrez & Associates
4 (“MGA”) appeared on behalf of Defendants and Bloom, and evidence was presented by the
5 parties through exhibits and testimony. Based thereon, the Court finds and concludes, as follows:

6 FINDINGS OF FACT

7 1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in
8 Defendants consisting of \$1 million from 50% member TGC 100 Investor, LLC, managed by
9 Adam Flatto (“Flatto”), and services (aka sweat equity) from 50% member Matthew Farkas
10 (“Farkas”).¹ In exchange for Plaintiff’s contributions, Plaintiff received a 3% membership
11 interest in Defendants.²

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

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

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

24 ³ Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 (“3/3 Trans.”), 8:10-16.

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

27 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.

28 ⁷ 3/3 Trans., 159:23-160:2.

1 affiliated entities in 2017 (the “Ngan Judgment”). As Plaintiff did not receive any accounting to
2 show what happened to Defendants’ business or its assets and had questions, on May 2, 2017,
3 Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of
4 Defendants’ operating agreements and NRS 86.241.⁸ Defendants did not provide any documents
5 in response to Plaintiff’s demand, resulting in Plaintiff filing an arbitration demand under a
6 provision of Defendants’ operating agreements requiring that such matters be determined through
7 arbitration with the party bringing the matter required to pay all the upfront costs of the
8 arbitration, subject to reimbursement in the event said party prevailed.⁹

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

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

22 ⁸ Exhibit 1.

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

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

28 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.

1 to obtain books and records Bloom has requested and Farkas has signed a series of documents
2 purporting to bind Plaintiff to its detriment and then argued for enforcement of those documents
3 based on the fact a signature of Farkas is affixed. This was done despite Plaintiff's affirmative
4 notice that Farkas did not have authority to bind Plaintiff without Flatto's consent delivered on
5 July 13, 2017, to Defendants and MGA, as counsel for Defendants, as well as the registered
6 agent for Defendants,¹⁵ which notice attached a prior notice to Defendants emailed on April 18,
7 2017, and explained to Defendants that Farkas is not the Plaintiff's manager and Farkas does not
8 have the authority to bind Plaintiff.¹⁶

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

15 7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all
16 respects" on the claim for books and records of Defendants arising from Defendants' operating
17 agreements and NRS 86.241¹⁹ and ordered Defendants to "forthwith, but no later than ten (10)
18 calendar days from the date of this AWARD, make all the requested documents and information
19 available from both companies to [Plaintiff] for inspection and copying."²⁰ Fees and costs were
20 awarded Plaintiff.²¹ The Arb. Award further provided that the "Award is in full settlement of all
21 claims submitted to this arbitration. All claims not expressly granted herein are hereby
22

23 ¹⁵ Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

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

14 9. The Order was entered November 17, 2020, constituting a final, appealable
15 judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon
16 Plaintiff’s application citing no compliance or communicated intention to comply with the Order.
17 The OSC scheduled a hearing for January 21, 2021.²⁶ The OSC was served on MGA on
18 December 18, 2020; in addition, Bloom was personally served with the OSC on December 22,
19 2020.²⁷ On December 21, 2020, notices of judgment debtor examinations for each of
20 Defendants and post-judgment discovery were served on MGA.²⁸ Bloom was also personally

21
22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

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

1 served with post-judgment discovery under NRCP 69(2) on December 29, 2020.²⁹

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

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

18 12. The purported Settlement Agreement expressly provides that upon execution of the
19 Settlement Agreement, Plaintiff “will file a dismissal with prejudice of the current actions
20 related to this matter, including the arbitration award and all relation [sic] motions and actions
21 pending in the District Court.”³⁰ In exchange, Defendants agreed to pay Plaintiff \$1 million, plus
22 6% per annum since the date of investment, but contingent on its collection of proceeds from a
23 sale of the Ngan Judgment.³¹ Defendants’ Motion to Enforce seeks specific performance of
24 Plaintiff’s obligation under the Settlement Agreement to effectuate dismissal of this case, with
25 prejudice.

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

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

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

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

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

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

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

24 ³⁴ See Exhibit 38, PLTF_405 (Nahabedian’s email).

25 ³⁵ Exhibits FF and J.

26 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.

27 ³⁷ See, e.g., Exhibit 28.

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).

1 of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that
2 was reflected in a formal amendment to Plaintiff's operating agreement.⁴⁰ Further, whether
3 Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically
4 addressed in multiple communications to Defendants. First, there was the April 18, 2017
5 email,⁴¹ then the July 13, 2017 letter⁴² (attaching the April 18, 2017 email and further stating
6 "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then
7 there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant
8 without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.⁴³

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

17 18. The circumstances surrounding how the Settlement Agreement was prepared and
18 executed are also relevant. The Settlement Agreement was drafted by Bloom⁴⁶ and executed by
19 Bloom, as manager of Defendants.⁴⁷ It is dated January 6, 2021 but was executed by Farkas on
20 January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

27 ⁴⁵ 3/3 Trans., 67:16-68:23; 131:7-13.

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

1 store for Farkas' signing and return.⁴⁸ Farkas did not know he was signing a Settlement
2 Agreement when he signed it,⁴⁹ and there is no evidence he intended to bind Plaintiff to anything
3 when he executed the documents. Notwithstanding the express terms of the Settlement
4 Agreement providing that the signatories were duly authorized,⁵⁰ Farkas did not read that
5 provision (or any provision)⁵¹ and testified he never otherwise represented to Bloom or anyone
6 else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.⁵² Farkas
7 testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is
8 corroborated by the lack of evidence of any back and forth on terms prior to the agreement being
9 finalized by Bloom.⁵³ There is no evidence Bloom provided Farkas a copy of the Settlement
10 Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other
11 documents to be signed.⁵⁴ Farkas testified he believed that the documents he signed at the UPS
12 store related to resolution of a threatened claim against him by Defendants in connection with his
13 prior employment and included the retention of personal counsel for him.⁵⁵ This testimony was
14 corroborated by Nahabedian's January 14, 2021 correspondence referencing a threat of adverse
15 action against Farkas from Defendants⁵⁶ and the fact that a form of Release between Farkas and
16 Defendants was executed at the same time as the Settlement Agreement.⁵⁷

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

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

21 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.

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

23 ⁵¹ 3/3 Trans., 103:22, 118:3-9, 119:4-7.

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

27 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.

28 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.

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

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

14 It was revealed from Nahabedian's records:

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

22
23 ⁵⁹ Exhibits 2, 21-23, E, ¶ 5; 3/3 Trans. 59:23-60:20.

24 ⁶⁰ See *Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing
25 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.

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

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

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

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

23 ⁶⁴ 3/3 Trans., 150:25-151:1; 3/10 Trans., 48:6-49:2.

24 ⁶⁵ 3/10 Trans., 35:5-16

25 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.

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

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

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

22 ⁷⁰ *Id.* at PLTF_245 (emphasis added).

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

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

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

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

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

14 22. Although there is dispute between Farkas and Bloom regarding when Bloom was
15 specifically informed that Farkas was removed from having *any* management interest in
16 Plaintiff in September 2020,⁸⁰ Bloom and Nahabedian both knew that Farkas had officially
17 resigned his management position in September 2020 by at least the time the Motion to Enforce
18 was filed.⁸¹ Despite learning of the restriction on Farkas' authority, Bloom and his counsel⁸²
19 were unfazed and moved forward on their enforcement efforts.

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

22 ⁷⁸ PLTF_311, 316-317, 318, 323, 328-332.

23 ⁷⁹ 3/10 Trans., 51:17-20.

24 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
25 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in
26 support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the
27 timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas'
28 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.

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

10 24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb.
11 Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot
12 bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.⁸⁶
13 Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA⁸⁷ representing
14 Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind
15 [Plaintiff]."⁸⁸ Bloom did not heed any of the notices of Farkas' restricted authority to bind
16 Plaintiff.

17 25. In the Motion to Enforce, Maier testified⁸⁹ that Farkas had authority based on
18 Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and
19

20 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).

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

22 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).

23 ⁸⁶ Exhibit 2, PLTF_007.

24 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
25 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.

26 ⁸⁸ Exhibit 22.

27 ⁸⁹ Motion to Enforce, 3:1-6.

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

5 26. In addition, Maier testified in support of the Motion to Enforce⁹² that Plaintiff’s
6 operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of
7 the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to
8 September 2020, provides that the Administrative Member (Farkas) could not act without first
9 obtaining the consent of the other members (Flatto).⁹³ At Section 4.4, it provides that persons
10 dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the
11 Administrative Member (Farkas until September 2020).⁹⁴ However, by the time of the Motion
12 to Enforce, Defendants and Bloom had received notice of the amendment executed in
13 September 2020 that changed the Administrative Member to Flatto and Flatto was the only
14 person with authority to bind Plaintiff subsequent to that date.⁹⁵ In addition, the entry of the
15 Arb. Award and 2017 communications providing notice of a restriction on Farkas’ authority
16 post-dated the operating agreement, negating Defendants’ ability to conclusively rely upon
17 Farkas’ signature as binding authority under Section 4.4.

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

23 ⁹⁰ Exhibit 28, PLTF_299-300.

24 ⁹¹ 3/3 Trans., 33:1-19; Exhibit 28, PLTF_298.

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

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

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

10 29. The Settlement Agreement expressly provides that, in exchange for dismissal, if
11 Defendants sell the Ngan Judgment, Defendants will pay Plaintiff \$1,000,000.00, plus 6%
12 interest.⁹⁶ There is no evidence of any actual sale, or even ability to sell⁹⁷ the Ngan Judgment
13 for a sufficient sum to pay Plaintiff \$1,000,000.00 plus interest. Further, Defendants' promise
14 for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the
15 concession that the Ngan Judgment has not resulted in any collections since its entry in 2017,
16 despite diligent collection efforts from MGA and other collection counsel.⁹⁸

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

24 ⁹⁶ Exhibit 13, PLTF_106.

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

27 ⁹⁸ 3/3 Trans., 217:18-24. 218:9-15.

28 ⁹⁹ Exhibits 7 and 8, Article V.

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

9 32. “A meeting of the minds exists when the parties have agreed upon the contract's
10 essential terms.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250,
11 255 (2012).

12 Neither Plaintiff, Flatto, nor Plaintiff's known counsel, GTG, saw or reviewed the
13 Settlement Agreement before it was executed by Farkas.¹⁰⁰ Farkas had not even reviewed it.
14 The only time that Farkas had to review the Settlement Agreement's terms was during those
15 minutes he was at the UPS store and the Settlement Agreement was provided with the other
16 documents for his signature. Even after the Settlement Agreement was executed, Bloom, MGA
17 and Nahabedian did not forward the Settlement Agreement to Farkas, Flatto or GTG. The first
18 time Plaintiff received a copy of the Settlement Agreement was when it was attached to the
19 Motion to Enforce.

20 33. Conceding that Bloom never negotiated the Settlement Agreement with Plaintiff,
21 Bloom's testimony relating to a meeting of the minds on the terms was that Bloom had
22 discussions with Flatto in 2017 and was in receipt of a communication from Flatto to Farkas
23 dated January 23, 2017 (before the May 2, 2017 initial demand for Defendants' books and
24 records), which Farkas forwarded to Bloom on April 27, 2017 asking for a return of his
25 investment.¹⁰¹ The Court finds this email and any related 2017 discussions with Flatto cannot be

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

27 ¹⁰¹ 3/3 Trans., 203:16-25; Exhibit C, FIRST0188.

1 reasonably construed as Flatto's agreement to the terms of the Settlement Agreement, as there
2 had been the passage of over three years' time, and in that time, Plaintiff was forced to file the
3 arbitration and obtain the Order for the production of Defendants' books and records, and the
4 Settlement Agreement provided for immediate dismissal of the fruits of that litigation, with
5 prejudice, a term not subject of Flatto's April 2017 email. Further, the Settlement Agreement
6 does not provide for the payment of funds in exchange for the dismissal of the Order, Arb.
7 Award and other pending matters. Rather, it provides for the payment of funds if they are ever
8 received from a sale of the Ngan Judgment, a sale that is speculative as there is no evidence of
9 any actual sale agreement or proof of funds. The Court finds there was insufficient evidence to
10 establish a meeting of the minds on the Settlement Agreement's essential terms.

11 34. The Motion to Enforce was filed for the express purpose of avoiding the
12 consequence of Defendants and Bloom's contempt of the Order. Given the timing, the Court
13 gives special care to determine if the equities support an order for specific performance. In
14 addition to those inequities discussed above (lack of consideration, claim and issue preclusion,
15 concealment of material facts and bad faith), the Court also finds that there are indicia of duress
16 and fraud here that would prevent specific performance.

17 35. In addition to being the manager of Defendants, Farkas' prior employer, Bloom is
18 within Farkas' family. Even though the parties stood in an adversarial relationship *vis a vis* this
19 case, Bloom and Farkas continued to have their familial connection. Under the circumstances, at
20 a minimum, Bloom had a duty to act with the utmost good faith when dealing with Farkas.
21 Even though the parties stood in an adversarial relationship here, the circumstances surrounding
22 Farkas' execution of the Settlement Agreement demonstrate that the documents sent to the UPS
23 Store for Farkas' execution would not have occurred but-for Bloom's familial relationship with
24 Farkas. As Farkas testified, "[Bloom] is my brother-in-law. He's family. I didn't think he
25 would-he would try to do this..."¹⁰² "I trust him as-a brother in law, and as somebody who was
26 representing to me that he was just trying to help in this part of what was going on....I believe

27 ¹⁰² 3/3 Trans., 116:1-21, 119:9-16.
28

1 that he took advantage of a nuance in the law....I think the way Jay treated me was wrong and
2 manipulative. And I think he knew exactly what he was doing.”¹⁰³

3 36. Farkas was self-effacing throughout his testimony at the Hearing, explaining that it
4 was his fault for trusting Bloom and not reading the documents before signing them.¹⁰⁴ If this
5 was a typical arms’ length transaction with no special duties owed between the persons signing
6 the subject agreement, Farkas’ admitted failure to even review the documents before signing them
7 could be a real issue (assuming he had authority in the first place). However, here, the
8 Court finds that there was a special confidence as a result of a familial relationship that resulted in
9 Farkas’ blind trust in Bloom and Bloom’s representations to him about the Bloom Documents’
10 contents.¹⁰⁵

11 37. Farkas was threatened by Bloom with civil action by Defendants and/or their
12 members if he did not sign the Settlement Agreement and other documents provided to him by
13 Bloom, his family member.¹⁰⁶ Farkas felt that he had no choice but to sign any document that
14 Bloom put in front of him. Farkas involuntarily accepted the Bloom Documents and executed
15 them without diligence because he believed otherwise he would suffer adverse action he could
16 not afford to address—a belief that is completely subjective. Where Defendants were only able
17 to procure Farkas’ signature through the abuse of special confidences, the threat of adverse
18 action and concealment of the true nature and substance of the Bloom Documents being signed,
19 enforcement of the Settlement Agreement against the innocent Plaintiff would be inequitable.

20 38. By its OSC, Plaintiff seeks an order compelling Defendants and their principal,
21 Bloom, to comply with the Order, and to require them to pay the fees and costs incurred in the
22 enforcement of the Order as necessary to redress the non-compliance. This requested relief is
23 authorized pursuant to NRS Chapter 22 (Contempts). *See* NRS 22.010(3) (disobedience or
24 resistance to any lawful writ, order, rule or process issued by the court constitutes contempt) and

25 ¹⁰³ *Id.*, 154:16-155:23, 156:13-18.

26 ¹⁰⁴ *See, e.g.*, 3/3 Trans., 101:7-9, 141:20-25.

27 ¹⁰⁵ *Id.* at 102:17-20.

28 ¹⁰⁶ 3/3 Trans., 100:19-101:6, 116:15-21, 117:7-8, 119:17-18, 132:3-22, 134:18-21.

1 NRS 22.100-110 (penalties for contempt). The Court is addressing and treating the contempt
2 proceedings as civil contempt proceedings.

3 39. The Order required Defendants to produce “all the requested documents and
4 information available from both companies to Plaintiff for inspection and copying, as set forth in
5 the [Arb. Award] and Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief.”¹⁰⁷
6 “Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief”¹⁰⁸ provides the following
7 list of documents to be produced by each of the Defendants:

- 8 1) The Company’s company books, inclusive of any and all
9 agreements relating to the Company’s governance (Company operating
10 agreements, amendments, consents and resolutions)
- 11 2) Financial Statements, inclusive of balance sheets and profit & loss
12 statements
- 13 3) General ledger and back up, inclusive of invoices
- 14 4) Documents sufficient to show the Company’s assets and their
15 location
- 16 5) Documents relating to value of the Company and/or the
17 Company’s assets
- 18 6) Documents sufficient to show the Company’s members and their
19 status, inclusive of any redeemed members
- 20 7) Tax returns for the Company
- 21 8) Documents sufficient to show the accounts payable incurred by the
22 Company, paid by the Company, and remaining due from the Company
- 23 9) Documents sufficient to show payments made to the Company
24 managers, members and/or affiliates of any managers or members
- 25 10) Company insurance policies
- 26 11) Documents sufficient to show the status of any Company lawsuits
- 27 12) Documents sufficient to show the use of the Investors’ funds (and
28 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

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.

