

**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 IV**

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

**MAIER GUTIERREZ & ASSOCIATES**

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

[jag@mgalaw.com](mailto:jag@mgalaw.com)

[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Petitioners*

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/Counterclaimants' 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**

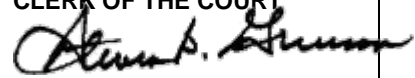
I certify that on the 20th day of September, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE ELIZABETH GONZALEZ, 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.  
MUSHKIN & COPPEDGE  
6070 South Eastern Avenue, Suite 270  
Las Vegas, Nevada 89119  
Email: [Michael@mccnvlaw.com](mailto:Michael@mccnvlaw.com)  
*Attorney for Real Parties in Interest*

DATED this 20th day of September, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES



1 **EXHS**

2 JOSEPH A. GUTIERREZ, ESQ.

3 Nevada Bar No. 9046

4 DANIELLE J. BARRAZA, ESQ.

5 Nevada Bar No. 13822

6 **MAIER GUTIERREZ & ASSOCIATES**

7 8816 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148

9 Telephone: 702.629.7900

10 Facsimile: 702.629.7925

11 E-mail: [jag@mgalaw.com](mailto:jag@mgalaw.com)

12 [djb@mgalaw.com](mailto:djb@mgalaw.com)

13 *Attorneys for Plaintiffs*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 SPANISH HEIGHTS ACQUISITION  
17 COMPANY, LLC, a Nevada Limited Liability  
18 Company; SJC VENTURES HOLDING  
19 COMPANY, LLC, d/b/a SJC VENTURES, LLC,  
20 a Delaware Limited Liability Company,

21 Plaintiffs,

22 vs.

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

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: XI

**EXHIBITS IN SUPPORT OF PLAINTIFFS'  
RENEWED APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND MOTION FOR PRELIMINARY  
INJUNCTION ON AN ORDER  
SHORTENING TIME**

Plaintiffs Spanish Heights Acquisition Company, LLC ("SHAC") and SJC Ventures Holding Company, LLC, d/b/a SJC VENTURES, LLC ("SJC") ("Plaintiffs"), by and through their attorneys

of record, MAIER GUTIERREZ & ASSOCIATES, hereby file this exhibit list in support of plaintiffs' renewed application for temporary restraining order and motion for preliminary injunction on an order shortening time filed on December 14, 2020.

A copy of the following exhibits were electronically emailed to the Court and defendants' counsel Michael Mushkin, Esq. on December 14, 2020.

EXHIBIT NUMBER	EXHIBIT DESCRIPTION
1	First Grant, Bargain, Sale Deed
2	10/14/2010 Grant, Bargain, Sale Deed
3	Secured Promissory Note
4	Deposition Transcript of Kenneth Antos at p. 54
5	Guaranty and Acknowledgement and Agreement of Guarantors
6	Numerous other loan modifications to the underlying Promissory Note
7	Deed of Trust
8	First Modification to Deed of Trust
9	Deed
10	Lease Agreement
11	Forbearance Agreement
12	Amendment to Forbearance Agreement
13	Pledge Agreement
14	4/1/2020 Correspondence
15	Executed Assignment of Interest
16	Notice to Vacate
17	Transcript of Proceedings from May 14, 2020 at pp. 233-234
18	Notice of Default
19	Notice of Breach
20	PLTFS00261-Correspondence from Jonathan Ukeiley of Northern Trust Bank
21	Order restraining defendants
22	Bloom Decl.

DATED this 15th day of December, 2020.

**MAIER GUTIERREZ & ASSOCIATES**

/s/ Danielle J. Barraza

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

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**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2, **EXHIBITS IN SUPPORT OF PLAINTIFFS' RENEWED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME** was electronically filed on the 15th day of December, 2020, served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List, as follows:

Michael R. Mushkin, Esq.  
MUSHKIN & COPPEDGE  
6070 South Eastern Avenue, Suite 270  
Las Vegas, Nevada 89119  
*Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,  
5148 Spanish Heights, LLC, and Dacia LLC*

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

# **EXHIBIT 1**

# **EXHIBIT 1**

20070416-0002478

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

04/16/2007 14:06:03  
T20070065215

Requestor:  
CHICAGO TITLE

Debbie Conway KAH  
Clark County Recorder Pgs: 4

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

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

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

ESCROW NO: 07000087-018-SC

**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That

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

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

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

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

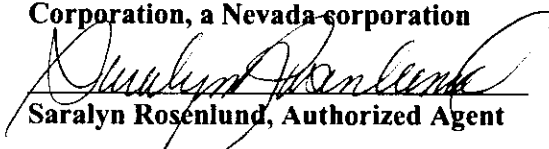
**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

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

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

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

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

  
Saralyn Rosenlund, Authorized Agent

ESCROW NO: 07000087-018-SC

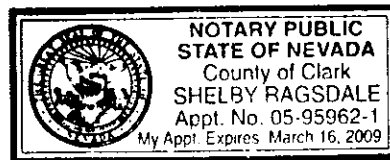
STATE OF NEVADA

COUNTY OF CLARK

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

  
\_\_\_\_\_  
Notary Public

My commission expires: 3.16.09



## **EXHIBIT A**

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



**State of Nevada  
Declaration of Value**

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

a) 163-29-615-007

b)

**2. Type of Property:**

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

**FOR RECORDER'S OPTIONAL USE ONLY**

Documentation/Instrument #: \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

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

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

Transfer Tax Value: \$ 1,800,000.00

Real Property Transfer Tax Due: \$ 9,180.00

**4. If Exemption Claimed:**

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

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

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

Signature: [Signature] Capacity: Grantor  
Signature: [Signature] Capacity: Grantee

**SELLER (GRANTOR) INFORMATION**

**(REQUIRED)**

Print Name: Rhodes Design and Development Corporation

Address: 4730 S. Ft. Apache #300

City: Las Vegas

State: NV Zip: 89147

**BUYER (GRANTEE) INFORMATION**

**(REQUIRED)**

Print Name: SHEILA M. NEWMAN - ANTO'S

Address: 4965 MTN. FOLIAGE DR.

City: LAS VEGAS

State: NV Zip: 89148

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

Print Name: Chicago Title  
Address: 9500 W. Flamingo Rd., Ste. 104  
City/State/Zip: Las Vegas, NV 89147

Escrow #: 07000087-018

# **EXHIBIT 2**

# **EXHIBIT 2**

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

Escrow #10-05-0444-KMD

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

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

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

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

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

### **SUBJECT TO:**

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

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

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

Kenneth M. Antos

Kenneth M. Antos

Sheila M. Neumann-Antos

State of NEVADA }  
County of Clark } ss:

This instrument was acknowledged before me  
on

10/7/10

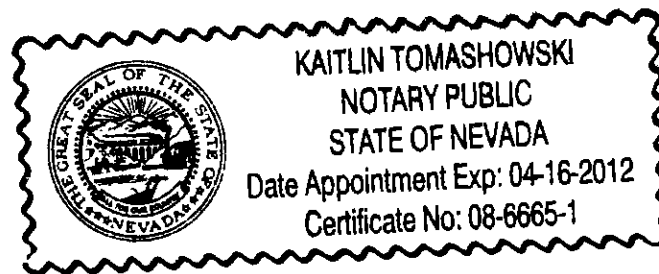
by Kenneth M. Antos and Sheila M. Neumann-Antos

Kaitlin Tomashowski  
NOTARY PUBLIC

My Commission

Expires:

4/16/12



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




**EXHIBIT "A"**

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

1. Assessor Parcel Number(s)

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

Book: \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

- \$ 
- \$ 
- \$ 

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

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

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

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

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

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

**PLTFS00645**  
**PA0720**

# **EXHIBIT 3**

# **EXHIBIT 3**

## SECURED PROMISSORY NOTE

\$300,000.00

Bellevue, Washington  
June 22, 2012

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

### 1. Certain Definitions.

#### 1.1 As used in this Agreement:

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

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

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

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

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

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

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

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



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

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

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

## 2. **Term Loan**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

## **8 Defenses.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Indemnification.**

12.1 Indemnification Agreement.

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

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

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

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

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

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

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

### 13. Miscellaneous.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

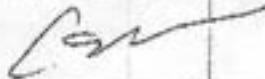
13.12 Counterparts; Facsimiles. This Secured Promissory Note may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures shall be deemed to be original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

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

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

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

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

Facsimile: (425) 688-7003

EXHIBIT A  
FORM OF REQUEST FOR ADVANCE

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

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

Lender: CBC Partners I, LLC

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

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

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

Borrower represents and warrants to Lender as follows:

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

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

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

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



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

## SECURITY AGREEMENT

This SECURITY AGREEMENT is made as of the 22nd day of June, 2012, by KCI INVESTMENTS, LLC, a Nevada limited liability company ("Debtor"), in favor of CBC PARTNERS I, LLC, a Washington limited liability company ("Secured Party").