1 said they are all in the custody of Farkas and/or Defendants' former controller, Henricksen (the
2 "Controller").¹¹¹

3 42. Farkas denies taking any books and records of Defendants with him when he left
4 his employment with Defendants (indeed, if he had taken books and records with him, that
5 would have eliminated the need for Plaintiff to request the production of Defendants' books and
6 records in May 2017).¹¹² There is no record of any request from Defendants to produce
7 documents subsequent to May 2, 2017 or any evidence that Farkas was properly designated a
8 custodian of Defendants' records. To the contrary, Bloom is the only person listed in the
9 Operating Agreement or the records of the Secretary of State as having the managerial
10 responsibilities as well as the duties of the registered agent.¹¹³

11 43. Moreover, the failure to produce even one record demonstrates that the cost of
12 production is not a credible excuse for Defendants' disobedience of the Order. Relatedly, lack of
13 funds is no defense to Defendants' performance where there is no evidence of Defendants'
14 compliance with their own governing documents for the purpose of raising funds to meet the
15 Order obligations. As set forth at Section 4.2 of the Defendants' respective Operating
16 Agreements:¹¹⁴

17 If necessary and appropriate to enable the Company to meet its costs,
18 expenses, obligations, and liabilities, and if no lending source is available,
19 then the Manager shall notify each Class A Member ("Capital Call") of
20 the need for any additional capital contributions, and such capital demand
21 shall be made on each Class A Member in proportion to its Class A
22 Membership Interest....

23 Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to
24 comply with the Order.¹¹⁵ Bloom's affiliated SJC is the 45.625% Class A Member of First 100.¹¹⁶

25 ¹¹¹ 3/10 Trans., 14:9-18.

26 ¹¹² 3/3 Trans., 125:9-21, 126:11-25; 3/10 Trans., 87:10-24.

27 ¹¹³ Exhibits 26 and 27.

28 ¹¹⁴ Exhibits 7 and Exhibit 8, p. 8.

¹¹⁵ 3/3 Trans., 74:15-20; 3/10 Trans., 7:13-19.

1 The 23.709% Class A Member of 1st 100, and Bloom's other affiliates, SJC 1, LLC and SJC 2,
2 LLC, have further Class A Member interests of 6.708% and 12.208% in 1st 100, respectively.¹¹⁷
3 Therefore, Bloom's affiliates have the lion's share of any capital call obligation for either entity
4 to meet their performance obligation.

5 44. There is no question here that Bloom had notice of the Order, and he even filed a
6 response to the OSC in conjunction with Defendants. Bloom is the only person appointed under
7 Defendants' operating agreements and with the Nevada Secretary of State to act as the Manager
8 of the companies.¹¹⁸ Throughout Bloom's testimony, he attempted to distance himself from this
9 manager role and its responsibilities to Defendants. However, Defendants are manager-managed,
10 and Bloom is expressly the only person with authority or power under the Defendants' operating
11 agreements to do any act that would be binding on Defendants, or incur any expenditures on
12 behalf Defendants.¹¹⁹ Bloom is not only the only Manager listed in the operating agreements and
13 with the Nevada Secretary of State; he is also the "Registered Agent" with the Nevada Secretary
14 of State.

15 45. In his Response to the OSC, Bloom argues he is absolutely immune from
16 contempt proceedings under NRS 86.371, which provides that no member or manager of a
17 Nevada LLC is individually liable for the debts or liabilities of the company. The subject
18 contempt is not to address the non-payment of the monetary award that is included in the Order;
19 it is solely for disobedience and/or resistance of a Court order requiring certain action solely
20 within Bloom's responsibilities under the Defendants' Operating Agreements and as designated
21 with the Nevada Secretary of State for each of the Defendants.

22 If any of the foregoing Findings of Fact would be more appropriately deemed to be
23 Conclusions of Law, they shall be so deemed.

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

27 ¹¹⁹ Exhibits 7 and 8, Sects. 3.17, 6.1(A).

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

1 legal consequences for the principal, the agent reasonably believes, in accordance with the
2 principal's manifestations to the agent, that the principal wishes the agent so to act.” *Simmons*
3 *Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)).

4 When examining whether actual authority exists, the courts are to focus on an agent's reasonable
5 belief. *Id.* (citing § 2.02 & cmt. e (“Whether an agent's belief is reasonable is determined from
6 the viewpoint of a reasonable person in the agent's situation under all of the circumstances of
7 which the agent has notice.”)).

8 5. Without any appreciation for all that he was signing at the UPS store, Farkas did
9 not consult with Flatto or counsel for Plaintiff regarding the Settlement Agreement.¹²⁰ Farkas’
10 belief he lacked consent to bind Plaintiff to the terms of the Settlement Agreement was
11 reasonable under the circumstances. In particular, at all times, actions taken on behalf of
12 Plaintiff required Flatto’s consent and the failure to obtain the consent of Flatto is conclusive
13 evidence that Farkas’ belief that he lacked authority to bind Plaintiff when he executed the
14 Settlement Agreement was reasonable. Accordingly, the Court concludes Farkas did not have
15 actual authority to bind Plaintiff under the Settlement Agreement.

16 6. An agent has apparent authority where the “principal holds his agent out as
17 possessing or permits him to exercise or to represent himself as possessing” and “there must also
18 be evidence of the principal's knowledge and acquiescence.” *Simmons Self-Storage v. Rib Roof,*
19 *Inc.*, 130 Nev. 540, 550, 331 P.3d 850, 857 (2014)(quoting *Ellis v. Nelson*, 68 Nev. 410, 418–19,
20 233 P.2d 1072, 1076 (1951)). Thus, “[a]pparent authority (when in excess of actual authority)
21 proceeds on the theory of equitable estoppel; it is in effect an estoppel against the [principal] to
22 deny agency when by his conduct he has clothed the agent with apparent authority to act.” *Ellis*
23 *v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951). Moreover, to be clothed with
24 apparent authority, there “must also be evidence of the principal's knowledge and acquiescence in
25 them.” *Id.* There is no authority “simply because the party claiming has acted upon his
26 conclusions.” *Id.* There can only be apparent authority, “where a person of ordinary prudence,
27 conversant with business usages and the nature of the particular business, acting in good faith.

28 ¹²⁰ 3/3 Trans., 72:19-23.

1 and giving heed not only to opposing inferences but also to all restrictions which are brought
2 to his notice, would reasonably rely.” *Id.* (emphasis added) (noting that where inferences against
3 the existence of apparent authority are as equally reasonable as those supporting it, a party may
4 not rely on apparent authority).

5 7. “[A] party claiming apparent authority of an agent as a basis for contract
6 formation must prove (1) that he subjectively believed that the agent had authority to act for the
7 principal and (2) that his subjective belief in the agent’s authority was objectively reasonable.”
8 *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).
9 Reasonable reliance on the agent’s authority “is a necessary element.” *Id.*; *Forrest Tr. v. Fid.*
10 *Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009). In determining reasonableness, “the
11 party who claims reliance must not have closed his eyes to warnings or inconsistent
12 circumstances.” *Great Am. Ins. Co.*, 113 Nev. at 352, 934 P.2d at 261, (citing *Tsouras v.*
13 *Southwest Plumbing and Heating*, 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978)) (emphasis
14 added). As the Nevada Supreme Court has explained, “the reasonable reliance requirement
15 [includes] the performance of due diligence” to learn the veracity of representations of
16 authority.” *In re Cay Clubs*, 130 Nev. 920, 932–33, 340 P.3d 563, 571–72 (2014) (emphasis
17 added).

18 8. The Settlement Agreement is not the first time that Bloom has directed Farkas to
19 sign a document and then taken the position that Farkas’ signature bound Plaintiff to its detriment.
20 The question of Farkas’ authority to bind Plaintiff without Flatto’s consent was raised in
21 the arbitration, and it was resolved **against Defendants** as part of the Arb. Award. Thus, even
22 before Plaintiff amended its operating agreement in September 2020 to remove Farkas, it was
23 clearly established by the arbitrators that Farkas had no authority to bind Plaintiff without the
24 consent of Flatto.

25 9. *Res judicata* precludes Defendants’ reiterated argument that Farkas’ signature on
26 a document is sufficient to bind Plaintiff to its detriment. *Univ. of Nev. v. Tarkanian*, 110 Nev.
27 581, 598, 879 P.2d 1180, 1191 (1994) (defining *res judicata* as encompassing both issue and
28 claim preclusion doctrines). The issue of Farkas’ authority to bind Plaintiff without Flatto’s

1 consent- the same issue at bar--was previously raised and decided in the Arb. Award, confirmed
2 by the Order. As the Order is a final judgment that was appealable, the finality of the
3 determination is concrete and immutable here. *See Kirsch v. Traver*, 134 Nev. 163, 166, 414
4 P.3d 818, 821 (2018) (defining “final judgment” for the purpose of analyzing *res judicata* as
5 being procedurally definite without any reservation for future determination following the parties
6 having an opportunity to be heard, a reasoned opinion supporting the determination, and that the
7 determination having been subject to appeal) (citing *Univ. of Nev. v. Tarkanian*, 110 Nev. at 598,
8 879 P.2d at 1191, *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor Title Ins.*
9 *Co.*, 114 Nev. 823, 963 P.2d 465 (1998)).

10 10. As a matter of law, as established by the Order confirming the Arb. Award,
11 Farkas did not have apparent authority to bind Plaintiff absent Flatto’s consent, and here, the
12 failure to obtain Flatto’s consent to the Settlement Agreement is undisputed. On this basis
13 alone, Farkas did not have actual or apparent authority to bind Plaintiff under the Settlement
14 Agreement.

15 11. The Court therefore concludes there was no good faith basis for Bloom’s
16 intentional disregard of the Arb. Award and Order thereon and reliance by Bloom on Farkas’
17 signature on the Settlement Agreement was not reasonable.

18 12. “Consideration is the exchange of a promise or performance, bargained for by the
19 parties.” *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 191, 274 P.3d 762, 764 (2012).
20 In addition to consideration being an essential element of any contract, gross inadequacy of
21 consideration may be relevant to issues of capacity, fraud, mistake, misrepresentation, duress, or
22 undue influence in addition to being relevant to whether there is an essential element of a
23 contract. *Oh v. Wilson*, 112 Nev. 38, 41–42, 910 P.2d 276, 278–79 (1996) (*citing* Restatement
24 (Second) of Contracts § 79 cmt. c (1979)). Inadequacy of consideration is often said to be a
25 “badge of fraud,” justifying a denial of specific performance. *Id.*

26 13. The Court concludes that there is such inadequacy of consideration to Plaintiff in
27 exchange for dismissal of its hard-fought rights under the Order that it justifies denial of the
28 requested specific performance.

1 14. A special relationship arises in any situation where “kinship or professional,
2 business, or social relationships between the parties” results in one party gaining the confidence of
3 another and purporting to advise or act consistently with the other party’s interest. *Perry v.*
4 *Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337–338 (1995) (citations omitted). An equitable duty
5 is owed as a result of such a confidential relationship, which is akin to a fiduciary duty. *See*
6 *Executive Mgmt., ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 841, 963 P.2d 465, 477 (1998) (citing
7 *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982)). Constructive fraud is the breach
8 of that equitable duty, which the law declares fraudulent because of its tendency to deceive others
9 to violate confidence. *Id.*

10 15. In equity and good conscience, Bloom was bound to act in good faith and with
11 due regard to the interests of Farkas who was reposing his confidence in Bloom. *Perry*, 111 Nev.
12 at 946–47, 900 P.3d 337 (citing *Long*, 98 Nev. at 13, 639 P.2d at 529–30). Particularly in light
13 of the Arb. Award, Bloom had a duty to at least disclose to Farkas (as well as Flatto) his plan to
14 settle this case under the Settlement Agreement and have the Order, underlying Arb. Award and
15 pending OSC dismissed, with prejudice. Bloom should have emailed or otherwise provided a
16 copy of the documents to Farkas so Farkas could consult with Flatto and counsel. Not only did
17 Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would
18 never have to be revealed until after the case was dismissed, inclusive of hiring Farkas separate
19 counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement.

20 16. Duress is a valid basis to set aside a contract or avoid specific performance. *Kaur*
21 *v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362 (2020); *Levy v. Levy*, 96 Nev. 902, 903–04,
22 620 P.2d 860, 861 (1980) (recognizing duress as a basis to set aside a settlement). “The coercion
23 or duress exception applies when “(1) . . . one side involuntarily accepted the terms of another;
24 (2) . . . circumstances permitted no other alternative; and (3) . . . circumstances were the result of
25 coercive acts of the opposite party.” *Nevada Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev.
26 949, 956, 338 P.3d 1250, 1255 (2014).

27 17. An improper threat can exist when a party is threatened with civil action,
28 especially when there are circumstances of emotional consequences. Restatement (Second) of

1 Contracts § 175, cmt. b (1981). “[A] party's manifestation of assent is induced by duress if the
2 duress substantially contributes to his decision to manifest his assent. *Id.*, cmt. c. “The test is
3 subjective and the question is, did the threat actually induce assent on the part of the person
4 claiming to be the victim of duress.” *Id.* In making the determination, courts consider, “the age,
5 background and relationship of the parties” and the rule is designed to protect “persons of a weak
6 or cowardly nature.” *Id.*; *see also Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993
7 (1966).

8 18. A threat is improper if “what is threatened is the use of civil process and the threat
9 is made in bad faith.” Restatement (Second) of Contracts § 176 (1)(c). Accordingly, when
10 evaluating duress, bad faith of one party is relevant as to another party’s capacity to contract.
11 *Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 587, 356 P.3d 1085, 1088 (2015); Restatement
12 (Second) of Contracts § 205 cmt. c (1981) (“Bad faith in negotiation, although not within the
13 scope of [the implied covenant of good faith and fair dealing], may be subject to
14 sanctions. Particular forms of bad faith in bargaining are the subjects of rules as to capacity to
15 contract, mutual assent and consideration and of rules as to invalidating causes such as fraud
16 and duress.”).

17 19. Defendants’ contempt of the Order through resistance and/or disobedience of the
18 Order is clearly established.

19 20. Bloom, as the sole natural person legally associated with Defendants, did not
20 testify to any efforts to marshal Defendants’ books and records for production to Plaintiff, except
21 to obtain a letter dated February 12, 2021 (nearly two months after the OSC was entered),
22 providing that the Controller was seeking payment to compile and produce Defendants’
23 records.¹²¹ Defendants’ requested condition of Plaintiff’s payment of expenses incurred by
24 Defendants to comply with its Order obligation is barred by *res judicata*. Again, the Order
25 confirming the Arb. Award, a final judgment, precludes a second action on the underlying claim
26 or any part of it. *Univ. of Nev.*, at 599, 879 P.2d at 1191. Issue preclusion applies to any issue

27 ¹²¹ Exhibit V.
28

1 actually raised and decided in the judgment. *Id.* Claim preclusion “embraces all grounds of
2 recovery that were asserted in a suit, as well as those that could have been asserted, and thus, [it]
3 has a broader reach” than the issue preclusion doctrine. *Id.* at 600, 879 P.2d at 1192.

4 21. The very purpose of the issue preclusion doctrine is “to prevent multiple litigation
5 causing vexation and expense to the parties and wasted judicial resources by precluding parties
6 from relitigating issues.” *Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018); *see*
7 *also Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 258, 321 P.3d 912, 916
8 (2014) (issue preclusion is appropriately applied to conserve judicial resources, maintain
9 consistency, and avoid harassment or oppression of the adverse party (citing *Berkson v. LePome*,
10 245 P.3d 560, 566 (Nev. 2010))).

11 22. Plaintiff’s demand for Defendants’ books and records under the terms of
12 Defendants’ operating agreements and NRS 86.241 resulting in the Order was arbitrated, and the
13 arbitrators ruled in favor of Plaintiff and against Defendants on the entirety of the claim, and
14 even awarded Plaintiff fees and costs.¹²² Defendants’ claimed expenses associated with the
15 demand for production was required to be arbitrated,¹²³ and there was clearly no award of
16 expenses in favor of Defendants following the arbitration. Ignoring their obligation to arbitrate
17 any request for expenses associated with the production of documents in the arbitration,
18 Defendants waited until Plaintiff’s Motion to Confirm Arb. Award to seek to modify the Arb.
19 Award to include a condition for production of the ordered books and records on Plaintiff’s prior
20 payment for Defendants’ expenses associated with production.¹²⁴ The Court made reasoned
21 conclusions regarding the procedural infirmity of bringing the request for relief to the Court
22 when the relief was not awarded by the arbitrators, and DENIED it as part of the Order.¹²⁵ The
23 Order is a final judgment not subject to any appeal, and as it specifically addressed and resolved
24 Defendants’ argument for a condition of Plaintiff’s payment of expenses of production, the Order

25 ¹²² Exhibit 4.

26 ¹²³ Exhibits 7 and 8, Sect. 13.9 (Dispute Resolution provision).

27 ¹²⁴ Exhibit 3 (the Declaration of Bloom in support of the Countermotion to Modify Arbitration Award).

28 ¹²⁵ Exhibit 4, p. 2:11-25; 3:15-16.

1 itself defeats any argument from Defendants that production of the documents pursuant to the
2 Order is in any way conditioned on payment of any purported expenses demanded by
3 Defendants.

4 23. Under the circumstances, the Court concludes that Plaintiff's non-payment of
5 expenses demanded on February 12, 2021 is not a valid excuse for Defendants' disobedience
6 and/or resistance of the subject Order. The books and records must be produced forthwith and
7 without the imposition of any conditions.

8 24. Bloom argues that since he is not a party to the Order in his individual capacity, he
9 should not be a party to these contempt proceedings. The relevant authority provides otherwise.
10 The Nevada contempt statutes (NRS Chapter 22) as well as relevant Nevada Rules of
11 Civil Procedure ("NRCPP") are directed *to conduct* of persons resisting or disobeying enforceable
12 Court orders and does not limit its reach to the defendants alone. Limited liability companies
13 such as Defendants engage in conduct through responsible persons- here, there is only Bloom
14 and his counsel working at his direction. *See, e.g.*, NRCPP 69 (describing procedures for
15 execution on judgment to include obtaining discovery from any person); NRCPP 71 ("When an
16 order grants relief . . . [that] may be enforced against a nonparty, the procedure for enforcing the
17 order is the same as for a party."); NRCPP 37(b) (providing for orders compelling compliance and
18 sanctions for failure of a "party or its officers, directors or managing agents" to comply with
19 court discovery orders).

20 25. The "responsible party" rule is longstanding, providing that the contempt powers
21 of the Courts reach through the corporate veil to command not only the entity, but those who are
22 officially responsible for the conduct of its affairs. If a person is apprised of the Order directed
23 to the entity, prevents compliance or fails to take appropriate action within their power for the
24 performance of the corporate duty, they are guilty of disobedience and may be punished for
25 contempt. *Wilson v. United States*, 221 U.S. 361, 377 (1911) ("When a copy of the writ which
26 has been ordered is served upon the clerk of the board, it will be served on the corporation, and
27 be equivalent to a command that the persons who may be members of the board shall do what is
28 required. If the members fail to obey, those guilty of disobedience may, if necessary, be

1 punished for the contempt While the board is proceeded against in its corporate capacity,
2 the individual members are punished in their natural capacities for failure to do what the law
3 requires of them as representatives of the corporation.”); *Electrical Workers Pension Trust Fund*
4 *of Local Union #58, IBEW v. Gary’s Elec. Service Co.*, 340 F.3d 373, 380 (6th Cir. 2003)
5 (holding that sole officer of the defendant, who was not himself a party, could be held in
6 contempt for the defendant’s failure to obey the court’s judgment and order). In order to hold an
7 officer, director or other managing agent in contempt, the movant must show that he had notice
8 of the order and its contents. *Id.*

9 26. A non-party who fails to produce documents in compliance with a Court order
10 will be jointly and severally liable for disobedience when he is found to have abetted the
11 disobedience or is legally identified with the responsible party. *See Luv n Care Ltd. v. Laurain*,
12 2019 WL 4279028, at * 4 (D. Nev. Sept. 10, 2019) (finding the managing member jointly and
13 severally liable for contempt and payment of fees and costs), (citing *United States v. Wilson*;
14 *Electrical Workers Pension Trust Fund of Local Union #58*; *United States v. Laurins*, 857 F.2d
15 529, 535 (9th Cir. 1988) (“A nonparty may be liable for contempt if he or she either abets or is
16 legally identified with the named defendant. . . . **An order to a corporation binds those who are**
17 **legally responsible for the conduct of its affairs.**”) (emphasis added)); *Peterson v. Highland*
18 *Music, Inc.*, 140 F.3d 1313, 1323–24 (9th Cir. 1988); *NLRB v. Sequoia Dist. Council of*
19 *Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977); *1st Tech, LLC v. Rational Enter., Ltd.*, 2008 WL
20 4571057, at *8 (D. Nev. July 29, 2008). Put another way, an order to an entity binds those who
21 are legally responsible for the conduct of its affairs. *Luv n Care Ltd.*, at *4 (citing *Laurins*).

22 27. As such, once Bloom had notice of the Order, he could not delegate the
23 responsibility for performance on a third party, but he himself had to take reasonable steps to
24 provide the records in compliance with the Order in his capacity as the sole person legally
25 associated with Defendants and responsible for the books and records of Defendants, as manager
26 of Defendants’ manager.

27 28. As set forth above, the “responsible party” rule applies to contempt proceedings;
28 otherwise there would never be a consequence for an entity’s non-compliance, particularly here

1 when there are no formalities being followed and, at least at this juncture, Bloom is the *alter ego*
2 of Defendants. Bloom ignores the holding of the Nevada Supreme Court in *Gardner on Behalf*
3 *of L.G. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 730, 735, 405 P.3d 651,
4 655–56 (2017), which explained that those bases for corporate veil piercing, such as *alter ego*,
5 illegality or other unlawfulness, will equally apply to a Nevada LLC. “As recognized by courts
6 across the country, LLCs provide the same sort of possibilities for abuse as corporations, and
7 creditors of LLCs need the same ability to pierce the LLCs' veil when such abuse exists.” *Id.*,
8 133 Nev. at 736, 405 P.3d 656.

9 Related to *alter ego*, NRS 86.376 then specifically provides, as follows:

- 10 1. Except as otherwise specifically provided by statute or agreement, no
11 person other than the limited-liability company is individually liable for a debt or
12 liability of the limited-liability company unless the person acts as the alter ego of
13 the limited-liability company.
14 2. A person acts as the alter ego of a limited-liability company only if:
15 (a) The limited-liability company is influenced and governed by the person;
16 (b) There is such unity of interest and ownership that the limited-liability
17 company and the person are inseparable from each other; and
18 (c) Adherence to the notion of the limited-liability company being an entity
19 separate from the person would sanction fraud or promote manifest injustice.
20 3. The question of whether a person acts as the alter ego of a limited-liability
21 company must be determined by the court as a matter of law.

22 29. Both Defendants are in “default” status with the Nevada Secretary of State. The
23 testimony of Bloom demonstrated that Defendants have no continued operations, there are no
24 employees, there are no bank accounts, there are no records being maintained as required under
25 the operating agreements or NRS 86.241, and there is no active governance of any kind.¹²⁶
26 While Bloom self-servingly represents that there are “directors” and “officers” of Defendants, he
27 concedes, as he must, that there were no writings to reflect that any director or officer has any
28 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.

1 disobeying and/or resisting the Order. Therefore, in addition to the “responsible party” rule that
2 applies to contempt, there should be no immunity for liability when, as here, Bloom is
3 Defendants’ *alter ego*.

4 30. Furthermore, the Nevada Supreme Court has explained the broad, independent
5 authority of the Court to enforce its decrees independent of the rules or statutes, including
6 sanctions for non-compliance by non-parties with its orders and legal processes. *See Halverson*
7 *v. Hardcastle*, 123 Nev. 245, 261–62, 163 P.3d 428, 440–441 (2007) (“the court has inherent
8 power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it
9 may issue contempt orders and sanction . . . for litigation abuses. Further, courts have inherent
10 power to prevent injustice and to preserve the integrity of the judicial process . . .”).

11 31. Under the Court’s inherent authority to enforce its decrees against those appearing
12 and demonstrating disregard for its Order, the “responsible party” rule recognized in the common
13 law, Nevada’s contempt statutes, Nevada’s Rules of Civil Procedure, as well as NRS 86.376,
14 Bloom is a proper party to the subject contempt proceedings.

15 32. The Settlement Agreement was a sham, never designed to result in any fair benefit
16 to Plaintiff, and, if effectuated with the dismissal of the Order, underlying Arb. Award
17 and pending contempt motions, with prejudice, the ramifications to Plaintiff would have been
18 unacceptable under law or equity. The Eighth Judicial District Court has enacted its own rule,
19 EDCR 7.60(b) to provide the Court further express authority to impose sanctions upon a party,
20 including attorneys’ fees, when a party, without just cause, presents a motion to the Court that is
21 “obviously frivolous, unnecessary or unwarranted,” or “so multiplies the proceedings in a case as
22 to increase costs unreasonably and vexatiously.”

23 33. The Court determines that sanctions are properly awarded against Defendants
24 inclusive of the reasonable fees and costs expended by Plaintiff relating to the Motion to Enforce
25 and Response to OSC.

26 34. The expenses associated with addressing the re-litigated defenses asserted by
27 Defendants and Bloom were then unnecessarily increased by Bloom’s wrongful direction to not
28

1 permit the disclosure of any communications between or among Nahabedian and Bloom and/or
2 MGA, regardless of whether they related to Plaintiff and this action.¹²⁷

3 35. Sanctions are awardable under NRCP 37 for failure to provide discovery.

4 Any of the foregoing Conclusions of Law that would more appropriately be deemed to be
5 Findings of Fact shall be so deemed.

6 **ORDER**

7 NOW, THEREFORE, based upon the Foregoing Findings of Fact and Conclusions of
8 Law, the Court makes the following rulings:

9 1) The Court declines to reverse its prior denial of the Motion to Enforce.

10 2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order
11 in contempt of Court (civil), the Court orders immediate compliance. In order to purge their
12 contempt, Defendants, and any manager, representative or other agent of Defendants receiving
13 notice of this order shall take all reasonable steps to comply with the Order, and within 10 days
14 of notice of entry of this order, shall produce the following books and records for Defendants to
15 Plaintiff¹²⁸ at their expense:¹²⁹

- 16 1) Each of Defendants' company books, inclusive of any and all agreements
17 relating to governance (operating agreements, amendments, consents and
18 resolutions);
19 2) Financial Statements, inclusive of balance sheets and profit & loss
20 statements;
21 3) General ledger and back up, inclusive of invoices;
22 4) Documents sufficient to show each of Defendants' assets and their
23 location;
24 5) Documents relating to value of each of each of Defendants and/or their
25 assets;
26 6) Documents sufficient to show Defendants' members and their status,
27 inclusive of any redeemed members;
28 7) Tax returns for each of Defendants;
8) Documents sufficient to show the accounts payable incurred, paid and
remaining due for each of Defendants;

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.

- 1 9) Documents sufficient to show payments made to each of Defendants'
2 managers, members and/or affiliates of any managers or members;
3 10) Each of Defendants' insurance policies
4 11) Documents sufficient to show the status of any lawsuits involving either of
5 Defendants; and
6 12) Documents sufficient to show the use of investors' funds (and any other
7 members' investment) for each of Defendants.

8 For any documents not produced within 10 days of entry of this order, there shall be certification
9 from Bloom establishing all steps taken to marshal and produce the documents, where the
10 documents are located, why they were not provided by the deadline and when they will be
11 provided.

12 3) Also, the Court orders reimbursement of Plaintiff's reasonable fees and costs
13 incurred in connection with the finding of contempt pursuant to the OSC, the Countermotion for
14 Sanctions, and the Motion for Sanctions, as follows:

15 Based on the determination that Defendants and Bloom disobeyed and resisted the Order
16 in contempt of Court (civil), and the Motion to Enforce was a tool of that contempt as
17 orchestrated by Bloom in disregard of the Arb. Award confirmed by the Order, the Court orders
18 Defendants and Bloom are jointly and severally responsible for the payment of all the reasonable
19 fees and costs incurred by Plaintiff since entry of the Order for the purpose of coercing
20 compliance with the Order in order to make them whole, inclusive of responding to the Motion to
21 Enforce and bringing the Motion to Compel.

22 Within 10 days of entry of this order, counsel for Plaintiff shall provide a declaration and
23 supporting documentation as necessary to meet the factors outlined in *Brunzell v. Golden Gate*
24 *National Bank*, 85 Nev. 345, 55 P.2d 31 (1969), and delineating the fees and costs expended in
25 relating to the Motion to Compel, Motion to Enforce and OSC, following which, there will be an
26 opportunity to respond to Plaintiff's submission within 10 days of service of Plaintiff's
27 supplement, and Plaintiff can file a reply within 7 days thereof. The Court will then consider the
28 submissions and enter its further order on the amount of fees and costs to be awarded, and
29 payment will be due within thirty (30) days thereafter.

30 4) Any failure to comply with the Order compelling compliance and requiring
31 payment of the expenses incurred shall be subject to appropriate consequences. A status check is

1 scheduled for May 24, 2021 at 9:00 a.m.

Dated this 7th day of April, 2021

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D39 950 89AB 02DB
Mark R. Denton
District Court Judge

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
9 First 100, LLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

21 Max Erwin merwin@gtg.legal

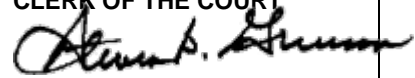
22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 4/8/2021

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Joseph Gutierrez

Maier Gutierrez & Associates
Attn: Joseph A. Gutierrez
8816 Spanish Ridge Avenue
Las Vegas, NV, 89148



1 **NEO**
JOSEPH A. GUTIERREZ, ESQ.
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DANIELLE J. BARRAZA, ESQ.
3 Nevada Bar No. 13822
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7
8 *Attorneys for Plaintiffs*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

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

23 Defendants.

24 AND RELATED CLAIMS.
25

Case No.: A-20-813439-B
Dept. No.: XI

NOTICE OF ENTRY OF ORDER

26 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

27 YOU AND EACH OF YOU will please take notice that a **FINDINGS OF FACT AND**
28

1 **CONCLUSIONS OF LAW** was hereby entered on the 6th day of April, 2021. A copy of which is
2 attached hereto.

3 DATED this 20th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Danielle J. Barraza

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

10 Nevada Bar No. 13822

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

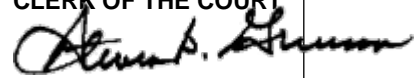
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 20th day of April, 2021, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

6 Michael R. Mushkin, Esq.
7 MUSHKIN & COPPEDGE
8 6070 South Eastern Avenue, Suite 270
9 Las Vegas, Nevada 89119
10 *Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,*
11 *5148 Spanish Heights, LLC, and Dacia LLC*

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



1 FFCL

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 v.

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

24 Defendants.

Case No. A-20-813439-B

Dept. No.: XI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

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

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

15 **I. Procedural Posture**

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

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

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

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

1 Emergency Directive 008.

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

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

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

9 **II. Findings of Fact**

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

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

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

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

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

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

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

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

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

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

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

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

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

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

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

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

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

22 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
23 create, assume or permit to exist any debt secured by the real property
24 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

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

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

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

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

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

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

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

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

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

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

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

27 24. The Certificate of Trust provides in part:

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

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

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

15 25. The Certificate of Trust further provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 As to the Seller, he:

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

40. Spanish Heights was created to facilitate this transaction.

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

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

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

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

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

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

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

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

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

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

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

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

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

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

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

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

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

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

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

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

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

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

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.
8

9 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
10 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
11 SJCVC appears on the Pledge Agreement.
12

13 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
14 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
15 Gutierrez & Associates.
16

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

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

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

26 ***

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

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

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

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

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

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

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

25 ***

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

28 ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ***

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

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

23 From the Pledge Agreement:

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

28 From the Amendment to the 2017 Forbearance Agreement:

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

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

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

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.
7

8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]hen a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:

16 Trustor and Guarantor each waive all benefits of the one-action
17 rule under NRS 40.430, which means, without limitation, Trustor
18 and Guarantor each waive the right to require Lender to (i) proceed
19 against Borrower, any other guarantor of the Loan, any pledgor of
20 collateral for any person’s obligations to Lender or any other
21 person related to the Note and Loan Documents, (ii) proceed
22 against or exhaust any other security or collateral Lender may
23 hold, or (iii) pursue any other right or remedy for Guarantors’
24 benefit.

25 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
26 remedies.

27 The rights and remedies of CBCI under this Forbearance
28 Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.

20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
21 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
22 obligation of SJCVC.

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
24 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
25 Spanish Heights does not merge the Defendants interests.
26
27
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA

Natalie M. Cox

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

1 represented by James D. Greene, Esq. of Greene Infuso, LLP and Danielle J. Barraza, Esq. of
2 Maier Gutierrez & Associates. Parties 5148 Spanish Heights, LLC, CBC Partners I, LLC and
3 CBC Partners, LLC (collectively “CBC Parties”) were represented by Michael R. Mushkin Esq.
4 of Mushkin & Coppedge. No other appearances were entered. For the reasons stated on the
5 record at the hearing and incorporating those findings of fact and conclusions of law herein
6 pursuant to Federal Rule of Bankruptcy Procedure 7052, and with good cause appearing,

7 IT IS HEREBY ORDERED that the Motion is Granted in part and the Court finds that the
8 CBC Parties violated the automatic stay of 11 U.S.C. §362(a) with respect to the items designated
9 as issues (a), (b), and (c) on ECF No. 79-2, page 3, note 1, lines 17-20;

10 IT IS FURTHER ORDERED that the Motion is Denied with respect the issues designated
11 as issues (d) and (e) on ECF 79-2, page 3, note 1, lines 21-23;

12 IT IS FURTHER ORDERED that the Debtor is entitled to an award of sanctions against
13 the CBC Parties for their stay violations under the standards of *Taggart v. Lorenzen*, 139 S. Ct.
14 1795 (2019);

15 IT IS FURTHER ORDERED that Debtor’s counsel shall submit briefing and evidence
16 supporting its claims for damages as a result of the CBC Parties’ stay violations on or before May
17 28, 2021;

18 IT IS FURTHER ORDERED that the CBC Parties may file any opposition and related
19 documents or evidence relating to the Debtor’s damage claims on or before June 29, 2021;

20 IT IS FURTHER ORDERED that the Debtor may file a reply in support of its damages
21 claim on or before July 6, 2021;

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GREENE INFUSO, LLP
3030 South Jones Boulevard, Suite 101
Las Vegas, Nevada 89146
(702) 570-6000

1 IT IS FURTHER ORDERED that a hearing regarding Debtor's request for sanctions shall
2 be held on July 13, 2021 at 10:00 a.m.

3 Submitted by:

4 **GREENE INFUSO, LLP**

5 /s/ James D. Greene
6 JAMES D. GREENE, ESQ.
3030 South Jones Boulevard, Suite 101
7 Las Vegas, Nevada 89146

8 Approved by:

9 **MAIER GUTIERREZ & ASSOCIATES**

10
11 /s/ Danielle Barraza
12 Danielle Barraza
8816 Spanish Ridge Ave
13 Las Vegas, Nevada 89148

14
15 Approved by:

16
17 **MUSHKIN & COPPEDGE**

18
19 /s/ Michael R. Mushin
Michael R. Mushkin, Esq.
20 6070 South Eastern Ave Ste 270
Las Vegas, Nevada 89119
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(702) 570-6000

LOCAL RULE 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐

The court has waived the requirement set forth LR 9021(b)(1).

☐

No party appeared at the hearing or filed an objection to the motion.