### 1. DEFINITIONS.

As used in this Agreement:

- (1) "*Agreement*" means this Security Agreement, as it may be amended, modified or supplemented from time to time.
- (2) "*Business Day*" means a day which is not a Saturday, Sunday, or day on which banks in Seattle, Washington are generally closed for business.
- (3) "*Default*" means the occurrence or existence of any of the events listed in Section 4 of this Agreement.
- (4) "*Lien*" means any mortgage, pledge, lien, hypothecation, security interest or other charge, encumbrance or preferential arrangement, including, without limitation, the retained security title of a conditional vendor or lessor.
- (5) "*Loan Documents*" means, collectively, this Agreement, the Note, each executed of even date herewith, and all other agreements, instruments and documents now or hereafter executed and/or delivered by Debtor to the Secured Party, in order to evidence or secure the Obligations, including without limitation any guaranties, as each may be amended, modified or supplemented from time to time.
- (6) "*Note*" means the Secured Promissory Note in the original principal amount of \$300,000.00, dated as of June 22, 2012, executed by Debtor in favor of Secured Party, as may be amended, modified or supplemented from time to time.
- (7) "*Obligations*" means all of Debtor's liabilities, obligations and indebtedness to the Secured Party of any and every kind and nature, whether heretofore, now or hereafter owing, arising, due or payable and howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed or otherwise (including, without limitation, obligations of performance) and whether arising or existing under written agreement, oral agreement or by operation of law, including, without limitation, all Debtor's indebtedness and obligations to the Secured Party under the Note. The term includes, without limitation, all interest, charges, expenses, fees, reasonable attorneys' fees and disbursements and any other sum chargeable under this Agreement, the Note, and the other Loan Documents.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Terms used in this Agreement and not defined herein or in the Note shall have the meanings given such terms in the Code, as defined in Section 2.1 below.

## **2. SECURITY INTEREST.**

**2.1 Grant of Security Interest.** For good and valuable consideration, Debtor, hereby grants and transfers to Secured Party a security interest in all of the following (collectively, the "Collateral"): (a) all intellectual property and intellectual property rights and licenses, (b) all goods, tools, machinery, furnishings, furniture and other equipment and fixtures, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Debtor, wherever located, whether in the possession of Debtor or any other person and whether located on Debtor's property or elsewhere, and all improvements, replacements, accessions and additions thereto and embedded software included therein, (c) all accounts, deposit accounts, chattel paper (whether electronic or tangible), instruments, promissory notes, documents, general intangibles, payment intangibles, software, letter of credit rights, health-care insurance receivables and other rights to payment (collectively called "Rights to Payment"), now existing or at any time hereafter, and prior to the termination hereof, arising (whether they arise from the sale, lease or other disposition of inventory or from performance of contracts for service, manufacture, construction, repair or otherwise or from any other source whatsoever), including all securities, guaranties, warranties, indemnity agreements, insurance policies, supporting obligations and other agreements pertaining to the same or the property described therein, and in all goods returned by or repossessed from Debtor's customers, together with a security interest in all inventory, goods held for sale or lease or to be furnished under contracts for service, goods so leased or furnished, raw materials, component parts and embedded software, work in process or materials used or consumed in Debtor's business and all warehouse receipts, bills of lading and other documents evidencing goods owned or acquired by Debtor, and all goods covered thereby, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Debtor, wherever located, and all products thereof (collectively, the "Inventory"), whether in the possession of Debtor, warehousemen, bailees or any other person, or in process of delivery, and whether located at Debtor's places of business or elsewhere and (d) whatever is receivable or received when any of the Collateral or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all Rights to Payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and all Rights to Payment with respect to any claim or cause of action affecting or relating to any of the foregoing (hereinafter called "Proceeds"). Where Collateral is in the possession of a third party, Debtor will join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from third party that it is holding the Collateral for the benefit of Secured Party. For the purposes of this Section 2.1, "Debtor" shall include all existing and future subsidiaries of Debtor.

**2.2 Obligations Secured.** The obligations secured hereby are the payment and performance of: (a) all present and future indebtedness of Debtor to Secured Party; and (b) all obligations of Debtor and rights of Secured Party under this Agreement and the other Loan Documents. The word

"Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Debtor, or any of them, heretofore, now or hereafter made incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including under any swap, derivative, foreign exchange, hedge, deposit, treasury management or other similar transaction or arrangement, and whether Debtor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.

**2.3 Preservation of Collateral and Perfection of Security Interests Therein.** Until all of the Obligations of Debtor shall have been indefeasibly paid and satisfied in cash, the Secured Party shall be entitled to retain its security interests in and to all existing Collateral, and all proceeds and products thereof. Debtor hereby authorizes Secured Party to file, without Debtor's signature, one or more financing statements describing the Collateral, as well as any amendments and extensions, including without limitation to add collateral or one or more additional debtors and including a description of the Collateral as "all assets" of the Debtor. Debtor shall pay the cost of filing or recording the same in all public offices deemed necessary by the Secured Party to perfect and keep perfected the security interest in the Collateral or to otherwise protect and preserve the Collateral and Secured Party's security interest therein. In no event shall Debtor file a termination statement without Secured Party's signature, and Secured Party specifically does not authorize Debtor to do so.

**2.4 Possession for Perfection.** Secured Party may choose to perfect its security interest by possession in addition to filing a financing statement.

**2.5 Loss of Value of Collateral.** Debtor agrees to notify Secured Party promptly of any material loss or depreciation in the value of the Collateral, other than loss or depreciation occurring in the ordinary course of Debtor's business.

**2.6 Termination.** This Agreement will terminate upon the indefeasible payment in full in cash of all obligations of Debtor to Secured Party, including without limitation the payment of all Indebtedness of Debtor to Secured Party, and the termination of all commitments of Secured Party to extend credit to Debtor.

**2.7 Obligations of Secured Party.** Secured Party has no obligation to make any loans hereunder. Any money received by Secured Party in respect of the Collateral may be deposited, at Secured Party's option, into a non interest bearing account over which Debtor shall have no control, and the same shall, for all purposes, be deemed Collateral hereunder and may be applied to the Indebtedness owing under the Loan Documents in such order of application as Secured Party may elect in its sole discretion.

### **3. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**3.1 Recordkeeping.** Debtor covenants with Secured Party that Debtor shall at all times hereafter keep accurate and complete records of its finances, in accordance with sound accounting practices and generally accepted accounting principles, all of which records shall be available for

inspection during Debtor's usual business hours at the request of Secured Party.

**3.2 Asset Warranties.** Debtor represents and warrants to Secured Party that the Collateral is located at the premises of Debtor as provided for in the first paragraph hereof or, except as otherwise permitted in writing by Secured Party, at a third party location subject to a landlord's warehouseman's waiver and consent in form substance satisfactory to Secured Party in its sole discretion, and is not in transit. None of the Collateral will be removed from such locations without prior written notice to Secured Party, except for use or sale in the ordinary course of business. The Collateral is not subject to any lien, encumbrance, mortgage or security interest whatsoever except for the security interests granted to Secured Party. Debtor shall not permit any lien, encumbrance, mortgage or security interest whatsoever to attach to any of the Collateral, except in favor of Secured Party.

**3.3 Verification of Accounts.** After the occurrence of a Default hereunder, Secured Party shall have the right, at any time or times hereafter, in Secured Party's or in Debtor's name, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

**3.4 Appointment of Secured Party as Debtor's Attorney-in-Fact.** Debtor hereby irrevocably designates, makes, constitutes and appoints Secured Party (and all persons designated by Secured Party in writing to Debtor) as Debtor's true and lawful attorney-in-fact, and authorizes Secured Party, in Debtor's or Secured Party's name, to do the following: at any time after the occurrence of a Default, (i) demand payment of Accounts of Debtor; (ii) enforce payment of accounts of Debtor by legal proceedings or otherwise; (iii) exercise all of Debtor's rights and remedies with respect to proceedings brought to collect any Account; (iv) sell or assign any Account of Debtor upon such terms, for such amount and at such time or times as Secured Party deems advisable; (v) settle, adjust, compromise, extend or renew any Account of Debtor; (vi) discharge and release any Account of Debtor; (vii) prepare, file and sign Debtor's name on any proof of claim in bankruptcy or other similar document against any Account Debtor; (viii) have access to any postal box of Debtor and notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party; and (ix) do all other acts and things which are necessary, in Secured Party's discretion, to fulfill Debtor's Obligations under this Agreement. Secured Party shall not exercise its rights arising as a result hereof until after the occurrence of a Default hereunder.

**3.5 Notice to Account Debtors.** Following the occurrence of a Default under this Agreement, Secured Party may, in its sole discretion, at any time or times, without prior notice to Debtor, notify any or all Account Debtors that the Accounts of Debtor have been assigned to Secured Party, that Secured Party has a security interest therein, and that all payments upon such Accounts be made directly to Secured Party or as otherwise specified by Secured Party.

**3.6 Safekeeping of Assets and Asset Covenants.** Secured Party shall not be responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to all or any part of the Collateral; (c) any diminution in the value of all or any part of the Collateral; or (d) any act or default of any carrier, warehouseman processor, bailee, forwarding agency or any other person with respect to all or any part



of the Collateral. All risk of loss, damage, destruction or diminution in value of all or any part of the Collateral of Debtor shall be borne by Debtor.