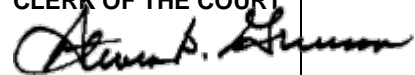
☒

I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐

I certify that this is a chapter 7 or 13 case, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

###



Michael R. Mushkin, Esq.
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L. Joe Coppedge, Esq.
Nevada Bar No. 4954
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Attorneys for Defendant and Counterclaimants
5148 Spanish Heights, LLC and
CBC Partners I, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES,
LLC, a Delaware Limited Liability Company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CAPTION CONTINUES BELOW

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**

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC PARTNERS
3 I, LLC, a Washington limited liability company,

4 Counterclaimants,

5 v.

6 SPANISH HEIGHTS ACQUISITION
7 COMPANY, LLC, a Nevada Limited Liability
8 Company; SJC VENTURES, LLC, a Delaware
9 limited liability company; SJC VENTURES
10 HOLDING COMPANY, LLC, a Delaware
11 limited liability company; JAY BLOOM,
12 individually and as Manager, DOE
13 DEFENDANTS 1-10; and ROE DEFENDANTS
14 11-20,

15 Counterdefendants.

16
17 **MOTION FOR APPOINTMENT OF RECEIVER OF SJC VENTURES**
18 **HOLDING COMPANY, LLC d/b/a SJC VENTURES, LLC,**
19 **A DELAWARE LIMITED LIABILITY COMPANY**

20 Defendants/Counterclaimants, 5148 Spanish Heights, LLC and CBC Partners I, LLC
21 (“Counterclaimants”) by and through their attorney, Michael R. Mushkin, of the law firm of
22 Mushkin & Coppedge, hereby moves for appointment of receiver of SJC Ventures, LLC d/b/a
23 SJC Ventures, LLC, a Delaware limited liability company (“SJCVC”).

24 This Motion is made and based upon the following Memorandum of Points and
25 Authorities, the papers, pleadings, and records on file herein, and any and all arguments that may
26 be allowed at the time of hearing of this motion.

27 **POINTS AND AUTHORITIES**

28 **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

1 Assignment of Rents, Security Agreement and Pledge Agreement.

2 SHAC has been in default under the Loan Documents (as defined below) since the first
3 Forbearance Agreement in September of 2017. The Forbearance Agreements were entered into
4 evidence during the Preliminary Injunction Hearing and Consolidated Non-Jury Trial held on
5 February 1, 2021, February 2, 2021, February 3, 2021 and March 15, 2021 (“Trial”), as Exhibits
6 1-16. All extensions have expired. Under the terms of the Loan Documents, upon default,
7 Counterclaimants are authorized “to do and perform any acts necessary or proper to preserve the
8 value of the Trust Property...”

9 Counterclaimants propose the appointment of a receiver who, as discussed herein, has
10 extensive experience as a receiver in commercial real estate cases and has been appointed by
11 Nevada Courts on multiple occasions. Accordingly, Counterclaimants respectfully request that
12 the Court appoint a receiver to act in accordance with the terms and conditions set forth in the
13 proposed Order submitted herewith.

14 **II. Statement of Facts**

15 **A. The Initial Promissory Note**

16 1. On or about April 16, 2007, nonparties Kenneth M. Antos and Sheila M.
17 Neumann-Antos transferred to Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the
18 Kenneth and Shelia Antos Living Trust dated April 26, 2007 (“Antos”) real property located in
19 Clark County, Nevada, commonly known as 5148 Spanish Heights Drive, Las Vegas, Nevada
20 89148 (the “Property”).

21 2. On or about June 22, 2012, Antos with nonparties KCI Investments, LLC a Nevada
22 limited liability company (“KCI”), entered into a Secured Promissory Note with CBC Partners I,
23 LLC, a Washington limited liability company (“CBCI”).

24 3. The June 22, 2012, Secured Promissory Note (the “Note”) was modified and
25 amended several times.

26 4. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
27 Agreement and Fixture Filing (“Deed of Trust”) was recorded against the Property in the Clark
28 County Recorder’s Office as Instrument No. 201412290002856, for the purpose of securing the

1 Note. The balance due is approximately \$6,297,333.49 (\$2,935,001.14 for principal, pre-
2 forbearance protection payments of \$1,326,744.55, interest and late charges of \$1,315,105.24 and
3 interest accrued at the rate of 20% in the amount of \$1,608.22 per day from April 1, 2020). Trial
4 Exhibit 1 5148SH 000003 – 5148SH 000004.

5 5. This Deed of Trust is subordinate to two (2) additional Deeds of Trust recorded
6 against the Property. The First Mortgage to City National is in the principal amount of
7 \$3,240,000.00 with monthly payments of \$19,181.07. The Second Mortgage to Northern Trust
8 Bank is in the principal amount of \$599,000.00 with monthly payments of \$3,034.00.

9 6. The Deed of Trust was subsequently modified on July 22, 2015, and on December
10 19, 2016, as recorded in the Clark County Recorder's Office Instrument No.'s 201507220001146
11 and 201612190002739 respectively.

12 7. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law
13 Ordering that the Note is a valid existing obligation and that the Deed of Trust is a valid and
14 existing obligation against the Property. See **Exhibit A**, attached hereto.¹

15 **B. The Forbearance Agreement**

16 8. On or about September 27, 2017, Antos, SHAC and Counterdefendant SJCV
17 entered into a Forbearance Agreement of the Note, acknowledging default and affirming CBCI
18 has fully performed.

19 9. As part of the Forbearance Agreement, Antos conveyed the Property to SHAC and
20 SHAC leased the property to SJCV.

21 10. As part of the Forbearance Agreement, SHAC would lease the Property to SJCV.
22 The Lease Agreement contained a Consent to Lease between SHAC and CBCI.

23 11. Paragraph 2 of the Consent to Lease states: "In the event CBCI... or otherwise
24 exercises its rights under the Forbearance Agreement, CBCI may terminate the Lease." Trial
25 Exhibit 15, attached hereto as **Exhibit B**, specifically Bates No. 5148SH 000152.

26 12. Pursuant to the terms of the Forbearance Agreement, SHAC was to make certain
27

28

¹ This FFCL has been appealed, but no stay has been sought.

1 payments to CBCI and other parties. In addition, a balloon payment of the total amount owing
2 was due on August 31, 2019.

3 13. As part of the Forbearance Agreement, there were certain requirements of SHAC
4 attached as Exhibit B to the Forbearance Agreement. Among the certain requirements was the
5 understanding that the First Lien holder would pay the real property taxes, that CBCI would pay
6 the 1st and 2nd Mortgage payments to prevent default, that SHAC would make certain repairs and
7 improvements to the Property in approximately the amount of \$100,000.00, SHAC would deposit
8 \$150,000.00 with Bank of America and replenish the account and provide CBCI with an Account
9 Control Agreement; SHAC would maintain the Property, and SHAC would pay for a customary
10 homeowner's insurance policy and all Homeowner's Association dues.

11 14. On December 1, 2019, an Amendment to Forbearance Agreement was entered
12 into, extending the balloon payment to March 31, 2020.

13 15. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law,
14 Finding that the Forbearance Agreement and Amendment to Forbearance Agreement "are clear
15 and unambiguous as a matter of law." See **Exhibit A**.

16 **C. The Pledge Agreement**

17 16. On or about August 4, 2017, SHAC was organized with the initial members being
18 SJCVC, nonparty CBC Partners, LLC ("CBC Partners"), and Antos.

19 17. On or about August 9, 2017, nonparty CBC Partners resigned as a member of
20 SHAC.

21 18. In addition to the certain requirements of the Forbearance Agreement, there was
22 certain pledged collateral. Among the pledged collateral, Antos and SJCVC pledged 100% of the
23 membership interest in SHAC, the Pledge Agreement. Trial Exhibit 8, attached hereto as **Exhibit**
24 **C**, Bates No. 5148SH 000089 – 5148SH 000097.

25 19. The Pledge Agreement was between Antos and SJCVC as Pledgors and CBCI as
26 the Secured Party and was dated September 27, 2017.

27 20. Pursuant to the Pledge Agreement, Antos and SJCVC pledged all right, title and
28 interest in and to 100% of their membership interest of SHAC to CBCI.

1 21. In addition to pledging membership interest, the Pledgors agreed to not “sell,
2 assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect
3 to, any of the Pledged Collateral...” See **Exhibit C**, specifically Bates No. 5148SH 000091.

4 22. On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law,
5 Ordering that the “Pledge Agreement is a valid existing obligation of SJCVC.” See **Exhibit A**.

6 **D. SHAC’s Operating Agreement**

7 23. On or about August 9, 2017, CBC Partners resigned as a member of SHAC.

8 24. On or about August 10, 2017, SJCVC signed a resignation of member of SHAC.

9 25. SHAC’s Operating Agreement was purportedly effective as of September 30,
10 2017, with the members being SJCVC as Investor or Investor Member and Antos being the Seller
11 Member.

12 26. SHAC’s Operating Agreement states that the “management and control of the
13 Company shall be vested exclusively and irrevocably with the Investor Member.” Trial Exhibit
14 5, attached hereto as **Exhibit D**, specifically Bates No. 5148SH 000536 – 5148SH 000537.

15 27. Pursuant to Exhibit B of SHAC’s Operating Agreement, SJCVC’s commitment was
16 to be \$150,000.00.

17 28. Upon information and belief, SJCVC never made the initial commitment.

18 29. In addition, Pursuant to Paragraph 8.02(a) of SHAC’s Operating Agreement,
19 SJCVC, among other things, was to:

20 a. “Provide for the funding of a (sic) **annual** expense reserve account in the
21 amount of \$150,000.00 within ninety days from which non member CBCI is authorized to issue
22 payment against its obligations due from Seller Member should Investor Member fail to effect
23 such payments...” (emphasis added).

24 b. “Provide for a second funding of an annual expense reserve account one
25 year later in the **additional** amount of \$150,000.00 within ninety days of the first anniversary of
26 the signing from which non Member CBCI is authorized to issue payment against its Note should
27 Investor Member fail to effect such payments...” (emphasis added).

28 c. “Cause the Company to effect repairs to the premises to bring it back to

1 top quality standard and working repair.”

2 d. “Cause the Company to pay all HOA assessments and fines.”

3 e. “At the earlier of 2 years... pay off in full the CBC revicable (sic) as relates
4 to the property.”

5 f. “At the earlier of 2 years... either assume service of or retire either or both
6 of the 1st and 2nd position lenders.”

7 See **Exhibit D**, specifically Bates No. 5148SH 000546 – 5148SH 000548.

8 30. Upon information and belief, SJCVC never provided funding of the initial or
9 subsequent reserve account, repaired the property to top quality standard, paid the HOA
10 assessments and fines, pay in full CBC receivables, or assumed service of the 1st and 2nd position
11 lenders.

12 **E. The Security Agreement**

13 31. In addition to the certain requirements of the Forbearance Agreement, there was
14 certain pledged collateral. Among this pledged collateral, SJCVC granted a security interest in
15 collateral described as:

16 SJCVC represents that First 100, LLC and 1st One
17 Hundred Holdings, LLC, obtained a Judgment in the amount of
18 \$2,221,039,718,46 against Raymond Ngan and other Defendants in
19 the matter styled First 100, LLC, Plaintiff(s) vs, Raymond Ngan,
20 Defendant(s), Case No, A-17-753459-C in the 8th Judicial District
21 Court for Clark County, Nevada (the “Judgment”), SJCVC represents
22 It holds a 24.912% Membership Interest in 1st One Hundred
23 Holdings, LLC. SJCVC represents and warrant that no party, other
24 than the Collection Professionals engaged to collect the Judgment,
25 have a priority to receive net Judgment proceeds attributable to
26 SJCVC before SJCVC; and that SJCVC shall receive Its interest at a
27 minimum in pari passu with other parties who hold interests in the
Judgment, 1st One Hundred Holdings, LLC represents and warrant
that no party, other, than the Collection Professionals engaged to
collect the Judgment and certain other creditors of 1st One Hundred
Holdings, have a priority to receive net Judgment proceeds prior to
distributions to 1st One Hundred Holdings Members; and that SJCVC
shall receive Its interest at a minimum in pari passu with other
parties who hold interests in the Judgment.

28 Trial Exhibit 10, attached hereto as **Exhibit E**, Bates No. 5148SH 000101-5148SH 000107.

1 32. This Security Interest is in jeopardy.

2 33. While the instant dispute was ongoing, Jay Bloom and SCJV were litigating a
3 similar case pending before the Eighth Judicial District Court, Clark County, Nevada, Case No.
4 A-20-822273-C, filed by TGC/Farkas Funding LLC (the “Plaintiff LLC”) which is an entity
5 owned half by Bloom’s brother-in-law (who contributed “sweat equity”) (“Farkas”) and half by
6 a third-party investor, TGC 100 Investor (“Investor Member”) who acted through Flatto as its
7 manager (“Flatto”). See **Exhibit F**, *Denton FFCLO* at ¶1, p. 2.²

8 34. The Investor Member brought suit against First 100, LLC, First One Hundred
9 Holdings LLC, two companies both managed by SJCVC and in turn majority owned and controlled
10 by Jay Bloom (the “Denton Contempt Litigation”).

11 35. In connection with the Denton Contempt Litigation, the Honorable Mark Denton
12 held an evidentiary hearing on why the named Defendants and Jay Bloom “should not be found
13 in contempt of court... for their failures to comply with the Order Confirming Arbitration Award,
14 Denying Countermotion to Modify, and Judgment entered on November 17, 2020...” and further
15 issued Findings of Fact and Conclusions of Law & Order on April 7, 2021 (the “Denton FFCLO”)
16 that, among other things, found Bloom to be the alter-ego of SJCVC (the “Alter-Ego Finding”).

17 36. As background to the Denton Contempt Litigation, in 2013, The Investor Member
18 contributed \$1,000,000 to the Plaintiff LLC which was formed to facilitate investments in a group
19 of LLCs managed by Jay Bloom, the alter ego of SJCVC (the “LLCs” or the “Defendants”). *Denton*
20 *FFCLO* at p. 2.

21 37. The litigation began when the Investor Member, after the LLCs business wound
22 down, requested an accounting from the LLCs to show what happened to the business or its assets
23 and had related questions and made a written demand for the books and records pursuant to the
24 operating agreements of the LLCs and NRS 86.241. *Denton FFCLO* at p. 3:1-4.

25 38. Bloom/SJCVC did not provide any information to the Investor Member. The
26 Investor Member filed an arbitration demand under the operating agreements. Three years later,
27 a three- arbitrator panel (“Arbitrator”) entered a Decision and Award wholly in favor of the
28

² The Defendants have appealed the Denton FFCLO, but no stay has been sought.

1 Investor Member, compelling production of the Company records and ordering reimbursement
2 of the Plaintiff's attorney's fees and costs (the "Arb. Award") finding that Bloom/ SJVC's
3 response to the May 2, 2017, demand was the "first in a long and bad faith effort by [Defendants]
4 to avoid their statutory and contractual duties to a member to produce requested records" (the
5 "Arbitrator Bad Faith Finding"). *Id.* at ¶4, p. 3.

6 39. Following the Arb. Award, Farkas was no longer involved in the Plaintiff LLC.
7 Shortly after the Arb. Award was entered, Farkas had consented in writing to an amendment of
8 the Plaintiff LLC operating agreement and gave the Investor Member through Flatto complete
9 discretion to manage and operate the Plaintiff LLC. *Id.* at ¶17, p. 8.

10 40. Jay Bloom, on behalf of the LLCs, argued for the enforcement of the Farkas
11 Documents, representing that Farkas was the manager of the Plaintiff LLC. One of the documents
12 was a purported "redemption agreement" which declared Bloom released from any responsibility
13 to make company records available to the Investor Member. *Id.* at ¶6, p. 4:10.

14 41. Jay Bloom, as manager of the LLCs, did not comply with the Arb. Award and did
15 not turn over any books and records to the Investor Member. The Arb. Award was entered
16 November 1, 2020, and it was not appealed. In order to enforce the Arb. Award, the Investor
17 Member filed the Denton Contempt Litigation.

18 42. In response, Bloom/SJVC filed a countermotion for the modification of the Arb.
19 Award and a request for expenses, filing the Bloom Declaration which contended that the LLCs
20 had "no funds or employees, and the only way for Defendants to obtain and furnish the records
21 in compliance with the Arb. Award would be for the Court order Plaintiff [TGC/Farkas Funding,
22 LLC, the Investor Member] to first pay expenses." *Id.* at ¶8. The Court denied Bloom/SJVC's
23 countermotion and affirmed the Arb. Award (the "Denton Award Order") which was entered
24 November 17, 2020. *Id.* A month later, on Dec. 18, 2020, the Investor Member moved for an
25 Order to Show Cause ("OSC") citing no compliance or communicated intention by Bloom to
26 comply with the Arb Award. *Id.* at ¶9, p. 5-6. Bloom was personally served with the OSC and
27 post-judgment discovery. *Id.*

28 43. Following the issuance of the OSC and the existence of the post-judgment

1 discovery, the Court found that despite Farkas no longer being active in the Plaintiff LLC and
2 having given full authority to the Investor Member, Bloom convinced his brother-in-law, Farkas,
3 to sign a series of documents on behalf of the Plaintiff LLC, purporting to bind the Plaintiff LLC
4 and the Investor Member to their detriment (the “Farkas Documents”). *Id.* at ¶20, p. 10-13.

5 44. One of the Farkas Documents was a settlement agreement executed on Jan. 6, 2021
6 (the “Settlement Agreement”), purportedly on behalf of the Investor Member, which Bloom then
7 asserted mooted the OSC and the post-judgment discovery. *Id.* at ¶10, p. 6. Bloom filed with the
8 Court a Motion to Enforce the Settlement Agreement which provided for the immediate dismissal
9 of the Order affirming the Arb. Award and the Arb. Award with prejudice. *Id.* Bloom also argued
10 that he was a non-party to the dispute and again reiterated the need for expenses to comply. *Id.* at
11 ¶11, p. 6. Bloom did not disclose the existence of the Settlement Agreement to the Investor
12 Member. *Id.* at ¶13, p. 7. When the Investor Member found out about the Settlement Agreement
13 it immediately sent notice repudiating it. The brother-in-law Farkas testified that he did not
14 believe he had the authority to execute the Settlement Agreement on behalf of the Plaintiff LLC
15 and that Bloom understood that. *Id.* at ¶ 15, p. 7. Ultimately, the court found that “[t]he Settlement
16 Agreement was a sham, never designed to result in any fair benefit to Plaintiff [LLC], and, if
17 effectuated with dismissal of the Order, the underlying Arb. Award... the ramifications to
18 Plaintiff [LLC] would have been unacceptable under law or equity.” *Id.* at ¶32.

19 45. Judge Denton found that “Bloom disobeyed and resisted the Order in contempt of
20 Court (civil) (the “Contempt Finding”), and further found that the Motion to Enforce was a tool
21 of that contempt as orchestrated by Bloom in disregard of the Arb. Award confirmed by the
22 Order.” *Id.* at p. 35:11. As the manager of the Debtor, disclosure of such contempt finding due to
23 an abject refusal to provide books and records to a member should be included in the Disclosure
24 Statement as a material fact related to at the very least feasibility and good faith.

25 46. The Court particularly called out the circumstances of the execution of the
26 Settlement Agreement by Farkas in 2021. Apparently, despite Farkas’ having resigned and given
27 all authority to the Investor Member, Jay Bloom had sent several documents to a UPS store to be
28 executed by his brother-in-law Farkas. Jay Bloom sent the Settlement Agreement, and he also

1 sent documents purporting to fire the Plaintiff LLC's counsel, Garman Turner Gordon ("GTG"),
2 to hire Bloom's personal counsel instead, and a release releasing and indemnifying Bloom, on
3 behalf of the Plaintiff LLC (collectively, the "Farkas Documents"). *Id.* at p. 11. Based on those
4 documents and relying on Bloom's representations as to Farkas' authority, Bloom's personal
5 counsel sent correspondence to GTG representing that he was hired to replace GTG and disclosing
6 the existence of the purported settlement agreement. *Id.* at p. 12:17.

7 47. Jay Bloom's personal counsel, in attempting to substitute in, did not contact either
8 of the members of his client, but relied solely on Bloom's (his adversary's) representations,
9 testifying that he took direction from Bloom because Bloom was Farkas' brother-in-law and his
10 "conduit." *Id.* at p. 13:10. The Court points out that at all relevant times Bloom and the LLCs (the
11 Defendants) were adverse to the Plaintiff LLC *with pending contempt proceedings against them*,
12 and under no circumstances should Bloom have been directing Plaintiff LLCs counsel without
13 any member of Plaintiff LLC's participation. *Id.* at p. 13:13.

14 48. The Court found that Bloom and his personal counsel (now purporting to act for
15 the Plaintiff LLC) knew about Farkas ceding his authority to Flatto following the issuance of the
16 Arb. Award and "were unfazed and moved forward in their enforcement efforts" with respect to
17 the Settlement Agreement executed by Farkas, without any authority. *Id.* at ¶22, p. 13. The Court
18 further held that "Bloom's refusal to recognize inconvenient limitations on Farkas' authority was
19 shown to be pervasive and reckless" and that "no reasonably intelligent person with knowledge
20 of that Arb. Award would once again attempt to enforce an agreement without Flatto's consent."
21 *Id.* at ¶23. Bloom tried to convince the Court that the Arb. Award was based on a declaration in
22 which Farkas committed perjury. Farkas provided rebuttal testimony that his declaration was
23 truthful and the "Court finds there is no support for Bloom's allegation of perjury." *Id.*

24 49. Despite having received notice of Farkas' consent to the revised operating
25 agreement giving Flatto authority, Bloom then argued that certain old documents executed by
26 Farkas provided apparent authority, which argument the court dismissed. *Id.* at ¶26, p. 15. The
27 Court held "there was a lack of good faith in Bloom's dealings with his brother-in-law in order to
28 obtain the signed [Farkas] Documents with haste and in an intentional disregard of the restrictions

1 set forth in the Arb Award” *Id.* at ¶27. The court found that Bloom’s actions in making Farkas
2 sign the documents amounted to duress by threatening his brother-in-law Farkas with civil action,
3 especially where there are circumstances of emotional consequences, (*Id.* at ¶¶16, 17, p. 27), and
4 that such threats amounted to bad faith subject to sanctions. *Id.* at p. 28:13.

5 50. The Court further found that Bloom’s Motion to Enforce the Settlement
6 Agreement “was filed for the express purpose of avoiding the consequence of Defendant’s and
7 Blooms contempt of the Order.” *Id.* at ¶34 p. 18. The Court found that due to their familial
8 relationship “Bloom had a duty to act with the utmost good faith when dealing with Farkas” which
9 he breached. *Id.* at p. 18:20. Farkas testified that “[Bloom] is my brother-in-law. He’s family. I
10 didn’t think he would-he would try to do something like this...” “I trust him as a brother-in-law,
11 and as somebody who was representing to me that he was just trying to help in this part of what
12 was going on... I believe that he took advantage of a nuance in the law... I think the way Jay
13 treated me was wrong and manipulative. And I think he knew exactly what he was doing.” *Id.* at
14 p. 18:23 – 19:2. Rather than acting with the utmost good faith, Bloom actually threatened Farkas
15 with civil action if he did not sign the Settlement Agreement and the other Bloom Documents. *Id.*
16 at p. 19:11.

17 51. The Court stated that Bloom was only able to procure Farkas’ signature through
18 the abuse of special confidences, the threat of adverse action and concealment of the true nature
19 and substance of the Bloom Documents being signed. *Id.* at p. 19:16.

20 52. It is no surprise that the court granted the OSC and found Bloom in contempt
21 holding that Bloom was not incapable of abiding by the Court’s order affirming the Arb. Award,
22 “Bloom merely determined to do nothing to comply with the order”. *Id.* at p. 21:21-22. The court
23 further concluded “there was no good faith basis for Bloom’s intentional disregard of the Arb.
24 Award and Order thereon” and reliance by Bloom on Farkas’ signature was not reasonable. *Id.* at
25 ¶11, p. 26:15.

26 53. The Denton Court found Bloom’s testimony demonstrated that the LLCs (like the
27 Debtor here) had no continued operations, no employees, no bank accounts, no records being
28 maintained as required under the operating agreements or NRS 86.241 and no active governance

1 of any kind (the “Breach of Entity Duties”). *Id.* at p. 32. The court held that “equity must be
2 applied such that Bloom will not be immune from consequences from his intentional conduct for
3 the purpose of disobeying and/or resisting the Order. Therefore, in addition to the “responsible
4 party” rule that applies to contempt, there should be no immunity for liability when, as here,
5 Bloom is [the LLCs] *alter ego*.” *Id.* at p. 33:1.

6 54. The Denton FFCLO found that Bloom intentionally concealed the true facts of the
7 subject of the dispute, and that Bloom made threats to a party who he was bound to act toward in
8 good faith and with due regard. Judge Denton found that “Farkas was threatened by Bloom with
9 civil action by Defendants and/or their members if he did not sign the Settlement Agreement and
10 other documents provided to him by Bloom, his family member” (*Id.* at ¶37); that “[n]ot only did
11 Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would
12 never have to be revealed until the case was dismissed, inclusive of hiring Farkas separate counsel
13 to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement”
14 (collectively, the “Duress and Bad Faith Acts”) (*id.* at ¶15 at p. 27).

15 55. In addition, as part of the Breach of Entity Duties, the Denton FFCLO found as a
16 matter of law that “[Bloom’s³] contempt of the [Court] Order through resistance and /or
17 disobedience [was] clearly established.” *Id.* at ¶ 19.

18 56. Further, the Denton FFCLO states that Bloom followed “no corporate formalities”
19 with regard to his entities, and “that at this juncture, Bloom is the alter ego of the named corporate
20 Defendants” (previously defined herein as the Alter Ego Finding). *Id.* at p. 31-32.

21 **III. Argument**

22 Under applicable Nevada law, it is well recognized that a lender is entitled to the
23 appointment of a receiver to protect the collateral which secures a borrower’s obligations. In this
24 case, the obligated party is SJCV, who has possession of all the collateral including SJCV’s
25 interest in the Judgment encumbered by the debt. SJCV has now encumbered the very same
26 collateral by way of the Denton FFCLO. Bloom has been found to be the alter ego of SJCV and
27 committed acts of deceit and fraud. Bloom has been found to have acted recklessly. Alternatively,
28

³ Bloom was found to be the “sole natural person legally associated with Defendants.” *Denton FFCLO* at ¶20, p. 28.

1 NRS §32.010(6) provides that a receiver may be appointed in all other cases where receivers have
2 heretofore been appointed by courts of equity. Such authority, combined with the default and
3 express agreement to such relief, unquestionably entitles Counterclaimants to the appointment of
4 a receiver in the present case.

5 **A. Legal Standard**

6 **NRS 32.010 Cases in which receiver may be appointed.** A
7 receiver may be appointed by the court in which an action is
8 pending, or by the judge thereof:

9 1. In an action by a vendor to vacate a fraudulent
10 purchase of property, or by a creditor to subject any property or fund
11 to the creditor's claim, or between partners or others jointly owning
12 or interested in any property or fund, on application of the plaintiff,
13 or of any party whose right to or interest in the property or fund, or
14 the proceeds thereof, is probable, and where it is shown that the
15 property or fund is in danger of being lost, removed or materially
16 injured.

17 . . .

18 5. In the cases when a corporation has been dissolved,
19 or is insolvent, or in imminent danger of insolvency, or has forfeited
20 its corporate rights.

21 6. In all other cases where receivers have heretofore
22 been appointed by the usages of the courts of equity.

23 In general, "a receiver is a neutral party appointed by the court to take possession of
24 property and preserve its value for the benefit of the person or entity subsequently determined to
25 be entitled to the property." *Anes v. Crown Partnership, Inc.*, 113 Nev. 195, 199, 932 P.2d 1067,
26 1069 (*citing Lynn v. Ingalls*, 100 Nev. 115, 120, 676 P.2d 797, 800-01 (1984)). A court-appointed
27 receiver acts as an officer of the court. *Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839
28 (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

1 equity.

2 “The appointment of a receiver is an action within the trial court’s sound discretion and
3 will not be disturbed absent a clear abuse.” *Medical Device Alliance, Inc. v. Ahr*, 116 Nev. 851,
4 862, 8 P.3d 135, 142 (2000) (citing *Nishon’s Inc. v. Kendigian*, 91 Nev. 504, 505, 538 P.2d 580,
5 581 (1975); *Peri-Gil Corp. v. Sutton*, 84 Nev. 406, 411, 442 P.2d 35, 37 (1968); *Bowler v.*
6 *Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954)). The appointment of a receiver does not
7 require the posting of a bond. *Bowler v. First Judicial Dist. Court*, 68 Nev. 445, 234 P.2d 593
8 (1951).

9 In this case, this Court should exercise its discretion and appoint a receiver to collect the
10 business records of SJCVC, determine the efforts made to collect upon the Judgment and report the
11 financial condition of SJCVC to the Court. Jay Bloom, the alter ego of the manager of the Debtor,
12 SJCVC, has a pattern of breaching contracts, breaching his fiduciary duties as a manager,
13 misrepresenting facts and law, using litigation to frustrate the expectations of partners and
14 creditors by among other things disobeying and resisting lawful court orders resulting in a
15 judgment for contempt, using manufactured agreements obtained under duress as a tool of the
16 contempt and refusing to perform the most basic of governance obligations, such as keeping and
17 producing accurate books and records or filing tax returns, which pattern has continued and will
18 continue. Accordingly, Counterclaimants easily satisfy the statutory requirements of Sections
19 32.010, 107.100, and 107 A.260 of the Nevada Revised Statutes for the appointment of a receiver.

20 **B. Counterclaimants have Standing to Seek Appointment of a Receiver**

21 Pursuant to NRS 32.010(1), Counterclaimants have standing to seek the appointment of a
22 receiver. Nevada allows for the appointment of a receiver upon the application of a creditor. See
23 Trial Exhibit 1, Forbearance Agreement. The Loan is secured by the Security Agreement. See
24 **Exhibit E**, attached hereto. The Note, Deed of Trust, Assignment of Rents, and all of the other
25 Loan Documents were assigned by Counterclaimant CBC Partners I, LLC to Counterclaimant
26 5148 Spanish Heights, LLC. See Recorded Assignment of Interest in Deed of Trust, Trial Exhibit
27 100, attached hereto as **Exhibit G**.

1 **C. Larry Bertsch is Well Qualified to Serve as Receiver**

2 Attached hereto as **Exhibit H** is a statement of the qualification of Larry Bertsch. As can
3 be seen by the attachment, Mr. Bertsch is easily qualified, given his vast experience and
4 familiarity with the real estate market in Nevada, to serve as receiver for the Property, to possess
5 and control the accounts, funds, monies, books and records of the Property, upon such terms and
6 provisions as the Court deems appropriate. Indeed, Mr. Bertsch has been appointed by courts as
7 receiver on numerous separate occasions. Mr. Bertsch is able and willing to act as receiver for the
8 Property in this action should the Court grant this Motion.

9 **D. There Exists a Conflict of Interest for SJC Ventures**

10 SJCVC claims to be the irrevocable manager of SHAC. See Trial Exhibit 5, attached hereto
11 as **Exhibit D**, specifically Bates No. 5148SH 000536, Operating Agreement of SHAC. SJCVC is
12 also the tenant in the sole property owned by SHAC. The ownership of SJCVC rights in SHAC are
13 in question and SJCVC has defaulted under the terms of the various forbearance agreements. As
14 such, the rights of the true members are unrepresented, a receiver is necessary to protect those
15 interests.

16 **IV. Conclusion**

17 On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law Ordering
18 that the Note is a valid existing obligation and that the Deed of Trust is a valid and existing
19 obligation against the Property. On April 6, 2021, this Court entered its Findings of Fact and
20 Conclusions of Law Ordering that the “Pledge Agreement is a valid existing obligation of SJCVC.”
21 On April 6, 2021, this Court entered its Findings of Fact and Conclusions of Law Finding that the
22 Forbearance Agreement and Amendment to Forbearance Agreement “are clear and unambiguous
23 as a matter of law.” In addition, the Denton FFCLO states that Bloom followed “no corporate
24 formalities” with regard to his entities, and “that at this juncture, Bloom is the alter ego of the
25 named corporate Defendants”. Bloom has refused to answer all questions regarding SJCVC’s
26 finances and SJCVC’s ability to meet its contractual obligations.

27 Pursuant to NRS 32.010, 107.100, or 107A.260, the Court should appoint a receiver to
28 protect Counterclaimants’ collateral in accordance with the loan documents. Due to his extensive

1 background and experience in finance and commercial real estate and as a receiver for this Court,
2 Counterclaimants request that this Court appoint Larry Bertsch, as receiver in this case and that
3 the Court authorize the receiver to exercise the powers set forth more specifically in the Proposed
4 Order, attached hereto as **Exhibit I**.

5 DATED this 24th day of June, 2021

6 MUSHKIN & COPPEDGE

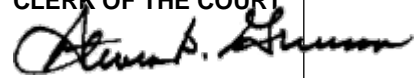
7
8 /s/Michael R. Mushkin
9 MICHAEL R. MUSHKIN, ESQ.
10 Nevada Bar No. 2421
11 L. JOE COPPEDGE, ESQ.
12 Nevada Bar No. 4954
13 6070 South Eastern Ave Ste 270
14 Las Vegas, NV 89119
15
16
17

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that the foregoing **Motion for Appointment of Receiver** was submitted
20 electronically for filing and/or service with the Eighth Judicial District Court on this 24th day of
21 June, 2021. Electronic service of the foregoing document shall be upon all parties listed on the
22 Odyssey eFileNV service contact list.

23
24 /s/K.L. Foley
25 An Employee of
26 MUSHKIN & COPPEDGE
27
28

EXHIBIT “A”



1 FFCL

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

10 Plaintiffs,

11 v.

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

Case No. A-20-813439-B

Dept. No.: XI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15, 2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

1 Emergency Directive 008.

2 On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and
3 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

4 Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a
5 counterclaim against plaintiffs, and Jay Bloom.

6
7 On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against
8 SJCVC, which SJCVC answered on September 28, 2020.⁵

9 **II. Findings of Fact**

10 1. This action involves residential real property located at 5148 Spanish Heights
11 Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

12 2. The original owners of the Property were Kenneth and Sheila Antos as joint
13 tenants, with the original deed recorded in April 2007.

14 3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos
15 (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-
16 Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the
17 "Antos Trust", and together with "Antos", the "Antos Parties").

18 4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust
19 recorded on the Property.

20 5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of
21 Trust recorded on the Property.

22 6. The Property is currently owned by Spanish Heights⁶ which has entered into a
23

24
25
26
27 _____
28 ⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:

22 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
23 create, assume or permit to exist any debt secured by the real property
24 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:

20 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
21 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
22 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
23 of a Deed of Trust on the real property located at 5148 Spanish Heights
24 Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guarantied
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
9 SJCVC acknowledged default and affirmed CBCI has fully performed.

10 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
11 agreements between the Antos and CBCI are valid.

12 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
13 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
14 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
15 accordance with their respective terms, and any instrument or agreement required
16 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
17 valid, binding and enforceable. This Forbearance Agreement does not conflict with any
18 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

19 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
20 Antos Trust conveyed the Property to Spanish Heights.

21 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
22 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

23 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
24 term is two years, with an option for SJCVC to exercise two additional consecutive lease
25

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust..."