**3.7 Insurance.** Debtor shall at all times maintain a liability policy of insurance and property policy of insurance (insuring the Collateral at all times against all hazards specified by Secured Party, including, without limitation, fire, theft and risks covered by extended coverage insurance), and such policies shall include endorsements reflecting Secured Party as additional insured and lender's loss payee. Such policies of insurance shall be satisfactory to Secured Party as to form, amount and insurer. Debtor shall furnish certificates, policies or endorsements to Secured Party as proof of such insurance, and if Debtor fails to do so, Secured Party is authorized but not required to obtain such insurance at Debtor's expense. All policies shall provide for at least thirty (30) days prior written notice to Secured Party of cancellation or non-renewal. Secured Party may act as attorney-in-fact for Debtor in making, adjusting and settling any claims under any such insurance policies. Debtor hereby assigns to Secured Party all of its right, title and interest to any insurance policies insuring the Collateral, including, without limitation, all rights to receive the proceeds of insurance, and directs all insurers to pay all such proceeds directly to Secured Party and authorizes Secured Party to endorse Debtor's name on any instrument for such payment.

**3.8 Transfer of Collateral.** Debtor shall not sell, lease, transfer, assign or otherwise dispose of any of the Collateral or any interest therein without the prior written consent of Secured Party in each instance, except inventory sold to buyers in the ordinary course of business.

**3.9 Damage to Collateral.** Debtor shall immediately notify Secured Party in writing of any destruction of, or any substantial damage to, any of the Collateral.

**3.10 Change of Place of Business.** Debtor shall immediately notify Secured Party in writing of any change in any of its place of business or the opening of any new place of business.

**3.11 Inspection.** With reasonable prior notice, Debtor shall at all times during normal business hours allow Secured Party or its agents to examine and inspect the Collateral wherever located as well as Debtor's books and records, and to make extracts and copies of them, it being understood that Secured Party shall use reasonable efforts in the normal course of its operations to keep confidential all such information that (a) is not in the public domain, and (b) is not required to be disclosed by any court, agency or authority of competent jurisdiction, provided, however, that the requirement to keep such information confidential shall not apply to the extent necessary in order for Secured Party to foreclose on or otherwise deal with the Collateral in the Secured Party's best interests upon the occurrence of a Default.

**3.12 Mergers, Etc.** Debtor shall not become a party to any consolidation, merger, liquidation or dissolution or organize, purchase, assume or acquire any subsidiary or joint venture or partnership interest or interest in any other business entity, without the prior written consent of Secured Party.

**3.13 Change of Name.** Debtor's exact legal name is as set forth in the first paragraph of this Security Agreement. Debtor shall notify Secured Party 30 days in advance of any intended change of

Debtor's name or form of organization, and will notify Secured Party when such change becomes effective.

**3.14 Organization.** Debtor is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization. Debtor is duly qualified as a foreign organization in good standing in each state in which the failure to so qualify would have a material adverse effect on its business. Debtor warrants that the place of organization and other information set forth below the Debtor's signature is true and correct.

**3.15 Authority.** Debtor has full corporate right and power to enter into and perform its obligations under this Agreement and the other Loan Documents to which Debtor is a party, and is the owner and has possession or control of the Collateral and Proceeds. The execution, delivery and performance of this Agreement and the other Loan Documents to which Debtor is a party have been duly authorized by all necessary corporate action of Debtor, and this Agreement and the other Loan Documents to which Debtor is a party constitute valid and binding obligations of Debtor enforceable against Debtor in accordance with their respective terms, subject to applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditor's rights generally.

**3.16 No Conflicts.** The execution, delivery and performance by Debtor of this Agreement and each of the other Loan Documents do not and shall not: (a) contravene or constitute a default (or an event that, with due notice or the lapse of time, or both, would constitute a default) under or result in any breach of, or cause or permit the acceleration of the maturity of any debt or obligation pursuant to, Debtor's Certificate of Formation or Operating Agreement or any document, commitment or other agreement to which Debtor is a party or by which any of Debtor's property is bound; or (b) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Debtor.

**3.17 Actions or Proceedings.** There are no actions or proceedings which are pending or threatened against Debtor which might result in any material and adverse change in its financial condition or materially affect the Collateral pledged hereunder.

**3.18 Violation of Law.** Debtor is not in violation of any applicable federal, state, municipal or county statute, regulation or ordinance which may materially and adversely affect its business, property, assets, operations or conditions, financial or otherwise. Debtor agrees that, so long as any Obligations shall remain unpaid or outstanding, Debtor shall comply with all applicable laws, rules, regulations, and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments, and governmental charges imposed upon Debtor or upon Debtor's property.

**3.19 Consents.** All authorizations, consents, approvals, registrations, exemptions and licenses required to be obtained by Debtor or which are necessary for the borrowing contemplated by the Note and the other Loan Documents and the execution and delivery by Debtor of the Note and the Loan Documents to which Debtor is a party, and the performance by Debtor of each of Debtor's obligations hereunder and thereunder, if any, have been obtained and are in full force and effect.

3.20 **Accuracy of Information.** All factual information heretofore or contemporaneously furnished by or on behalf of Debtor to Secured Party for purposes of or in connection with the Note or any transaction contemplated hereby is, and all other factual information hereafter furnished by or on behalf of Debtor to Secured Party will be, true and accurate in every material respect on the date as of which such information is dated or certified, and Debtor has not omitted and will not omit any material fact necessary to prevent such information from being false or misleading. Debtor has disclosed to Secured Party in writing all facts which might materially and adversely affect the credit, financial condition, affairs or prospects of Debtor, or Debtor's ability to perform Debtor's obligations under the Note.

3.21 **Liens.** Debtor has the exclusive right to grant a security interest in the Collateral and Proceeds, and all Collateral and Proceeds are genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except the lien created hereby or as otherwise agreed to by Secured Party, or as heretofore disclosed by Debtor to Secured Party, in writing. Debtor shall not, without the prior written consent of Secured Party, create, incur, assume or suffer to exist any lien, security interest, encumbrance or other claim of any nature whatsoever on any of its assets, including, without limitation, the Collateral.

#### 4. **DEFAULTS, RIGHTS AND REMEDIES OF SECURED PARTY.**

4.1 **Defaults.** Each of the following occurrences shall constitute a "Default" under this Agreement:

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

4.1.2 if any representation or warranty of Debtor made in the Note or in this Agreement shall have been false or misleading in any material respect, or shall have contained any material omission, as of the date hereof;

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

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



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

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

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

4.1.8 if a notice of lien, levy, or assessment is filed or recorded with respect to all or a material part of the assets of Debtor or the Collateral by the United States, or any Department, agency or instrumentality thereof, or by any state, county, municipality or other governmental agency or any taxes or debts owing at any time or times hereafter to any one or more of them become a lien upon all or a material part of the Collateral the effect of which is reasonably likely to reduce the Company's ability to repay principal or interest under the Note when due.

4.1.9 If all or any material part of the Collateral is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

4.1.10 if the Secured Party shall receive at any time a UCC report indicating that Secured Party's security interest is not in the same priority position as when the security interest was perfected.

4.1.11 if any Loan Document ceases to be in full force and effect or any lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected and prior to all other liens or is terminated, revoked, declared void as a result of any act of the Borrower, any guarantor of the Indebtedness, or any third party; or

4.1.12 if the Secured Party deems itself insecure.

#### 4.2 Rights and Remedies

(1) **Rights and Remedies Generally.** Upon the occurrence of a Default, Secured Party shall issue a Notice of Default to Debtor. Debtor shall have three (3) Business Days from receipt of such Notice of Default to cure the Default; provided however, if an event of default was caused by an

Act of God, Debtor shall have thirty (30) days from the date of receipt of the Notice of Default to cure the default (the "Cure Period"). Notwithstanding the foregoing, there shall be no Cure Period for Debtor's failure to timely pay any Obligation to Secured Party. If Debtor fails to completely cure the Default within the Cure Period, all of the Obligations of Debtor shall immediately and automatically, without any additional notice of any kind, be immediately due and payable in cash. In addition, upon the occurrence of a Default and expiration of the Cure Period without a complete cure, Secured Party shall have, in addition to any other rights and remedies contained in this Agreement, the Note or in any of the other Loan Documents, all of the rights and remedies of a secured party under the Uniform Commercial Code as then in effect in Nevada, or other applicable laws, all of which rights and remedies shall be cumulative, and non-exclusive, to the extent permitted by law. In addition to all such rights and remedies, the sale, lease or other disposition of the Collateral, or any part thereof, by Secured Party after Default and expiration of the Cure Period without a complete cure, may be for cash, credit or any combination thereof, and Secured Party may purchase all or any part of the Collateral at public or, if permitted by law, private sale, and in lieu of actual payment of such purchase price, may set-off the amount of such purchase price against the Obligations then owing. Any sales of such Collateral may be adjourned from time to time with or without notice. Secured Party may, in its sole discretion, cause the Collateral to remain on the premises of Debtor, at Debtor's expense, pending sale or other disposition of such Collateral. At such times, Secured Party shall have the right to repair, process, preserve, protect and maintain the Collateral and make such replacements thereof and additions thereto as Secured Party may deem advisable. Secured Party shall have the right to conduct such sales on the premises of Debtor, at Debtor's expense, or elsewhere, on such occasion or occasions as Secured Party may see fit.