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

22
23
24
25
26
27
28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.
8

9 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
10 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
11 SJCVC appears on the Pledge Agreement.
12

13 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
14 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
15 Gutierrez & Associates.
16

17 61. As additional required security, SJCVC agreed to a Security Agreement to grant
18 CBCI a Security Interest in a Judgment described as:

19 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
20 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
21 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
22 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
23 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
SJCVC represents It holds a 24,912% Membership Interest in 1st One
Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

24 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
25 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

26 ***

27 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”)
28 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has
been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

70. On April 1, 2020, a Notice of Default and Demand for Payment was sent to Spanish Heights and SJCVC. This letter had a typo on the date of final balloon payment being due on March 31, 2021. This was corrected and emailed to Spanish Height's and SJCVC's counsel noting that the default date was corrected to March 31, 2020.

71. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to Spanish Heights, SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]hen a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16

17 Trustor and Guarantor each waive all benefits of the one-action
18 rule under NRS 40.430, which means, without limitation, Trustor
19 and Guarantor each waive the right to require Lender to (i) proceed
20 against Borrower, any other guarantor of the Loan, any pledgor of
21 collateral for any person’s obligations to Lender or any other
22 person related to the Note and Loan Documents, (ii) proceed
23 against or exhaust any other security or collateral Lender may
24 hold, or (iii) pursue any other right or remedy for Guarantors’
benefit.

25 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
26 remedies.

27 The rights and remedies of CBCI under this Forbearance
28 Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.

20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
21 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
22 obligation of SJCVC.

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
24 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
25 Spanish Heights does not merge the Defendants interests.
26
27
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA

EXHIBIT “B”

5148 Spanish Heights Dr.

Las Vegas, Nevada

LANDLORD

Spanish Heights Acquisition Company, LLC,
a Nevada limited liability company

TENANT

SJC Ventures, LLC
a Delaware limited liability company

REAL PROPERTY LEASE

THIS LEASE is made as of August 15, 2017, by and between Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("Landlord"), and SJC Ventures, LLC, a Delaware limited liability company ("Tenant") (the foregoing parties are collectively the "Parties" and each is a "Party").

ARTICLE I INTRODUCTORY PROVISIONS

1.1 Defined Terms. Capitalized terms used in this Lease and not otherwise defined shall have the meanings set forth or cross-referenced in Exhibit "1".

1.2 APPROVAL OF CBCI- The parties recognize that the execution this Real Property Lease is a condition to the Forbearance Agreement between CBC Partners I, LLC, and the Landlord, Tenant, and other parties. Accordingly, this Lease Agreement is subject to the written consent of CBCI ("CBCI's Consent"), in the form which is attached to Exhibit "2." The terms and conditions of CBCI's Consent, and the Forbearance Agreement shall supersede any provisions of this Lease that are inconsistent with, or contrary to, the Consent Agreement.

1.3 Basic Lease Provisions. The following are certain basic lease provisions that are part of and are referred to in subsequent provisions of this Lease:

- (a) Term:
 - (i) two (2) years commencing on the Rent Commencement Date and expiring on the Term Expiration Date, unless this Lease is extended as provided herein or is earlier terminated by Law or as otherwise provided herein.
 - (ii) Tenant shall be afforded, at Tenants sole option, two additional consecutive lease extensions consisting of a two years term for each of the two extensions, as may be exercised by Tenant.
- (b) Estimated Premises Delivery Date:
August 15, 2013
- (c) Rent Commencement Date:
The first day of the month following the Premises Delivery Date.
- (d) Base Rent:
Per schedule set forth below. The monthly Base Rent shall be abated during certain months as indicated:

Initial Term Monthly Base Rent:

<u>Lease Month</u>	<u>Monthly Base Rent</u>
1-3	\$0.00
3-24	\$4,375

(e) Tenant's Name:
SJC Ventures, LLC

(f) Permitted Use:

The Premises may be occupied and used by the Tenant and its assigned solely for those lawful purposes allowed pursuant to Statute, Ordinance and CC&Rs for the community.

(g) Notice Addresses:
Tenant: SJC VENTURES, LLC
5148 Spanish Heights Dr.,
Las Vegas, Nevada 89148

With copies to:

Landlord: SPANISH HEIGHTS
ACQUISITION COMPANY, LLC
5148 Spanish Heights Dr.,
Las Vegas, Nevada 89148

With copies to:

A COPY OF ANY NOTICES SHALL ALSO BE PROVIDED
TO CBCI IN ACCORDANCE WITH THE CONSENT
AGREEMENT.

Payments to:

SPANISH HEIGHTS
ACQUISITION COMPANY, LLC
5148 Spanish Heights Dr.,
Las Vegas, Nevada 89148

(h) First Installment of Monthly Base Rent and Security Deposit:

Within 90 days of execution and delivery of this Lease, Tenant shall pay no less than the first year of the Monthly Base Rent of \$4,375.00 which installment shall be applied to the Monthly Base Rent for the third (3rd) through twelfth (12th) full calendar months of the Term. Monthly Base Rent for any partial calendar month at the beginning of the Term shall not be billable.

(i) Guarantor:

Tenant to provide a guarantee against its distributions resultant from its interest in 1st One Hundred Holdings, LLC. and any proceeds realized therefrom under such company's collections against its judgments in the Nevada State Clark County Eighth Judicial District Court Actions, cases numbered A-16-738970-C and A-17-753459-C.

1.3 Additional Provisions. The following provisions shall apply notwithstanding anything in this Lease to the contrary:

(a) Tenant Compliance with CC&Rs: Tenant shall comply with all CC&R obligations of unit owners and residents, as set forth in the Associations Governing Documents and Covenants Conditions and Restriction.

Should there be any compliance issue, Tenant shall be responsible to cure any such violation cited, and either defend or pay an fines associated with such violations asserted.

(d) Premises Delivery Condition: Landlord shall deliver the Premises in as is where is condition.

1.4 Modified Gross Lease. This Lease is a modified gross lease.

1.5 Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

EXHIBIT "1" - Definitions

EXHIBIT "2" - CBCI'S Consent to Lease.

ARTICLE II
PREMISES

2.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, subject to (a) the terms and conditions of this Lease, (b) all matters of record, and (c) all Community Association Governing Documents and Covenants Conditions and Restrictions.

ARTICLE III
TERM

3.1 Initial Term. The term of this Lease shall commence on the Rent Commencement Date and, unless this Lease extended as provided in Section 3.5 or is earlier terminated by Law or as elsewhere provided herein, shall expire at midnight on the "Term Expiration Date" which shall be the date at the end of the number of Lease Years stated in Section 1.2(d) (such term, as the same may be extended under Section 3.5, is referred to herein as the "Term").

3.2 Rent Commencement Date.

(a) As used in this Lease, the term "Rent Commencement Date" shall mean the date specified in Section 1.2(c).

3.3 Confirmation of Term. At any time following the Rent Commencement Date, Landlord and Tenant shall, within fifteen (15) days following the request of either Party, execute a written confirmation of the Rent Commencement Date and the Term Expiration Date.

3.4 Commencement of Tenant Obligations. From the date Landlord delivers possession of the Premises to Tenant until the Rent Commencement Date, Tenant shall observe and perform all obligations of Tenant hereunder (other than its obligations to pay Base Rent and Additional Charges) as if the term of this Lease began when possession of the Premises was so delivered to Tenant.

3.5 Extension of Term. Tenant is hereby granted an option to extend the term of this Lease, hereinafter referred to as the "Original Lease", for the additional consecutive periods set forth in Section 1.2(d), if any. Each such option shall be effectively exercised only if (a) Tenant notifies Landlord, in writing, no less than one (1) months nor more than six (6) months prior to the commencement of the applicable extension period, of Tenant's intention to exercise such option, and (b) Tenant, at the time of such notice and as of the commencement of such extension period, is not in default of this Lease. If Tenant fails to effectively exercise any such option, then such option, and any other future options to extend the term of this Lease, shall thereupon terminate. The terms and conditions of each extension period shall be the same as the terms and conditions of the Original Lease except that: (a) Tenant shall have no further right of extension after the expiration of the last extension period, and (b) the Base Rent payable during such extension period shall be calculated in accordance with Section 1.2(d).

3.6 Surrender Upon Lease Termination. Upon the expiration or earlier termination of this Lease, Tenant shall deliver and surrender to Landlord possession of the Premises in broom-clean

condition and otherwise in the state of condition and repair as Tenant is required to maintain the Premises hereunder.

3.7 Holding Over. If Tenant holds possession of the Premises after the expiration or earlier termination of this Lease, then Landlord may, in its sole and absolute discretion, treat such possession as an unauthorized holdover and as either a tenancy at sufferance or a month-to-month tenancy, upon the same terms and conditions as are hereinafter set forth, except that the monthly Base Rent shall be one hundred percent (100%) of the monthly Base Rent payable by Tenant immediately prior to such termination (prorated on a daily basis if such tenancy is treated by Landlord as a tenancy at sufferance). Nothing herein shall be construed to limit Landlord's right to obtain possession of the Premises upon termination of this Lease by unlawful detainer proceedings or otherwise if Landlord does not exercise its option to treat the continued possession by Tenant as a month-to-month tenancy, or to pursue any other remedy provided for in this Lease or available at law or in equity.

ARTICLE IV RENT

4.1 Base Rent.

(a) Tenant hereby covenants and agrees to pay to Landlord, without deduction or set-off and without notice or demand, as "Base Rent", the amount(s) set forth in Section 1.2(d), said amount(s) to be due and payable in monthly installments, in advance, on the Rent Commencement Date and on the first day of each and every calendar month thereafter. Monthly Base Rent for any partial calendar month shall be prorated based on the actual number of days in such month. A 30-day grace period shall exist on all rent due dates.

(b) Tenant shall pay the adjusted Base Rent as calculated pursuant to Section 1.2(d) commencing with the first month of the Lease Year affected by the adjustment. However, pending the determination of the adjusted Base Rent, Tenant shall continue to pay Base Rent in the same amount as the Base Rent for the Lease Year immediately preceding the Lease Year affected by the adjustment. When the adjusted Base Rent has been determined, Tenant, concurrently with the next monthly Base Rent payment due and payable after the furnishing by Landlord to Tenant of the computation of the adjusted Base Rent, in addition to the adjusted Base Rent for such month, shall pay Landlord a sum equal to the amount of the increase in the Base Rent due for each of the previous months in the Lease Year affected by the adjustment.

4.2 Manner of Payment. All Rent and other amounts that Tenant is required to pay to Landlord hereunder shall be paid in lawful currency of the United States of America at the address set forth in Section 1.2(d) or such other place as Landlord may, from time to time, designate in writing.

4.3 Late Charges. Notwithstanding anything in this Lease to the contrary, if Tenant fails to pay any Rent or other amount that Tenant is required to pay to Landlord hereunder within thirty (30) days

following the due date thereof, then Tenant shall pay to Landlord upon demand a late charge equal to two percent (2%) of the amount due per month from the due date thereof.

4.4 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of an amount less than the amount of any payment of Rent or other amount herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent or other amount, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent or other amount be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or other amount or pursue any other remedy provided for in this Lease or available at law or in equity.

ARTICLE V ADDITIONAL CHARGES

5.1 Status of Charges. Tenant shall additionally pay to Landlord, as part of the Rent, the amounts described in this Article VIII (collectively, the "Additional Charges").

5.2 Operating Costs.

(a) Tenant shall pay to Landlord Operating Costs. Tenant's share of the Premises Operating Costs shall be paid by Tenant to Landlord in equal monthly installments, in advance, without deduction or set-off and without notice or demand, on the first day of each calendar month during the Term in an amount equal to one-twelfth (1/12) of Tenant's share of the Premises Operating Costs as estimated by Landlord for the then current Landlord's Fiscal Year. The amount due for any partial Landlord's Fiscal Year shall be prorated based on the actual number of days in such year, and in any event, shall not exceed 10% of the base rent as specified in 1.2(d) above during the initial Lease Term. During any optional term, the 10% cap referenced in the preceding sentence will apply only to increases over the total Premises Operating Costs paid by Tenant in the final year of the initial Term.

(b) Within ninety (90) days after the end of each Landlord's Fiscal Year, Landlord shall furnish Tenant with a written statement in reasonable detail of the actual Operating Costs and the amount of Tenant's share thereof for such Landlord's Fiscal Year. If Tenant's share of the actual Operating Costs for such Landlord's Fiscal Year exceeds the aggregate of Tenant's monthly payments with respect thereto, then Tenant shall pay to Landlord any deficiency within thirty (30) days after Tenant's receipt of such statement from Landlord. If the aggregate of Tenant's monthly payments with respect thereto exceeds Tenant's share of the actual Operating Costs for such Landlord's Fiscal Year, then any surplus paid by Tenant shall be credited against the next installment of Rent due (except at the end of the Term, in which case Landlord shall pay such surplus to Tenant within thirty (30) days after Landlord's determination thereof). No failure of Landlord to provide such statement within the time prescribed shall relieve Tenant of its obligations hereunder. The obligations of Landlord and Tenant to make the foregoing adjustment shall survive the expiration or earlier termination of this Lease.

(c) As used herein, "Property Operating Costs" means all costs paid or incurred by Landlord in owning, operating, managing, maintaining, repairing, replacing, enhancing, securing, protecting and insuring the building, other improvements and spaces within the property, including,

without limitation: (i) costs of maintaining, repairing and replacing the roofs, structural portions and exteriors of the buildings in the Premises, (ii) costs of repainting the buildings and other improvements to the property, (iii) costs of electricity, water, gas, sewer and other utility services, (iv) costs of lighting, cleaning, heating, air-conditioning and otherwise cooling the premises, (v) costs of all maintenance and repairs necessary to preserve and maintain the utility and appearance of the premises, (vi) landscaping costs and costs of seasonal and other similar decorations for the premises, (vii) costs of installing, maintaining and repairing security systems, fire protection systems, lighting and utility systems, and storm drainage systems, (viii) trash, dirt, debris and other waste removal costs, (ix) pest extermination and control costs, (x) costs of supplies, materials, tools and equipment used in the operation, maintenance and repair of the premises, (xi) assessments paid or incurred by Landlord with respect to the premises under the Governing Documents or the CC&Rs, (xii) the reasonable costs of payroll, payroll taxes and employee benefits of all management personnel, including, managers, security and maintenance personnel, secretaries and bookkeepers, (xiii) reasonable consulting, accounting and legal fees and costs, (xiv) costs of purchasing and maintaining in full force all insurance that Landlord is required to maintain hereunder or that Landlord deems necessary or appropriate with respect to the premises, (xv) costs of services, if any, furnished by Landlord for the use of all tenants of the premises, including, without limitation, parcel pickup and delivery services, and (xvi) costs of improvements not part of initial premises construction which are (A) made to comply with Laws or insurance requirements not in force at the time of such initial construction, (B) undertaken for the protection of the health and safety of tenants, residents and other occupants of the premises and their agents, employees, customers and invitees, or (C) made for the purpose of reducing Premises Operating Costs.

5.3 Real Property Taxes.

(a) Tenant acknowledges that the Premises, its leasehold improvements and the underlying realty will be separately assessed for tax purposes. Tenant shall pay to Landlord as Tenant's share of the Real Property Taxes the portion of the Real Property Taxes set forth in Section 1.2(h). Tenant's share of Real Property Taxes shall be paid by Tenant to Landlord in equal monthly installments, in arrears, without deduction or set-off and without notice or demand, on the first day of each calendar month following the Term in an amount equal to one-twelfth (1/12) of Tenant's share of the Real Property Taxes as estimated by Landlord for the then current Landlord's Fiscal Year. The amount due for any partial Landlord's Fiscal Year shall be prorated based on the actual number of days in such year.

(b) Within ninety (90) days after Landlord's payment of the final installment of Real Property Taxes for each Landlord's Fiscal Year, Landlord shall furnish Tenant with a written statement in reasonable detail showing the actual amount of the Real Property Taxes and the amount of Tenant's share thereof for such Landlord's Fiscal Year. If Tenant's share of the actual Real Property Taxes for such Landlord's Fiscal Year exceeds the aggregate of Tenant's monthly payments with respect thereto, then Tenant shall pay to Landlord any deficiency within thirty (30) days after Tenant's receipt of such statement from Landlord. If the aggregate of Tenant's monthly payments with respect thereto exceeds Tenant's share of the actual Real Property Taxes for such Landlord's Fiscal Year, then any surplus paid by Tenant shall be credited against the next installment of Rent due (except at the end of the Term, in which case Landlord shall pay such surplus to Tenant within thirty (30) days after Landlord's determination thereof). No failure of Landlord to provide such statement within the time prescribed shall relieve Tenant of its obligations hereunder. The obligations of Landlord and Tenant to make the foregoing adjustment shall survive the expiration or earlier termination of this Lease.

(c) As used herein, "Real Property Taxes" means all taxes, assessments, levies, fees

and other governmental charges, general and special, ordinary and extraordinary, including, but not limited to, assessments for off-site public improvements for the benefit of the premises, which are laid, assessed, levied or otherwise imposed upon the premises or any part thereof and which are payable at any time during the Term, and all gross receipts taxes, rent taxes, business taxes and occupancy taxes, and shall include all of Landlord's reasonable administrative costs and all costs, including, without limitation, reasonable attorney fees, incurred by Landlord in contesting or negotiating any Premises Real Property Tax with any governmental authority, excepting only franchise, estate, inheritance, succession, capital levy, transfer, net income and excess profits taxes imposed upon Landlord.