(2) **Entry Upon Premises and Access to Information.** Upon the occurrence of a Default, Secured Party shall have the right to enter upon (to the exclusion of Debtor) the premises of Debtor where the Collateral is located (or is believed to be located) without any obligation to pay rent to Debtor, or any other place or places where such Collateral is believed to be located and kept, and remove such Collateral therefrom to the premises of Secured Party or any agent of Secured Party, for such time as Secured Party may desire, in order effectively to collect or liquidate such Collateral or to retain such Collateral in satisfaction of the Obligations, and/or Secured Party may require Debtor to assemble such Collateral and make it available to Secured Party at a place or places to be designated by Secured Party. Upon the occurrence of a Default, Secured Party shall have the right to obtain access to Debtor's data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Secured Party deems appropriate; and Secured Party shall have the right to notify post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party and to receive, open and process all mail addressed to Debtor.

(3) **Sale or Other Disposition of Collateral by Secured Party.** Any notice required to be given by Secured Party of a sale, lease or other disposition or other intended action by Secured Party, with respect to any of the Collateral, which is deposited in the United States mails, postage prepaid and duly addressed to Debtor at the address specified below, at least ten (10) days prior to such proposed action shall constitute fair and reasonable notice to Debtor of any such action. The net proceeds

realized by Secured Party upon any such sale or other disposition, after deduction for the expense of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' and paralegals' fees and legal expenses incurred by Secured Party in connection therewith, shall be applied as provided herein toward satisfaction of the Obligations. Secured Party shall account to Debtor for any surplus realized upon such sale or other disposition, and Debtor shall remain liable for any deficiency. The commencement of any action, legal or equitable, or the rendering of any judgment or decree for any deficiency shall not affect Secured Party's security interest in the Collateral until the Obligations are fully paid. Secured Party shall have the right to commence, continue or defend proceedings in any court of competent jurisdiction in the name of Secured Party, the "Receiver" (as hereinafter defined) or Debtor for the purpose of exercising any of the rights, powers and remedies set out in this Section 4.2, including, without limitation, the institution of proceedings for the appointment of a Receiver. Debtor agrees that Secured Party has no obligation to preserve rights to the Collateral against any other Person. Secured Party is hereby granted a license or other right to use, without charge, Debtor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, tradestyles, trademarks, service marks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale and selling any such Collateral, and Debtor's rights under all licenses and all franchise agreements shall inure to Secured Party's benefit until the Obligations are paid.

(4) **Third Person Waiver.** Debtor waives any right it may have to require Secured Party to pursue any third person for any of the indebtedness secured hereunder.

(5) **Sale on Credit.** If Secured Party sells any of the Collateral upon credit, Debtor will be credited only with payments actually made by the purchaser, received by Secured Party and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor shall be credited with the proceeds of the sale.

(6) **Application of Payments.** Notwithstanding any contrary provision contained in this Agreement or in any of the other Loan Documents, Debtor irrevocably waives the right to direct the application of any and all payments at any time or times hereafter received by Secured Party from Debtor or with respect to any of the Collateral, and Debtor does hereby irrevocably agree that Secured Party shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter, whether with respect to the Collateral or otherwise, against the Obligations in such manner as Secured Party may deem advisable, notwithstanding any entry by Secured Party upon any of its books and records.

(7) **Marshaling; Payments Set Aside.** Secured Party shall be under no obligation to marshal any assets in favor of Debtor or any other Person or against or in payment of any or all of the Obligations. To the extent that Debtor makes a payment or payments to Secured Party or Secured Party enforces its security interests or exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state, federal or foreign law, common law or equitable cause, then to

the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made, or such enforcement or setoff had not occurred.

(8) **Appointment of Receiver.** Upon the occurrence of a Default, Secured Party shall have the right to appoint any Person to be an agent or any Person to be a receiver, manager or receiver and manager (the "Receiver") of the Collateral and to remove any Receiver so appointed and to appoint another if Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement will have all of the powers of Secured Party hereunder, and in addition, will have the power to carry on the business of Debtor. The Receiver will be deemed to be the agent of Debtor for the purpose of establishing liability for the acts or omissions of the Receiver and Secured Party will not be liable for such acts or omissions and, without restricting the generality of the foregoing, Debtor hereby irrevocably authorizes Secured Party to give instructions to the Receiver relating to the performance of its duties as set forth herein.

(9) **Advice of Counsel.** Debtor acknowledges that it has been advised by its counsel with respect to this transaction and this Agreement, including without limitation any waivers contained herein.

## **5. MISCELLANEOUS.**

5.1 **Waiver.** Secured Party's failure, at any time or times hereafter, to require strict performance by Debtor of any provision of this Agreement shall not waive, affect or diminish any right of Secured Party thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Secured Party of a Default under this Agreement or a default under any of the other Loan Documents shall not suspend, waive or affect any other Default under this Agreement or any other default under any of the other Loan Documents, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants and representations of Debtor contained in this Agreement or any of the other Loan Documents, and no Default under this Agreement or default under any of the other Loan Documents, shall be deemed to have been suspended or waived by Secured Party unless such suspension or waiver is in writing signed by an officer of Secured Party, and directed to Debtor specifying such suspension or waiver. This Security Agreement shall not be qualified or supplemented by course of dealing.

5.2 **Costs and Attorneys' Fees.** If at any time or times hereafter Secured Party employs counsel in connection with protecting or perfecting Secured Party's security interest in the Collateral or in connection with any matters contemplated by or arising out of this Agreement, whether (a) to commence, defend, or intervene in any litigation or to file a petition, complaint, answer, motion or other pleading, (b) to take any other action in or with respect to any suit or proceeding (bankruptcy or otherwise), (c) to consult with officers of Secured Party to advise Secured Party with respect to this Agreement or the other Loan Documents or the Collateral, (d) to protect, collect, lease, sell, take possession of, or liquidate any of the Collateral, or (e) to attempt to enforce or to enforce any security



interest in any of the Collateral, to attempt to enforce or to enforce any rights of Secured Party to collect any of the Obligations, then in any of such events, all of the reasonable attorneys' fees arising from such services, and any expenses, costs and charges relating thereto, including without limitation all reasonable fees of the paralegals and other staff employed by such attorneys, together with interest at the rate prescribed in the Note and shall be part of the Obligations, payable on demand and secured by the Collateral. Such interest shall accrue at the times, and in the manner, provided for in the Note.

**5.3 Expenditures by Secured Party.** If Debtor shall fail to pay taxes, insurance, assessments, costs or expenses which Debtor is, under any of the terms hereof or of any of the other Loan Documents, required to pay, or fails to keep the Collateral free from other security interests, liens or encumbrances, except as permitted herein, Secured Party may, in its sole discretion, after notice to Debtor, make expenditures for any or all of such purposes, and the amount so expended, together with interest thereon at the rate prescribed in the Note and shall be part of the Obligations, payable on demand and secured by the Collateral.

**5.4 Custody and Preservation of Collateral.** Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor shall request in writing, but failure by Secured Party to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure by Secured Party to preserve or protect any right with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by Debtor, shall of itself be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

**5.5 Assignability; Parties.** This Agreement may not be assigned by Debtor without the prior written consent of Secured Party. Secured Party may assign its rights and interests under this Security Agreement. If an assignment is made, Debtor shall render performance under this Security Agreement to the assignee. Debtor waives and will not assert against any assignee any claims, defenses or set-offs which Debtor could assert against Secured Party, except defenses which cannot be waived. Whenever in this Agreement there is reference made to any of the parties hereto, such reference shall be deemed to include, wherever applicable, a reference to the successors and permitted assigns of Debtor and the successors and assigns of Secured Party.

**5.6 Applicable Law of Severability.** This Agreement shall be construed in all respects in accordance with, and governed by, the internal laws (as opposed to conflict of laws principles) of the state of Washington. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. The parties hereto consent to the jurisdiction and venue of the state and federal courts sitting in King County, Washington in any action or judicial proceeding brought to enforce, or construe or interpret this Security Agreement.

**5.7 Section Titles.** The section and subsection titles contained in this Agreement shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties.

**5.8 Continuing Effect.** This Agreement, Secured Party's security interests in the Collateral of Debtor, and all of the other Loan Documents shall continue in full force and effect so long as any Obligations of Debtor shall be owed to Secured Party.

**5.9 Notices.** Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered upon the earlier of (a) personal delivery to the address set forth below (b) delivery by facsimile or similar means of delivery and (c) in the case of mailed notice, three (3) days after deposit in the United States mails, with proper postage for certified mail, return receipt requested, prepaid, or in the case of notice by Federal Express or other reputable overnight courier service, one (1) Business Day after delivery to such courier service, addressed to the party to be notified at the address set forth below their signatures to this Agreement, or to such other address as each party designates to the other in writing.

**5.10 Equitable Relief.** Debtor recognizes that, in the event Debtor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy at law may prove to be inadequate relief to Secured Party; therefore, Debtor agrees that Secured Party, if Secured Party so requests, shall be entitled to temporary and permanent injunctive relief.

**5.11 Entire Agreement.** This Agreement, together with the Loan Documents executed in connection herewith, constitutes the entire Agreement among the parties with respect to the subject matter hereof, and supersedes all prior written or oral understandings with respect thereto. This Agreement may be amended only by mutual agreement of the parties evidenced in writing and signed by the party to be charged therewith.

**5.12 Indemnity.** Debtor agrees to defend, protect, indemnify and hold harmless Secured Party and each and all of its respective officers, directors, employees, attorneys and agents ("Indemnified Parties") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for the Indemnified Parties in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnified Parties shall be designated by a party thereto), which may be imposed on, incurred by, or asserted against any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state, local or foreign laws or other statutory regulations, including without limitation securities, environmental and commercial laws and regulations, under common law or at equitable cause, or on contract or otherwise) in any manner relating to or arising out of this Agreement or the other Loan Documents, or any act, event or transaction related or attendant thereto (including any liability under federal, state, local or foreign environmental laws or regulations); provided, that Debtor shall not have any obligation to any Indemnified Party hereunder with respect to matters caused by or resulting from

the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is in violation of any law or public policy, Debtor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all matters incurred by the Indemnified Parties. Any liability, obligation, loss, damage, penalty, cost or expense incurred by the Indemnified Parties shall be paid to the Indemnified Parties on demand, together with interest thereon at the rate prescribed for in the Note from the date incurred by the Indemnified Parties until paid by Debtor, be added to the Obligations and be secured by the Collateral. The provisions of and undertakings and indemnifications set out in this Section 5.12 shall survive the satisfaction and payment of the Obligations.

**5.13 Representations and Warranties.** Notwithstanding anything to the contrary contained herein, each representation or warranty contained in this Agreement or any of the other Loan Documents shall survive the execution and delivery of this Agreement and the other Loan Documents and the repayment of the Obligations.

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

**5.15 Conflict.** To the extent that any provision or term of the Security Agreement or the Note conflict with any provision or term herein, the term or provision of this Agreement shall govern.

**5.16 Statute of Limitations.** Until all Indebtedness shall have been paid in full and all commitments by Secured Party to extend credit to Debtor have been terminated, the power of sale or other disposition and all other rights, powers, privileges and remedies granted to Secured Party hereunder shall continue to exist and may be exercised by Secured Party at any time and from time to time irrespective of the fact that the Indebtedness or any part thereof may have become barred by any statute of limitations, or that the personal liability of Debtor may have ceased, unless such liability shall have ceased due to the payment in full of all Indebtedness secured hereunder.

*Intentionally Blank*

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

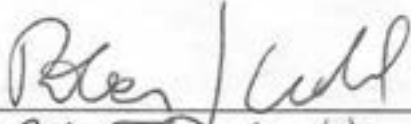
DEBTOR:

SECURED PARTY:

KCI INVESTMENTS, LLC

CBC PARTNERS I, LLC, a Washington limited liability company

a Nevada limited liability company

By   
Robert J. Walsh  
Co-managing member  
Debtor's Address: 4033 S. Dean Martin Drive

By   
John Otter, Authorized Representative

Las Vegas, NV 89103

Secured Party's Address: 305 108<sup>th</sup> Ave NE, Suite  
101

Bellevue, WA 98004

If Debtor is an entity created by filing, state of  
organization and state organization number:

NV #NV20041262524



# **EXHIBIT 4**

# **EXHIBIT 4**

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DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4 SPANISH HEIGHTS ACQUISITION ) Case No.: A-20-813439-B  
COMPANY, LLC, a Nevada Limited)

5 Liability Company; SJC ) Dept. No.: 11  
VENTURES HOLDING COMPANY, LLC, )

6 d/b/a SJC VENTURES, LLC, a )

Delaware Limited Liability )

7 Company, )

)

8 Plaintiffs, )

)

9 vs. )

)

10 CBC PARTNERS I, LLC, a )

foreign Limited Liability )

11 Company; et al., )

)

12 Defendants. )

)

13 (Complete caption on Page 2. )

)

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VIDEORECORDED VIDEOCONFERENCE DEPOSITION

17

OF

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KENNETH ANTOS

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Taken on Wednesday, September 23, 2020, at 9:13 a.m.

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By a Certified Court Reporter and Legal Videographer

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Remotely in Las Vegas, Nevada

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Reported by: Dawn Bratcher Gustin, CCR 253, RPR, CRR

California CSR 7124

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Job No. 42175A

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DISTRICT COURT  
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION ) Case No.: A-20-813439-B  
COMPANY, LLC, a Nevada Limited) Liability Company; SJC ) Dept. No.: 11  
VENTURES HOLDING COMPANY, LLC,) d/b/a SJC VENTURES, LLC, a )  
Delaware Limited Liability )  
Company, )  
Plaintiffs, )  
vs. )  
CBC PARTNERS I, LLC, a )  
foreign Limited Liability )  
Company; CBC PARTNERS, LLC, )  
a foreign Limited Liability )  
Company; 5148 SPANISH )  
HEIGHTS, LLC, a Nevada )  
Limited Liability Company; )  
KENNETH ANTOS AND SHEILA )  
NEUMANN-ANTOS, as Trustees )  
of the Kenneth & Sheila )  
Antos Living Trust and the )  
Kenneth M. Antos & Sheila )  
M. Neumann-Antos Trust; )  
DACIA, LLC, a foreign )  
Limited Liability Company; )  
DOES I through X; and ROE )  
CORPORATIONS I through X, )  
inclusive, )  
Defendants. )

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I N D E X

WITNESS PAGE  
KENNETH ANTOS  
Examination by Ms. Barraza 7

E X H I B I T S

EXHIBIT DESCRIPTION MARKED  
Exhibit 1 4/16/07 Grant, Bargain, Sale Deed 44  
(PLTFS000591-PLTFS000594)  
Exhibit 2 4/16/07 Deed of Trust 46  
(PLTFS000595-PLTFS000612)  
Exhibit 3 12/22/08 Construction Deed of 47  
Trust (PLTFS000613-PLTFS000637)  
Exhibit 4 3/17/09 Substitution of Trustee 49  
and Deed of Full Reconveyance  
(PLTFS000640)  
Exhibit 5 10/14/10 Grant, Bargain, Sale Deed 49  
(PLTFS000642-PLTFS000645)  
Exhibit 6 10/14/10 Deed of Trust (Third 51  
Party) (PLTFS000646-PLTFS000671)  
Exhibit 7 10/27/10 Substitution of Trustee 52  
and Deed of Reconveyance  
(PLTFS000672-PLTFS000673)  
Exhibit 8 11/30/10 Deed of Trust and 53  
Assignment of Rents  
(PLTFS000677-PLTFS000684)  
Exhibit 9 4/4/11 Revolving Credit Deed of 54  
Trust Security Agreement and  
Assignment of Rents  
(PLTFS000685-PLTFS000701)

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APPEARANCES:  
(All parties appearing remotely)

For the Plaintiffs:

DANIELLE J. BARRAZA, ESQ.  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
djb@mgalaw.com

For the Defendants CBC Partners I, LLC, CBC Partners,  
LLC, 5148 Spanish Heights, LLC, and Dacia, LLC:

MICHAEL R. MUSHKIN, ESQ.  
MUSHKIN & COPPEDGE  
6070 South Eastern Avenue  
Suite 270  
Las Vegas, Nevada 89119  
michael@mccnvlaw.com

The Videographer:

JOHNNY RANDALL

Also Present:

JAY BLOOM  
SHEILA NEUMANN-ANTOS

\* \* \* \* \*

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I N D E X

E X H I B I T S

(Continued)

EXHIBIT DESCRIPTION MARKED  
Exhibit 10 12/29/14 Deed of Trust and 55  
Assignment of Rents  
(PLTFS000702-PLTFS000724)  
Exhibit 17 10/2016 First Amendment to 57  
Intercreditor Agreement  
(PLTFS000794-PLTFS000952)  
Exhibit 18 12/22/08 Construction Deed of 20  
Trust  
(5148SH 000003-5148SH 000154)  
Exhibit 19 4/1/20 letter from Mushkin to Mr. 31  
Bloom and Mr. and Mrs. Antos with  
attachment  
(K001-K003 and L 001)