(d) The Rent to be paid under this Lease shall be paid to Landlord absolutely and without deduction for taxes of any nature whatsoever. Landlord and Tenant recognize and acknowledge that there may be changes in the current real property tax system and that there may be imposed new forms of taxes, assessments, levies, fees or other governmental charges, or there may be an increase in certain existing taxes, assessments, levies, fees or other governmental charges placed on, or levied in connection with the ownership, leasing, occupancy or operation of, the Premises. All such new or increased taxes, assessments, levies, fees or other governmental charges which are imposed or increased as a result of or arising out of any changes in the structure of the real property tax system or any limitations on the real property taxes which can be assessed on real property including, but not limited to, any and all taxes, assessments, levies, fees and other governmental charges imposed due to the existence of this Lease (including any surcharge on the income directly derived by Landlord therefrom) or for the purpose of funding special assessment districts of the type funded by real property taxes, shall also be included within the meaning of "Premises Real Property Taxes". With respect to any general or special assessment which may be levied against or upon the Premises and which under the Laws then in force may be evidenced by improvement or other bonds, or may be paid in periodic installments, there shall be included within the meaning of "Real Property Taxes" with respect to any Landlord's Fiscal Year only the amount currently payable on such bond for such Landlord's Fiscal Year, or the periodic installment for such Landlord's Fiscal Year.

(e) Tenant shall be responsible for payment of any type of tax, excise or assessment (regardless of label or whether in the form of a rental tax, gross receipts tax, sales tax, business or occupation tax, use assessment, privilege tax, franchise tax, or otherwise, except any tax, excise or assessment which in substance is a net income or franchise tax that is based solely on Landlord's net income) which is laid, assessed, levied or otherwise imposed at any time by any governmental authority upon or against the Premises, the use or occupancy of the Premises, the Rent payable by Tenant to Landlord, or otherwise with respect to the landlord-tenant relationship hereunder. Tenant shall pay the full amount of such tax, excise or assessment directly to the appropriate governmental authority, unless the applicable law expressly imposes solely on Landlord the duty to pay or collect such tax, excise or assessment, in which case Tenant shall pay the full amount of such tax, excise or assessment as part of the Rent due and payable under this Lease to Landlord within thirty (30) days following receipt of Landlord's billing therefor. Notwithstanding that the applicable Law may impose on Landlord the duty to pay or collect such tax, excise or assessment, it is understood and agreed that Tenant shall nevertheless be obligated to pay such tax, excise or assessment and Landlord shall be indemnified against and held harmless from the same by Tenant. If (i) Tenant fails to timely pay such tax, excise or assessment and Landlord pays the same, or (ii) Landlord elects in its sole and absolute discretion to pay the same in advance, then Tenant shall promptly reimburse Landlord for the amount thereof as part of the Rent next due and payable under this Lease. The provisions of this paragraph shall also apply to any such tax, excise or assessment which may at any time replace or supplement any tax, excise or assessment described herein.

ARTICLE VI SECURITY DEPOSIT

6.1 Security Deposit. Within 90 days of the Tenant's execution and submission of this Lease, Tenant shall deposit with Landlord and thereafter during the Term shall maintain on deposit with Landlord, without interest, the sum set forth in Section 1.2(d) as security deposit for the full, prompt and faithful performance by Tenant of all of its obligations hereunder. The Parties agree that it is the intent of the Parties that (a) such deposit or any portion thereof may be applied by Landlord to the initial obligations of the Tenant under this Agreement and/or the curing of any default that may exist, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and at the end of the first year, Tenant shall pay to Landlord upon demand the amount so applied which shall be added to the security deposit so that the same will be restored to its original amount, (b) Landlord shall not be obligated to hold the security deposit as separate funds, but may commingle it with other funds, (c) if Tenant performs 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 Tenant's actions from being filed against the Premises, the Building or the Premises as a result of work, labor, services or materials performed for or furnished to Tenant. If any such lien is filed, then Tenant shall (a) cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction or otherwise within thirty (30) days of Tenant's receipt of notice of such filing, subject to Tenant's right to contest the claim of such lien as provided below in this Article XV, and (b) defend (using counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord against and from all legal action, damages, loss, liability and other expenses (including reasonable attorney fees) arising from or out of such lien. If Tenant desires to contest any claim of any such lien, then Tenant, at its sole cost and expense, may do so upon furnishing Landlord with security reasonably acceptable to Landlord in the amount of at least one hundred fifty percent (150%) of the amount of such claim, plus estimated costs and interest. If a final judgment establishing the validity of such claim, or any part thereof, is entered, then Tenant shall pay and satisfy the same at within fifteen (15) days of such entry.

10.2 Litigation liens. Landlord shall endeavor to clear all third party liens, resultant from judgments, against the subject premises, through the initiation of a Quiet Title action.

ARTICLE XI OWNERSHIP OF TENANT IMPROVEMENTS AND PERSONAL PROPERTY

11.1 Tenant Improvements. Subject to Section 11.2, all installations, improvements and other alterations made by Tenant in or to the Premises, including, without limitation, HVAC equipment, water heaters, plumbing fixtures, lighting fixtures, wall coverings and floor finishes, shall become the property of Landlord upon completion and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of this Lease without any obligation on the part of Landlord to compensate Tenant for the same.

11.2 Tenant Personal Property. All fixtures installed by Tenant on or in the Premises ("Tenant

Personal Property") shall be and remain the property of Tenant and shall be removable at any time, including upon the expiration or earlier termination of this Lease. Tenant shall promptly repair any damage to the Premises caused by the removal of any Tenant Personal Property. Any Tenant Personal Property not removed from the Premises by Tenant upon the expiration or within fifteen (15) days after any earlier termination of this Lease may be construed by Landlord as abandoned by Tenant. Alternatively, Landlord may order Tenant to remove such Tenant Personal Property from the Premises or have the same removed at Tenant's expense. All costs associated with the installation and removal of Tenant Personal Property, inclusive of damage repair expenses, shall be the sole responsibility of Tenant.

11.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, levies, fees and other governmental charges which are laid, assessed, levied or otherwise imposed upon Tenant's business operations, leasehold improvements, trade fixtures, equipment and other personal property at the Premises.

ARTICLE XII RIGHTS OF LANDLORD

12.1 Landlord's Right to Access and Make Repairs. Landlord, solely upon notice to and consent by the Tenant (except in the case of an emergency in which case no such notice shall be required), shall have the right to enter the Premises to inspect the Premises, to make repairs to the Premises that Landlord is required to make hereunder, to perform any other obligation of Landlord hereunder, and to make repairs to the Building, during normal business hours and at any other time the Premises is open for business (and at any time in the case of an emergency). If Tenant is not in compliance with any maintenance or repair obligation of Tenant under this Lease, then Landlord shall have the right to immediately in the case of an emergency, and otherwise upon five (5) days notice (unless Tenant commences curing such noncompliance within such five (5) day period and thereafter diligently pursues such curing to completion), enter upon the Premises to remedy said noncompliance at Tenant's expense (payable as additional rent within thirty (30) days following receipt of Landlord's billing). In connection with any exercise of its rights under this Section 12.1, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business, but shall not be liable for any interference caused thereby.

12.2 Landlord's Right to Make Payments on Behalf of Tenant. Landlord has a right to make payments on behalf of Tenant where Tenant defaults in its payments or obligations under the terms of this Lease and fails to make such payments or perform such obligations within five (5) days of Landlord's notice to Tenant of such default. Said payments by Landlord shall be considered as additional rent and be due and payable within thirty (30) days following receipt of Landlord's billing.

ARTICLE XIII INDEMNITY AND INSURANCE

13.1 Mutual Indemnification.

(a) Subject to Section 13.4, Tenant shall defend (by counsel reasonably acceptable to

Landlord), indemnify and hold harmless Landlord against and from legal action, damages, loss, liability and any other expense (including reasonable attorney fees) in connection with loss of life, bodily or personal injury or property damage arising from or out of all acts, failures, omissions or negligence of Tenant, its agents, employees or contractors which occur in the Premises, or other parts of the Premises, unless and to the extent such legal action, damages, loss, liability or other expense (including reasonable attorney fees) results from any act, omission or neglect of Landlord, its agents, contractors, employees or Persons claiming through it.

(b) Subject to Section 13.4, Landlord shall defend (by counsel reasonably acceptable to Tenant), indemnify and hold harmless Tenant against and from legal action, damages, loss, liability and any other expense (including reasonable attorney fees) in connection with loss of life, bodily or personal injury or property damage, arising from or out of all acts, failures, omissions or negligence solely due to the conduct of Landlord, its agents, employees or contractors which occur in the Premises, Premises or other parts of the Premises, unless and to the extent such legal action, damages, loss, liability or other expense (including reasonable attorney fees) results from any act, omission or neglect of Tenant, its agents, contractors, employees or Persons claiming through it.

13.2 Tenant's Insurance.

(a) General Requirements. Tenant shall, from and after the date of delivery of the Premises from Landlord to Tenant and during the Term, carry and maintain with respect to the Premises the types of insurance set forth in Section 13.2(b), each of which shall be in the amount hereinafter specified (or in such other amount as Landlord may from time to time reasonably request) and in the form hereinafter provided for, and each of which shall be with an insurance company authorized to do business in the State of Nevada and rated A-/VIII or better in the most current edition of Best's Insurance Report. All policies of insurance required to be carried and maintained by Tenant hereunder (other than workers compensation policies of insurance) shall (i) name as additional insureds Landlord, each Secured Lender and such other Persons as Landlord specifies from time to time, (ii) contain a provision that Landlord and the other additional insureds, although named as insureds, shall nevertheless be entitled to recover under such policies for any loss occasioned to any of them by reason of the negligence or willful misconduct of Tenant, and (iii) contain a waiver of subrogation with regard to any claim against Landlord. All policies of such insurance shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord or any other Person may carry, and shall provide that Landlord be given written notice thirty (30) days prior to the expiration, material alteration, cancellation, non-renewal or replacement of the existing policies. Should Tenant fail to furnish said notice or obtain the policies as is provided in this Lease, and at the times herein provided, Landlord may obtain such insurance and the premiums on such insurance shall be deemed to be an Additional Charge to be paid by Tenant to Landlord upon demand. Tenant may maintain any of its required insurance coverages under umbrella or blanket policies of insurance covering the Premises and any other premises of Tenant, or any Affiliate of Tenant, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy.

(b) Required Insurance.

(i) Tenant shall carry and maintain commercial general liability insurance with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence. The policy for such insurance shall be written on an "occurrence" basis and shall include coverage for (A) personal injury claims including, without limitation, claims for bodily injury, death and property damage, (B)

contractual liability, with defense provided in addition to the policy limits for indemnitees of the named insured, (C) personal and advertising liability, including, without limitation, liability arising from intentional torts such as libel, slander, invasion of privacy, copyright infringement and unlawful detention, and (D) products and completed operations. Such policy shall provide for severability of interests, and shall not include a deductible in excess of \$25,000.00.

(ii) Tenant shall carry and maintain property insurance covering all leasehold improvements made by Tenant (including Tenant's Work), Tenant Personal Property and other personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof, without deduction for depreciation, providing protection against any peril included within the classification "all risks" insurance (including but not limited to coverage for water damage from all causes, including sprinkler damage, sewer discharge or backup, water line breakage, and overflow from Tenant's spaces). The policy for such insurance shall be endorsed with ISO endorsements specifying coverages for additional costs of contingent liability from the operation of building codes, increased costs of construction, debris removal and demolition costs. Such policy shall include coverage for all glass windows, doors and other glass fixtures and appurtenances at the Premises. The deductible under such policy shall not exceed Five Thousand Dollars (\$5,000.00) per occurrence. Landlord shall be named as a loss payee with respect to the coverage for Tenant improvements.

(c) Notice of Loss. Tenant shall promptly notify Landlord of any damage to Persons or property that occurs at the Premises from fire, any other casualty or serious injury.

13.3 Landlord's Insurance.

(a) General Requirements. Landlord shall, from and after the date of delivery of the Premises from Landlord to Tenant and during the Term, carry and maintain the types of insurance set forth in Section 13.3(b), each of which shall be in the amount hereinafter specified and in the form hereinafter provided for, and each of which shall be with an insurance company authorized to do business in the State of Nevada and rated A-/VIII or better in the most current edition of Best's Insurance Report. Landlord may maintain any of its required insurance coverages under umbrella or blanket policies of insurance covering the Building and any other premises of Landlord, or any Affiliate of Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy. All premiums for insurance maintained by Landlord pursuant to this Section 13.3 shall be a part of the Premises Operating Costs.

(b) Required Insurance. Landlord shall carry and maintain (i) general liability insurance with respect to the Premises with such limits as Landlord may reasonably determine, and (ii) property insurance covering the Building (excluding Tenant's Work, Tenant Personal Property, all other property required to be covered by Tenant's insurance under Section 13(b)(ii), and all property required to be covered by the property insurance of other tenants or occupants of the Building) in such amount as Landlord may reasonably determine, but in no event less than the amount required any Secured Lender.

13.4 Waiver of Subrogation. Notwithstanding anything to the contrary contained elsewhere in this Lease, neither Party shall be liable to the other Party, or to any insurance company insuring the other Party by way of subrogated rights or otherwise, for any loss or damage which is covered by any insurance carried, or required to be carried, by Tenant under Section 13.2(b), or any insurance carried, or required to be carried, by Landlord under Section 13.3(b).

13.5 Limitations on Landlord's Liabilities. Landlord shall not be responsible or liable to Tenant, or those claiming by, through or under Tenant, for any loss or damage to their person or property resulting from (a) the acts or omissions of Persons occupying space adjoining or adjacent to the Premises or connected to the Premises, or occupying any other space within the Premises, (b) the acts or omissions of any other Persons (except as otherwise expressly provided in Section 13.1(b)), or (c) events such as the breaking or falling of electrical cables and wires; or the breaking, bursting, stoppage or leaking of water, gas, sewer, or steam pipes or equipment.

ARTICLE XIV CASUALTY

14.1 Landlord's Obligation to Repair and Reconstruct.

(a) If the Premises shall be partially damaged by fire or other casualty but are not thereby rendered unsuitable for the purposes contemplated herein, Landlord shall cause the Premises to be repaired, subject to Section 14.1(c) and Section 14.2, and the Base Rent and Additional Charges shall not be abated. If by reason of such occurrence the Premises shall be rendered unsuitable for the purposes contemplated herein only in part, Landlord shall cause the Premises to be repaired, subject to Section 14.1(c) and Section 14.2, and the Base Rent and Additional Charges shall be abated proportionately as to the portion of the Premises rendered unsuitable for the purposes contemplated herein from the date of such occurrence until the earlier to occur of ninety (90) days after Landlord's restoration work has been substantially completed or the date the Premises so repaired has reopened for business.

(b) If the Premises shall be rendered wholly unsuitable for the purposes contemplated herein by reason of such occurrence, Landlord shall cause the Premises to be repaired, subject to Section 14.1(c) and Section 14.2, and the Base Rent and Additional Charges shall be abated from the date of such occurrence until the earlier to occur of ninety (90) days after Landlord's restoration work has been substantially completed or the date the Premises so repaired has reopened for business.

(c) If Landlord is required or elects to repair or reconstruct the Premises under the provisions of this Article XIV, its obligation shall be limited to that work with respect to the Premises which was Landlord's obligation to perform for Tenant at the commencement date of this Lease. Upon Landlord's completion of the work required to be performed by Landlord under this Section 14.1, other than details of construction which do not materially interfere with the performance of the work to be performed by Tenant under this Section 14.1, Tenant, at Tenant's expense, shall promptly perform all repairs and restoration not required to be done by Landlord and shall promptly re-fixture and reconstruct the Premises and recommence business in all parts thereof.

(d) Tenant shall not be entitled to any compensation or damages, other than stated herein, from Landlord for the loss of the use of the whole or any part of the Premises or damage to Tenant Personal Property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

14.2 Option to Terminate. Landlord may elect to terminate this Lease by giving to Tenant notice of such election within ninety (90) days after the occurrence of any of the events below. If notice is given, this Lease shall terminate as of the date of such notice and Base Rent and Additional Charges shall be adjusted as of the date of such termination.

(a) the Premises are rendered wholly untenable, or damaged as a result of any cause which is not covered by Landlord's actual insurance or Landlord's required insurance under Section 13.3(b),

(b) the Premises are damaged or destroyed to the extent of twenty-five percent (25%) or more of the cost of replacement during the second-to-last Lease Year of the Term,

(c) the Premises are materially damaged or destroyed in whole or in part during the last Lease Year of the Term, or

(d) the Premises is damaged to the extent of ten percent (10%) or more of the cost of replacement, However, Landlord shall not terminate this Lease solely pursuant to this clause.

Notwithstanding the foregoing provisions, if Landlord terminates this Lease solely pursuant to clause (b) or clause (c) of this Section 14.2, and if at the time Tenant receives notice of such termination any option of Tenant to extend the term of this Lease under Section 6.5 may still be validly exercised, then Tenant may nullify Landlord's termination notice, and require Landlord to repair the Premises in accordance with Section 14.1, by exercising such option by giving Landlord written notice of such exercise within thirty (30) days after Tenant's receipt of Landlord's notice of termination. Tenant hereby waives any statutory rights of termination which may arise out of partial or total destruction of the Premises which Landlord is obligated to restore.

14.3 Demolition of Premises. If the Premises is so substantially damaged that it is reasonably necessary, in Landlord's reasonable judgment, to demolish a portion of the Premises, including the Premises, for the purpose of reconstruction, Landlord may demolish the Premises, in which event Tenant's Base Rent and Additional Charges shall be abated from the date of the casualty until the earlier to occur of ninety (90) days after Landlord's restoration work has been substantially completed or the date the Premises so restored has reopened for business.