<p style="text-align: center;">P R O C E E D I N G S</p> <p>THE VIDEOGRAPHER: Good morning. Today is Wednesday, September 23rd, 2020. The time is approximately 9:13 a.m.</p> <p>This is the remote deposition of Kenneth Antos in the case of Spanish Heights Acquisition Company, LLC, et al, vs. CBC Partners I, LLC, et al.</p> <p>I'm Johnny Randall with Oasis Reporting Services. I will be monitoring the proceedings and recording both video and audio today.</p> <p>At this time I will ask counsel to identify themselves, state whom they represent, and agree on the record that there is no objection to the court reporter administering a binding oath to the witness through remote videoconferencing. If no objection is stated, we will proceed forward with all counsel. We'll begin the appearances with the noticing attorney.</p> <p>MS. BARRAZA: Good morning. Danielle Barraza on behalf of the plaintiffs, and we have no objection.</p> <p>MR. MUSHKIN: Good morning. Michael Mushkin on behalf of defendants, and we have no objection.</p> <p>(Witness sworn.)</p> <p style="text-align: center;">KENNETH M. ANTOS,</p> <p>having been first duly sworn, was examined and testified as follows:</p>	<p style="text-align: right;">6</p> <p>1 Do you understand that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. I'm going to ask that you wait for me to finish</p> <p>4 my question before going into your answer, and I'm also</p> <p>5 going to try to wait for you to completely finish</p> <p>6 whatever answer you're giving before going on to my next</p> <p>7 question. Okay?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. So from time to time, your counsel is going to</p> <p>10 be lodging objections to the questions. So we'd ask</p> <p>11 that unless you're specifically instructed not to answer</p> <p>12 the question, still do answer the question after the</p> <p>13 objection has been put on the record. Okay?</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. Is there any reason why you won't be able to</p> <p>16 give me full, complete, and truthful answers to the</p> <p>17 questions today?</p> <p>18 <b>A. No.</b></p> <p>19 Q. All right. What is your current home address?</p> <p>20 <b>A. 11512 Belmont Lake Drive, Las Vegas, Nevada</b></p> <p>21 <b>89135.</b></p> <p>22 Q. Can you give just a brief general overview of</p> <p>23 your educational background.</p> <p>24 <b>A. I have a -- starting from a master's degree in</b></p> <p>25 <b>business administration and an undergraduate degree in</b></p>
<p style="text-align: right;">7</p> <p>1 EXAMINATION</p> <p>2 BY MS. BARRAZA:</p> <p>3 Q. Good morning, Mr. Antos. Can you hear me okay?</p> <p>4 <b>A. Yes, I can.</b></p> <p>5 Q. All right. Can you please state and spell your</p> <p>6 name for the record.</p> <p>7 <b>A. It's Kenneth, K-e-n-n-e-t-h, Antos, A-n-t-o-s.</b></p> <p>8 Q. And have you had your deposition taken before?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. How many times, approximately?</p> <p>11 <b>A. I have no idea. Fifteen or 20.</b></p> <p>12 Q. Okay. What was the last time you had your</p> <p>13 deposition taken?</p> <p>14 <b>A. Maybe a year ago.</b></p> <p>15 Q. Okay. So I'm going to just go over -- it</p> <p>16 sounds like you're probably familiar with all the ground</p> <p>17 rules, but just to make sure we're all on the same page,</p> <p>18 I'm going to go over some of those right now.</p> <p>19 The oath that you just took is the same oath</p> <p>20 that you would take in a court of law. Do you</p> <p>21 understand that?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Which subjects you to the same penalties of</p> <p>24 perjury just as if you were to be subjected to in a</p> <p>25 court of law.</p>	<p style="text-align: right;">9</p> <p>1 <b>accounting and finance.</b></p> <p>2 Q. Okay. And where did you get those degrees</p> <p>3 from?</p> <p>4 <b>A. Syracuse University for the undergraduate and</b></p> <p>5 <b>State University of New York at Binghamton for the</b></p> <p>6 <b>master's.</b></p> <p>7 Q. Okay. And if you could give just a very</p> <p>8 general, brief --</p> <p>9 (Interruption by cell phone.)</p> <p>10 BY MS. BARRAZA:</p> <p>11 Q. Apologies for that.</p> <p>12 -- very general, brief overview of your work</p> <p>13 history, just very brief.</p> <p>14 <b>A. I started as a -- being an accountant for the</b></p> <p>15 <b>Wards Company, which being Circuit City, and I became</b></p> <p>16 <b>the president of Circuit City, everything west of the</b></p> <p>17 <b>Mississippi, about 3 billion-dollar entity. And</b></p> <p>18 <b>subsequent to that, I went into my own businesses.</b></p> <p>19 Q. Okay. As far as what kind of businesses have</p> <p>20 you been getting into? Like, the restaurant business?</p> <p>21 What kind of businesses?</p> <p>22 <b>A. In terms of the restaurant business, I was -- I</b></p> <p>23 <b>deal with Walmart. I had a master agreement, master</b></p> <p>24 <b>lease agreement, with Walmart, and I introduced Subway</b></p> <p>25 <b>to Walmart. But anyplace there's a Subway, it's a</b></p>

<p style="text-align: right;">10</p> <p><b>1 result of that contract, inside Walmart in approximately</b>  <b>2 1,800 locations. And subsequent to that, I went into</b>  <b>3 the restaurant business and opened up a series of</b>  <b>4 restaurants.</b>  5 Q. Here in Las Vegas?  <b>6 A. All over. They were -- they were in different</b>  <b>7 states.</b>  8 Q. Okay. Have you ever been convicted of any  9 felonies?  <b>10 A. No.</b>  11 Q. Okay. And have you ever been charged with any  12 crimes related to dishonesty?  <b>13 A. No.</b>  14 Q. And what did you do -- actually, when did you  15 first learn that you were going to be deposed in this  16 matter?  <b>17 A. Within the past month.</b>  18 Q. All right. And what have you -- have you  19 reviewed any documents in preparation for providing  20 deposition testimony today?  <b>21 A. Very --</b>  22 Q. All right. What documents do you recall  23 reviewing?  <b>24 A. The -- I just don't remember without looking --</b>  25 (Court reporter interrupts.)</p>	<p style="text-align: right;">12</p> <p>1 Q. Yes.  <b>2 A. I spoke to one person.</b>  3 Q. Okay. Who did you speak to?  <b>4 A. Alan Hallberg.</b>  5 Q. And who is he?  <b>6 A. Alan Hallberg owns the third -- as far as I</b>  <b>7 know owns the third position on my -- on the residence</b>  <b>8 that's in question.</b>  9 Q. Okay. When did you speak with Alan?  <b>10 A. Probably a couple months ago.</b>  11 Q. Okay. And what were you guys talking about?  <b>12 A. Some information I needed regarding the</b>  <b>13 occupancy of the -- of the property by the --</b>  14 (Court reporter interrupts.)  <b>15 THE WITNESS: -- the occupancy of the property</b>  <b>16 by Mr. Bloom.</b>  17 BY MS. BARRAZA:  18 Q. And you're saying this is information you  19 needed?  <b>20 A. Yes.</b>  21 Q. And why did you need this information?  <b>22 A. I wanted to know what was happening. I had</b>  <b>23 very little information.</b>  24 Q. And you were trying to figure out who was  25 occupying the residence; is that correct?</p>
<p style="text-align: right;">11</p> <p><b>1 THE WITNESS: -- back through the main file.</b>  2 BY MS. BARRAZA:  3 Q. Okay. How many -- approximately, how many  4 pages worth of documents would you say you reviewed in  5 preparation for your deposition today?  <b>6 A. Probably 30.</b>  7 Q. Okay. All right. And you have -- as you sit  8 here today, you have no recollection of anything you  9 actually reviewed; is that correct?  <b>10 A. Well, I don't know the titles. You asked me</b>  <b>11 the titles. I don't know.</b>  12 Q. Okay. So what's the substance of what you  13 reviewed?  <b>14 A. Some of the stuff was -- had to do with</b>  <b>15 Mr. Bloom's engagement as a -- as the manager of the</b>  <b>16 entity that was -- is leasing from -- the house that</b>  <b>17 was -- is in question. Some are the responsibilities of</b>  <b>18 Mr. Bloom as it pertains to that property.</b>  19 Q. Anything else?  <b>20 A. That's all I can remember.</b>  21 Q. And besides your attorney and your wife, have  22 you spoken with anybody else regarding this litigation?  <b>23 A. Over what period of time?</b>  24 Q. Over the past -- throughout this year.  <b>25 A. Throughout this year?</b></p>	<p style="text-align: right;">13</p> <p><b>1 A. I know who was occupying the residence.</b>  2 Q. Okay.  <b>3 A. I wanted to know what the -- what the</b>  <b>4 conditions of that occupancy were.</b>  5 Q. You're saying you want to know also the  6 condition of the property; is that what you're saying?  <b>7 A. No. I needed to know the technicalities of</b>  <b>8 what are the rights of the occupant --</b>  9 Q. Okay.  <b>10 A. -- if determined --</b>  11 Q. Okay. And why did you want to know that? Why  12 were you investigating that?  <b>13 A. Well, because we're here at this deposition,</b>  <b>14 and so I wanted to understand it a little better.</b>  15 Q. Did you speak to Alan prior to going -- making  16 your appearance at court and providing testimony in  17 court in this matter in April of this year?  <b>18 A. I haven't seen Alan in a couple years.</b>  19 Q. I'm saying did you speak to him before that?  <b>20 A. I speak to him regularly. Probably every six</b>  <b>21 months or so.</b>  22 Q. Okay. When was the last time you spoke to him?  <b>23 A. Well, as I said, a couple months ago.</b>  24 Q. Okay. And was it before or after you provided  25 testimony to this court for this matter?</p>

<p style="text-align: right;">14</p> <p>1 <b>A. I really don't recall.</b></p> <p>2 Q. Okay. So we'll come back to that, but moving</p> <p>3 on a little bit, as we kind of touched on, this</p> <p>4 litigation involves the property located at 5148 Spanish</p> <p>5 Heights Drive, Las Vegas, Nevada 89148. Are you</p> <p>6 comfortable with me just generally referring to that as</p> <p>7 "the property" throughout this deposition?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And you formerly owned that property; correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And you formerly resided there; correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. All right. And just to clarify, I am the</p> <p>14 counsel for the plaintiffs, which is Spanish Heights</p> <p>15 Acquisition Company, LLC, commonly known as "SHAC," and</p> <p>16 also SJC Ventures -- Ventures Holding Company, LLC, and</p> <p>17 also Jay Bloom. And I'll represent to you that Spanish</p> <p>18 Heights Acquisition Company, or SHAC, is the current</p> <p>19 owner of record of that property.</p> <p>20 Do you understand that?</p> <p>21 <b>A. I'm not aware of exactly who that is.</b></p> <p>22 Q. Okay. You're unaware of who owns the property</p> <p>23 according to the property records?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Okay. All right. So you're being deposed</p>	<p style="text-align: right;">16</p> <p>1 <b>THE WITNESS: I -- I don't know all the detail.</b></p> <p>2 <b>I'm very sketchy on it.</b></p> <p>3 BY MS. BARRAZA:</p> <p>4 Q. Okay. Have you personally reviewed the</p> <p>5 counterclaim that the trust has asserted against SJC</p> <p>6 Ventures?</p> <p>7 <b>A. Some parts, probably.</b></p> <p>8 Q. Okay. Do you have a personal recollection of</p> <p>9 that?</p> <p>10 <b>A. I have a recollection of the reasons for</b></p> <p>11 <b>default against the agreement by Mr. Bloom.</b></p> <p>12 Q. You're saying "the reasons for default"?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So what's your understanding of the reasons for</p> <p>15 default?</p> <p>16 <b>A. There are certain aspects that Mr. Bloom wants</b></p> <p>17 <b>to accomplish based on the agreement that he had, which</b></p> <p>18 <b>have not been, to my knowledge, achieved.</b></p> <p>19 Q. When you say "agreement," are you referring to</p> <p>20 the forbearance agreement?</p> <p>21 <b>A. I'm -- don't know if it's in the forbearance</b></p> <p>22 <b>agreement or any -- as one of the other agreements.</b></p> <p>23 Q. Okay. All right. So I'll represent to you</p> <p>24 that one of the causes of action that the trust is</p> <p>25 asserting against SJC is a breach of contract claim.</p>
<p style="text-align: right;">15</p> <p>1 because the -- you and Sheila Antos have been named as</p> <p>2 defendants in your capacities as trustees of the Kenneth</p> <p>3 and Sheila Antos Living Trust and the Kenneth M. Antos</p> <p>4 and Sheila M. Neumann-Antos Trust.</p> <p>5 Do you understand that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. All right. And so you -- that's in your</p> <p>8 capacity as you've been named as defendants.</p> <p>9 Additionally, the trust has asserted counterclaims</p> <p>10 against SJC.</p> <p>11 Are you aware that?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. So tell me about those counterclaims.</p> <p>14 Why is the trust suing SJC Ventures?</p> <p>15 <b>A. As far as I know, it's to get Mr. Bloom to</b></p> <p>16 <b>vacate the property.</b></p> <p>17 Q. Okay. So the Trust is suing SJC to try to get</p> <p>18 Mr. Bloom to vacate the property?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. Okay. Do you know what -- what the basis of</p> <p>21 the lawsuit -- of the counterclaims are? What are the</p> <p>22 causes of action?</p> <p>23 MR. MUSHKIN: Objection. Calls for a legal</p> <p>24 conclusion.</p> <p>25 Please answer, if you can.</p>	<p style="text-align: right;">17</p> <p>1 Are you familiar with that?</p> <p>2 <b>A. To a degree.</b></p> <p>3 Q. Okay. What's your understanding of that breach</p> <p>4 of contract claim?</p> <p>5 <b>A. That Mr. Bloom is in breach of contract for a</b></p> <p>6 <b>variety of nonachieving of commitments that he made in</b></p> <p>7 <b>writing, and so he has not fulfilled the obligations he</b></p> <p>8 <b>had under those terms.</b></p> <p>9 Q. And when you're saying he's "in breach of the</p> <p>10 contract," breach of what contract?</p> <p>11 MR. MUSHKIN: Objection. Asked and answered.</p> <p>12 BY MS. BARRAZA:</p> <p>13 Q. So breach of what contract?</p> <p>14 <b>A. I don't believe I said "breach." I said</b></p> <p>15 <b>default.</b></p> <p>16 Q. Okay. Understanding that. So default of what</p> <p>17 contract?</p> <p>18 <b>A. Contract to -- regarding the forbearance and</b></p> <p>19 <b>the acquisition of the property.</b></p> <p>20 Q. Okay. And -- all right. If I told you that</p> <p>21 the counterclaim for breach of contract is based on an</p> <p>22 alleged breach of the SHAC operating agreement, would</p> <p>23 that surprise you?</p> <p>24 <b>A. I don't know what that means.</b></p> <p>25 Q. Do -- are you aware of what the SHAC operating</p>



<p>18</p> <p>1 agreement is?</p> <p>2 <b>A. I've seen very little documents from SHAC, if</b></p> <p>3 <b>any.</b></p> <p>4 Q. Okay. Do you recall signing off on an</p> <p>5 operating agreement, a SHAC operating agreement?</p> <p>6 <b>A. I don't recall.</b></p> <p>7 Q. Okay. And do you personally have any</p> <p>8 recollection of looking at the SHAC operating agreement</p> <p>9 recently?</p> <p>10 <b>A. No.</b></p> <p>11 Q. All right. Now, is the trust claiming to have</p> <p>12 any interest in SHAC at this time?</p> <p>13 <b>A. I'm not really familiar with how it went</b></p> <p>14 <b>together.</b></p> <p>15 Q. Okay. To your knowledge, is the trust claiming</p> <p>16 to have any interest in SHAC?</p> <p>17 <b>A. I really don't know.</b></p> <p>18 Q. Okay. Are you personally claiming to have any</p> <p>19 interest in SHAC, the company?</p> <p>20 <b>A. I have no idea whether I have interest or don't</b></p> <p>21 <b>have interest. Those --</b></p> <p>22 Q. Okay. Do you recall ever signing any document</p> <p>23 that says the trust was transferring its interest in</p> <p>24 SHAC to another entity?</p> <p>25 <b>A. I don't recall.</b></p>	<p>20</p> <p>1 <b>lieu of -- of -- for signing anything. I have never.</b></p> <p>2 BY MS. BARRAZA:</p> <p>3 Q. Okay. Now, let's turn to -- if we can go to</p> <p>4 Exhibit 18. And tell me whenever you're there.</p> <p>5 (Exhibit 18 was marked for the</p> <p>6 record.)</p> <p>7 <b>THE WITNESS: I'm here.</b></p> <p>8 BY MS. BARRAZA:</p> <p>9 Q. Okay. Is the first page that you're looking</p> <p>10 at, does it say "Forbearance Agreement" at the top?</p> <p>11 <b>A. Yes, it does.</b></p> <p>12 Q. And at the bottom, do you see at the bottom</p> <p>13 there's page numbers?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Does it say 5148SH 0001?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Okay. All right. So that's -- I'll represent</p> <p>18 to you that this is a compilation of documents</p> <p>19 consisting of what's been disclosed as the Forbearance</p> <p>20 Agreement and other related agreements and documents.</p> <p>21 I want to turn your attention to -- as you can</p> <p>22 see the page numbers on the bottom right-hand corner; so</p> <p>23 I want you to go to page 34, if you can do that.</p> <p>24 <b>A. Okay. Okay.</b></p> <p>25 Q. All right. And so this document, do you</p>
<p>19</p> <p>1 Q. Okay. You don't recall doing that?</p> <p>2 Do you recall ever claiming to have held any</p> <p>3 interest in SHAC at any time?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Okay. You don't recall the trust ever having,</p> <p>6 like, a 49 percent interest in SHAC?</p> <p>7 <b>A. I remember seeing that somewhere.</b></p> <p>8 Q. Okay. So you do have a recollection of the</p> <p>9 trust claiming to have an interest in SHAC at some</p> <p>10 point?</p> <p>11 <b>A. I read somewhere that there was an interest,</b></p> <p>12 <b>but I -- I don't know what the details are.</b></p> <p>13 Q. Okay. And as you sit here today, you have no</p> <p>14 idea who SHAC attempted to tran- -- I mean -- I'm</p> <p>15 sorry -- who the trust attempted to transfer its</p> <p>16 interest in SHAC to; correct?</p> <p>17 <b>A. I'm not aware of it.</b></p> <p>18 Q. Okay. And as you sit here today, you're not</p> <p>19 aware of the trust receiving any kind of monetary</p> <p>20 consideration in return for transferring any kind of</p> <p>21 interest in SHAC; correct?</p> <p>22 MR. MUSHKIN: Objection. Calls for a legal</p> <p>23 conclusion.</p> <p>24 You may answer the question, if you can.</p> <p>25 <b>THE WITNESS: I've never received anything in</b></p>	<p>21</p> <p>1 recognize what this document is with page 34 at the</p> <p>2 bottom?</p> <p>3 <b>A. I see what it is.</b></p> <p>4 Q. Do you recognize it as the Limited Liability</p> <p>5 Company Agreement of Spanish Heights Acquisition</p> <p>6 Company, LLC?</p> <p>7 <b>A. I haven't read through it; so I -- I see the</b></p> <p>8 <b>title.</b></p> <p>9 Q. Okay. And then do you see the first paragraph?</p> <p>10 It references that it's a limited liability agreement of</p> <p>11 Spanish Heights Acquisition Company, and it does</p> <p>12 reference the "Antos, Kenneth and Sheila Living Trust,</p> <p>13 Kenneth M. Antos, Sheila M. Neumann-Antos Trust as</p> <p>14 trustees hereinafter referred to as the 'Seller' or the</p> <p>15 'Seller Member.'"</p> <p>16 Do you see that?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. And I want you to turn to -- well, let</p> <p>19 me just ask you this: Do you recognize this document as</p> <p>20 the SHAC operating agreement?</p> <p>21 <b>A. No, I -- I mean, it's been a while since I've</b></p> <p>22 <b>looked at any of this stuff. So I --</b></p> <p>23 MR. MUSHKIN: Counsel, just for the record,</p> <p>24 this is not an executed copy.</p> <p>25 MS. BARRAZA: So I'm seeing a signature on page</p>