ARTICLE XV CONDEMNATION

15.1 Condemnation. If the whole or substantially the whole of the Premises or the Premises shall be taken for any public or quasi-public use, by right of eminent domain or otherwise, or shall be voluntarily sold or conveyed in lieu of condemnation (but under threat of condemnation), then this Lease shall terminate as of the date when physical possession of the Premises or the Premises is taken by the condemning authority. If less than the whole or substantially the whole of the Premises is so taken, sold or conveyed, then Landlord (whether or not the Premises are affected thereby) may terminate this Lease by giving written notice thereof to Tenant prior to the date when physical possession of such portion of the Premises is taken by the condemning authority if such taking, sale or conveyance substantially impairs access to the Premises or the usefulness of the Premises as a mixed-use development, in which event this Lease shall terminate as of the date when physical possession of such portion of the Premises is taken by

the condemning authority. If less than the whole or substantially the whole of the Premises or the Premises is so taken, sold or conveyed, then either Landlord or Tenant may terminate this Lease by giving written notice thereof to the other party prior to the date when physical possession of such portion of the Premises or the Premises is taken by the condemning authority if such taking, sale or conveyance substantially impairs access to the Premises or the usefulness of the Premises for the purposes herein granted to Tenant, in which event this Lease shall terminate as of the date when physical possession of such portion of the Premises or the Premises is taken by the condemning authority. If this Lease is not so terminated upon any such taking, sale or conveyance, then (a) Landlord shall, to the extent Landlord deems feasible, restore the Premises and the Premises to substantially their former condition, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Premises and the Premises, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as compensation for such taking, sale or conveyance, and (b) if any portion of the Premises is so taken, sold or conveyed, the Base Rent and Additional Charges shall be equitably reduced based on the manner the same are calculated hereunder (i.e., whether they are calculated on a square foot or fixed rate basis). All compensation awarded for any such taking, sale or conveyance of the fee and the leasehold, or any part thereof, shall belong to and be the property of Landlord. Tenant hereby assigns to Landlord all right, title and interest of Tenant in and to any award made for leasehold damages and/or diminution in the value of Tenant's leasehold estate. Tenant shall have the right to claim such compensation as may be separately awarded or allocated by reason of the cost or loss to which Tenant may incur in removing Tenant's fixtures, leasehold improvements and equipment from the Premises. Compensation as used in this Article XX shall mean any award given to Landlord for such taking, sale or conveyance in excess of, and free and clear of, all prior claims of the holders of any mortgages, deeds of trust or other security interests. No such taking, sale or conveyance shall operate as or be deemed an eviction of Tenant or a breach of Landlord's covenant of quiet enjoyment. Tenant hereby waives any statutory rights of termination which may arise by reason of any such partial taking, sale or conveyance of the Premises.

ARTICLE XVI
SUBORDINATION AND ATTORNMENT BY TENANT

16.1 Subordination of Lease. This Lease and the estate of Tenant hereunder shall be subject and subordinate to any ground lease, deed of trust, mortgage lien, or any reciprocal easement agreement or other operating agreement which now encumbers or which at any time hereafter may encumber the Premises (such ground lease, deed of trust, mortgage lien, or reciprocal easement agreement or other operating agreement, and any replacement, renewal, modification, consolidation or extension thereof, being hereinafter referred to as an "Encumbrance"). Any Encumbrance shall be prior and paramount to this Lease and to the right of Tenant hereunder and all Persons claiming through and under Tenant, or otherwise, in the Premises. Tenant's acknowledgment and agreement of subordination provided for in this Section 21.1 shall be self-operative and no further instrument of subordination shall be required. However, Tenant, on Tenant's behalf, and on behalf of all Persons claiming through and under Tenant, covenants and agrees that, from time to time at the request of Landlord or the holder of any Encumbrance, Tenant will execute and deliver any necessary or proper instruments or certificates reasonably necessary to acknowledge or confirm the priority of the Encumbrance over this Lease and the subordination of this Lease thereto or to evidence Tenant's consent to any Encumbrance. Notwithstanding the foregoing, any holder of an Encumbrance may elect to the extent possible that this Lease shall have priority over such Encumbrance and, upon notification of such election by the holder of such Encumbrance, this Lease shall

be deemed to have priority over such Encumbrance, whether this Lease is dated prior to or subsequent to the date of such Encumbrance.

16.2 Attornment by Tenant. Tenant agrees that if the holder of any Encumbrance or any Person claiming under said Encumbrance shall succeed to the interest of Landlord in this Lease, then Tenant shall recognize and attorn to said holder as Landlord under the terms of this Lease. Tenant agrees that it will, upon the request of Landlord, execute, acknowledge and deliver any and all instruments necessary or reasonably requested by Landlord or its lender to give effect or notice of such attornment and failure of Tenant to execute any such document or instrument upon demand shall constitute a default by Tenant under the terms of this Lease.

ARTICLE XVII ASSIGNMENT AND SUBLETTING

17.1 Landlord's Consent Required.

(a) Tenant shall not mortgage, pledge, encumber, franchise, assign or in any manner transfer this Lease, voluntarily or involuntarily, by operation of law or otherwise, nor sublet all or any part of the Premises for the conduct of any business by any unrelated third Person who does not maintain a relationship with Tenant, or for any purpose other than is herein authorized without Landlord's prior written consent, which shall not be unreasonable withheld.

(b) If Tenant is a "closely-held" entity (meaning a corporation which is not listed on a national securities exchange as defined in the Securities Exchange Act of 1934, as amended, a partnership, a limited liability company, or any other type of business entity that is not a corporation), a change in the "control" of Tenant or in the "control" of any entity that directly or indirectly "controls" Tenant ("control" meaning the ownership or control of fifty percent (50%) or more of the voting or ownership interests of an entity or, if such entity is a partnership, the general partner of such entity) without Landlord's prior written consent shall constitute an attempted assignment in violation of this Lease and shall at Landlord's election: (i) be deemed to be a default under this Lease, (ii) be deemed to be an offer of return of the Premises to Landlord pursuant to Section 22.3, or (iii) be deemed to be null and void and of no effect.

(c) Any consent by Landlord to any assignment or subletting, or other operation by a concessionaire, or licensee, shall not constitute a waiver of the necessity for such consent under any subsequent assignment or subletting or operation by a concessionaire or licensee.

(d) Reference anywhere else in this Lease to an assignee or subtenant shall not be considered as a consent by Landlord to such assignment or subletting nor as a waiver against the same except as specifically permitted in this Section 22.1.

(e) Notwithstanding the foregoing provisions, Tenant shall have the right to assign or otherwise transfer this Lease or sublease the Premises (in whole or in part), to its parent or to a wholly owned subsidiary or to an entity which is wholly owned by the same entity which wholly owns Tenant or to a related third party, provided, however, that (i) Tenant shall also remain primarily liable for all obligations under this Lease, (ii) the transferee shall, prior to the effective date of the transfer, deliver to

Landlord, instruments evidencing such transfer and its agreement to assume and be bound by all the terms, conditions and covenants of this Lease to be performed by Tenant, all in form acceptable to Landlord, (iii) Tenant shall not be in default under this Lease and (iv) Tenant's right to make such transfer is expressly conditioned on, and shall remain in effect only as long as the transferee maintains its relationship as parent or wholly owned subsidiary of Tenant or wholly owned subsidiary of Tenant's parent.

(f) If Landlord approves a sublease or assignment other than a sublease or assignment made pursuant to subsection 17.1(e) of this Lease, 50% of any profits generated from said sublease/assignment shall be paid by Tenant to Landlord as they are generated.

17.2 Insolvency Proceedings. If an assignment of the Premises is caused by operation of law due to Tenant's voluntary or involuntary insolvency proceedings under bankruptcy law, said assignment shall be subject to any and all provisions of the Bankruptcy Code as amended at the time of said assignment.

17.3 Return of Premises by Tenant. Prior to or simultaneously with any request by Tenant for consent as required in this Article XVII to assign this Lease or sublet the whole or substantially the whole of the Premises, Tenant shall, by written notice and without charge of any kind, offer the return of the Premises to Landlord herein. Landlord, within thirty (30) days of receipt of said written notice, shall have the option to accept the Premises without further liability upon Tenant as to the terms of this Lease ; provided, however, that if Landlord elects to accept the Premises, then Tenant may, by written notice to Landlord within thirty (30) days of Landlord's notice to Tenant of such election by Landlord, rescind such offer and continue to lease the Premises on the terms and conditions set forth herein.

17.4 Acceptance of Rent by Landlord. If this Lease be assigned, or if the Premises, or any part thereof, be subleased or occupied by anybody other than Tenant with or without Landlord's consent, Landlord may collect from assignee, subtenant or occupant, any Rent or other charges payable by Tenant under this Lease and apply the amount collected to the Rent herein reserved, but such collection by Landlord shall not be deemed a waiver of the provisions of this Lease, nor an acceptance of this assignee, subtenant or occupant, as a tenant of the Premises.

17.5 No Release of Tenant's Liability. No assignment or subletting or any other transfer by Tenant, either with or without Landlord's consent, required or otherwise, during the Term shall release Tenant from any liability under the terms of this Lease nor shall Tenant be relieved of the obligation of performing any of the terms, covenants and conditions of this Lease.

17.6 Legal Fees. In each instance where Landlord's consent to an assignment or subletting is requested by Tenant, Tenant acknowledges and agrees that Landlord shall not be deemed to be acting unreasonably if Landlord, as one of its conditions to the granting of such consent, should require Tenant to pay the reasonable attorney's fees incurred by Landlord for outside counsel, if any, or counsel for Landlord's lender if such lender's consent should be required, in the preparing, reviewing, negotiating and/or processing of documentation in connection with the requested assignment or subletting irrespective of whether or not consent is given to such assignment or subletting.

ARTICLE XVIII
DEFAULT

18.1 Events of Default. Each of the following shall be considered an "Event of Default" and shall give rise to and entitle Landlord to the remedies provided for in Section 23.2, as well as any and all other remedies, whether at law or in equity, provided for or otherwise available to Landlord or as otherwise provided for in this Lease:

(a) Tenant shall default in the payment of any Rent or charges, or in the payment of any other sums of money required to be paid by Tenant to Landlord under this Lease, or as reimbursement to Landlord for sums paid by Landlord on behalf of Tenant in the performance of the covenants of this Lease, and said default is not cured within ten (10) days after receipt of written notice thereof from Landlord.

(c) Tenant should vacate or abandon the Premises or shall fail to operate its business on the days and hours required, or fails to continuously occupy the Premises.

(d) Tenant shall default in the performance of any other covenants, terms, conditions, provisions, rules and regulations of this Lease and such default is not cured within one hundred eighty (180) days after written notice thereof given by Landlord, excepting such defaults that cannot be cured completely within such one hundred eighty (180) day period providing Tenant, within said one hundred eighty (180) day period, commences the curing thereof and continues thereafter with all due diligence to cause such curing to proceed to completion.

(e) There is commenced any case in bankruptcy against the original named Tenant, any assignee or subtenant of the original named Tenant, any then occupant of the Premises.

(f) The sale of Tenant's interest in the Premises under attachment, execution or similar legal process.

(f) Any other Event of Default designated elsewhere herein occurs.

All cure periods provided in this Lease shall run concurrently with any periods provided by law.

18.2 Remedies and Damages.

(a) If any Event of Default occurs, Landlord may, at its option and in addition to any and all other rights or remedies provided Landlord in this Lease or at law or equity, immediately, or at any time thereafter, and without demand or notice (except as provided herein):

(i) without waiving the Event of Default, apply all or part of the security deposit, if any, to cure the Event of Default and Tenant shall upon demand after the expiration of the term restore the security deposit to its original amount;

(ii) without waiving such Event of Default, apply thereto any overpayment of Rent to curing the Event of Default in lieu of refunding or crediting the same to Tenant;

(iii) if the Event of Default pertains to work or other obligations (other than

the payment of Rent) to be performed by Tenant, without waiving such Event of Default, enter upon the Premises and perform such work or other obligation, or cause such work or other obligation to be performed, for the account of Tenant; and Tenant shall upon demand pay to Landlord the cost of performing such work or other obligation.

18.3 Rights of Redemption. Landlord expressly acknowledges any and all of Tenant's rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation, by Tenant, of any of the covenants or conditions of this Lease, or otherwise.

18.4 Default by Landlord. If Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Landlord's part to be kept or performed, Tenant, prior to exercising any right or remedy Tenant may have against Landlord on account of such default, shall give written notice to Landlord and, if Tenant has been notified of the name and notice address of such lender, Landlord's lender of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default complained of in the notice provided for by this Section 23.6 is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within said thirty (30) day period (or Landlord's lender in a longer reasonable time) shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed to completion.

18.5 Attorneys' Fees & Costs of Enforcement. In the event of a dispute among the parties that results in the filing of a court action seeking enforcement of the terms of this Lease, the prevailing party shall be entitled to all reasonable costs, attorney fees (including allocable in-house counsel costs) and related expenses incurred, whether or not the matter is taken to final judgment.

ARTICLE XIX NOTICES

19.1 Notices to Tenant and Landlord. Any and all notices and demands by or from Landlord to Tenant, or by or from Tenant to Landlord, required or desired to be given hereunder shall be in writing and shall be validly given if sent by any of the following methods which provides a written delivery confirmation receipt: i) served personally; ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested; iii) delivered by a nationally recognized next day delivery courier service, or; iv) transmitted by facsimile with a copy sent the same day via US first class mail postage prepaid. All notices shall be effective upon receipt. However, if such notice or demand be served by registered or certified mail or by courier service in the manner provided, service shall be conclusively deemed given the first Business Day delivery is attempted whether or not it actually occurs. Notices shall be addressed in accordance with Section 1.2(k). Either party may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

19.2 Notices to Mortgagee. Tenant shall give each Landlord's mortgagee (each a "Landlord Mortgagee") written notice of any alleged default which could give rise to Tenant's termination of this Lease or expenditure of money on behalf of Landlord provided Landlord has given Tenant a notice advising Tenant of the name and address of such Landlord Mortgagee. Such Landlord Mortgagee shall also be given an appropriate time to cure such default including the opportunity to obtain possession of Landlord's interest, if necessary, to cure the default.

ARTICLE XX MISCELLANEOUS

20.1 Force Majeure. Whenever a day is appointed herein on which, or a period of time is appointed in which, a Party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such Party is prevented from the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operations, sabotage, unforeseen governmental regulations or control, fire or other casualty, unforeseen inability to obtain materials, fuel or energy, weather or other acts of God, or other causes beyond such Party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse any Party from the prompt payment of any money that such Party is required to pay hereunder.

20.2 Time of the Essence. Subject to Section 20.1, time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

20.3 Brokers. Tenant and Landlord each warrants to the other that it has had no dealings with any broker or agent in connection with this Lease. Subject to the foregoing, Tenant and Landlord covenant and agree to pay, hold harmless and indemnify the other from and against any and all costs, expenses or liability for any compensation, commissions and charges claimed by any broker or agent alleging to have dealt with the indemnifying party with respect to this Lease or the negotiation hereof (including, without limitation, the cost of legal fees in connection therewith).

20.4 Recordation. This Lease may be recorded by Tenant. Tenant may also record a memorandum or short form of this Lease,

20.5 Exculpation. If Landlord shall fail to perform any term, covenant or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon the execution of such judgment and levy thereon against the right, title and interest of Landlord in the Premises and out of rent or other income from the Premises receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Premises. Neither Landlord, nor any of its members, partners, venturers, shareholders, officers, directors or Affiliates shall be liable for any deficiency.

20.6 Perpetuities. If for any reason the Rent Commencement Date has not occurred within three (3) years of the date hereof, this Lease shall thereupon terminate and be of no further force or effect (except with respect to matters that arose before such termination).

20.7 Estoppel Certificates. Tenant agrees at any time, upon not less than ten (10) days prior written request by Landlord, to execute, acknowledge and deliver to Landlord a written statement certifying that this Lease is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force as modified and stating the modifications), the dates to which the Rent have been paid in pursuant to this Lease and such other certification concerning this Lease as may be reasonably requested by Landlord. Tenant further agrees that such statement may be relied upon by any mortgagee or prospective purchaser of the fee or assignee of any mortgage on the fee of the Premises.

20.8 Consents. Where in this Lease, or in any rules and regulations imposed by Landlord hereunder, Landlord's or Tenant's consent or approval is required and is not expressly permitted to be withheld in Landlord's or Tenant's sole discretion, such consent or approval shall not be permitted to be unreasonably withheld, conditioned or delayed. Tenant shall pay all costs and expenses (including reasonable attorney fees) that may be incurred by Landlord in processing, documenting or administering any request by Tenant for any consent or approval of Landlord required under this Lease. The grant by Landlord of any consent or approval hereunder shall in no way result in the incurrence by Landlord of any liability related to the subject matter of such consent or approval.

20.9 No Partnership. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, a partnership, a joint venture or any other association between Landlord and Tenant. Neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the Parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

20.10 Effective Date of Lease. The submission of this Lease for examination or execution does not constitute a reservation of or option for the Premises; and this Lease becomes effective as a lease only upon execution and delivery thereof by both Parties.

20.11 Costs of Performing Obligations. Except as otherwise expressly provided herein, each Party shall perform its obligations hereunder at its sole cost and expense and without any right to receive any reimbursement therefore from the other Party.

20.12 Drafting. This Lease shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of its language.

20.13 Covenants. Whenever in this Lease any words of obligation or duty are used in connection with either Party, such words shall have the same force and effect as though framed in the form of express covenants on the part of such Party.

20.14 Captions. The captions appearing at the commencement of the articles and sections hereof, and as the title to the exhibits attached hereto, are descriptive only and for convenience in reference to this Lease, and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

20.15 Limitation Language. In this Lease, the use of words such as "including" or "such as" shall not be deemed to limit the generality of the term, covenant or condition to which they have reference, whether or not non-limiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other