<p>22</p> <p>1 78.</p> <p>2 MR. MUSHKIN: I'm on page 62. It has no</p> <p>3 signature. That's the page there. We'll go to 78.</p> <p>4 This looks like an executed copy of B-10.</p> <p>5 Let's see what the other one was.</p> <p>6 Would you mind taking a look at 62 and 78.</p> <p>7 MS. BARRAZA: I'm seeing that, but I'm seeing a</p> <p>8 signature on 78.</p> <p>9 MR. MUSHKIN: Oh, no. I don't dispute that,</p> <p>10 but I -- I'm -- it appears that 62 is the execution page</p> <p>11 for the operating agreement. I fully acknowledge that</p> <p>12 the documents are what they are. I just wanted to point</p> <p>13 out that it's a different header than -- I believe that</p> <p>14 what you're pointing to is the execution of something --</p> <p>15 MS. BARRAZA: Of Exhibit A. Of Exhibit A to</p> <p>16 the operating agreement.</p> <p>17 MR. MUSHKIN: Right. It's something titled</p> <p>18 on --</p> <p>19 MS. BARRAZA: 63.</p> <p>20 MR. MUSHKIN: Sorry. 69, "Exhibit B" --</p> <p>21 MS. BARRAZA: B.</p> <p>22 MR. MUSHKIN: -- "to Forbearance Agreement"</p> <p>23 starting at B-1, and it looks like the execution page is</p> <p>24 B-10 for that agreement --</p> <p>25 MS. BARRAZA: Uh-huh.</p>	<p>24</p> <p>1 A. "In the event of a failure to reasonably</p> <p>2 resolve any issues among any of the parties or</p> <p>3 their owners, assigns, or successors, the</p> <p>4 dispute of those parties will be referred to</p> <p>5 binding arbitration for resolution thereof, and</p> <p>6 such party waives any right to litigation in</p> <p>7 favor of such resolution through binding</p> <p>8 arbitration."</p> <p>9 Q. Now, what does that sentence mean to you?</p> <p>10 A. It means if there's an issue, that we get</p> <p>11 together and resolve it.</p> <p>12 Q. An issue with respect to the operating</p> <p>13 agreement; correct?</p> <p>14 A. I don't know if it's the operating agreement or</p> <p>15 the forbearance agreement. I'm not sure.</p> <p>16 Q. All right. And you're saying if there's an</p> <p>17 issue, we get together and resolve it. Now, it</p> <p>18 specifically states get together with respect to binding</p> <p>19 arbitration.</p> <p>20 Do you understand that?</p> <p>21 A. Yes.</p> <p>22 Q. Now, do you understand binding arbitration is</p> <p>23 different from going to court and doing litigation with</p> <p>24 the court system?</p> <p>25 A. Yes.</p>
<p>23</p> <p>1 MR. MUSHKIN: -- but that the operating</p> <p>2 agreement itself, the reference, at least the copy here,</p> <p>3 is not executed.</p> <p>4 MS. BARRAZA: Okay. Understanding that.</p> <p>5 BY MS. BARRAZA:</p> <p>6 Q. So getting back to the question, regardless of</p> <p>7 this not being an executed version of the operating</p> <p>8 agreement, do you recognize this as the SHAC operating</p> <p>9 agreement? Do you have any -- do you recognize that?</p> <p>10 A. I recall signing this. You had asked me what</p> <p>11 it is. I have no idea at this point. It's been a</p> <p>12 while.</p> <p>13 Q. All right. And you mentioned that you don't</p> <p>14 recall looking at this in a while; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. All right. Well, I'll turn -- and you</p> <p>17 did recall signing this. So I'm going to turn your</p> <p>18 attention to page 6- -- actually, page 59, if you can go</p> <p>19 there.</p> <p>20 A. Okay.</p> <p>21 Q. And do you see where it references "Dispute</p> <p>22 Resolution" on Section 12.05?</p> <p>23 A. I see the heading, yes.</p> <p>24 Q. All right. Now, can you read for me into the</p> <p>25 record that first sentence under "Dispute Resolution."</p>	<p>25</p> <p>1 Q. Okay. And so do you understand that by the</p> <p>2 trust asserting a counterclaim against SJG for an</p> <p>3 alleged breach of the operating agreement, that's going</p> <p>4 against this dispute resolution clause which says it</p> <p>5 needs to go through arbitration?</p> <p>6 MR. MUSHKIN: Objection. Calls for a legal</p> <p>7 conclusion and assumes facts not in evidence.</p> <p>8 You can answer the question, if you can.</p> <p>9 THE WITNESS: I can't -- I can't answer.</p> <p>10 BY MS. BARRAZA:</p> <p>11 Q. So do you have any understanding as to how this</p> <p>12 dispute resolution clause comes into play with respect</p> <p>13 to your counterclaims?</p> <p>14 A. I believe, but I'm not sure.</p> <p>15 Q. What do you believe?</p> <p>16 A. That based on other ancillary activities not</p> <p>17 accomplished, that it bypasses this.</p> <p>18 Q. Sorry. I didn't catch the last part of what</p> <p>19 you said.</p> <p>20 A. I don't believe this applies since Mr. Bloom</p> <p>21 did not achieve commitments he made under the</p> <p>22 forbearance agreements.</p> <p>23 Q. So you're saying because of alleged breaches of</p> <p>24 the forbearance agreement, the -- certain sections of</p> <p>25 the op- -- the SHAC operating agreement should not</p>



<p>26</p> <p>1 apply; is that correct?</p> <p>2 MR. MUSHKIN: Again, objection. Calls for a</p> <p>3 legal conclusion. And the witness has answered your</p> <p>4 question, Counsel.</p> <p>5 BY MS. BARRAZA:</p> <p>6 Q. You can answer.</p> <p>7 <b>A. I'm saying that, first off, it was -- he has</b></p> <p>8 <b>defaulted on the forbearance agreements, and as far as</b></p> <p>9 <b>I'm understanding -- I don't understand a lot about</b></p> <p>10 <b>this -- the -- the -- that supersedes what -- what's</b></p> <p>11 <b>called for here.</b></p> <p>12 Q. All right. Can you turn to page 60 of the --</p> <p>13 that Exhibit 18.</p> <p>14 <b>A. Hold on.</b></p> <p>15 Q. And I'm going to represent for the record that</p> <p>16 we do have an executed copy of this operating agreement</p> <p>17 that we will be emailing to try to add as another</p> <p>18 exhibit so that it can be properly authenticated on the</p> <p>19 record.</p> <p>20 MR. MUSHKIN: I'm not worried about it,</p> <p>21 Danielle. I've seen it as well, I just wanted you to</p> <p>22 know that one wasn't executed.</p> <p>23 MS. BARRAZA: Okay.</p> <p>24 BY MS. BARRAZA:</p> <p>25 Q. And are you on page 60?</p>	<p>28</p> <p>1 Q. Okay. So that says:</p> <p>2 "Should any party initiate a civil proceeding</p> <p>3 against any other, notwithstanding the binding</p> <p>4 arbitration provision above, such party</p> <p>5 initiating civil litigation shall recognize</p> <p>6 that it has caused material damage and harm to</p> <p>7 the other by way of their breach of this</p> <p>8 agreement, and hereby agrees to an award, to</p> <p>9 each named defendant party, liquidated damages</p> <p>10 in the amount of any cost of defense incurred</p> <p>11 by the aggrieved party plus \$10,000."</p> <p>12 Do you see that?</p> <p>13 <b>A. I see it.</b></p> <p>14 Q. So what does that mean to you?</p> <p>15 MR. MUSHKIN: Objection. Calls for a legal</p> <p>16 conclusion.</p> <p>17 You can answer.</p> <p>18 <b>THE WITNESS: It says we -- somebody has to pay</b></p> <p>19 <b>\$10,000 for initiating a civil action.</b></p> <p>20 BY MS. BARRAZA:</p> <p>21 Q. Okay. And do you understand that the trust has</p> <p>22 initiated civil action against SJC with respect to this</p> <p>23 operating agreement with -- regarding its counterclaim?</p> <p>24 <b>A. I believe so.</b></p> <p>25 Q. Okay. And so do you have any reason to dispute</p>
<p>27</p> <p>1 <b>A. Yes, I am.</b></p> <p>2 Q. Okay. So that's the continuation of the</p> <p>3 dispute resolution clause. If you can read the -- do</p> <p>4 you see at the -- the last sentence where it says:</p> <p>5 "Should any party initiate a civil</p> <p>6 proceeding..."</p> <p>7 <b>A. The last sentence of which section?</b></p> <p>8 Q. Of the first paragraph, page 60.</p> <p>9 MR. MUSHKIN: Counsel, do I have to remind you</p> <p>10 that you are the ones that filed?</p> <p>11 BY MS. BARRAZA:</p> <p>12 Q. Can you answer my question? Do you see that</p> <p>13 part, "Should any party..."?</p> <p>14 <b>A. I'm trying to find it.</b></p> <p>15 MR. MUSHKIN: Last sentence.</p> <p>16 <b>THE WITNESS: Hold on. Okay.</b></p> <p>17 <b>Yeah, I do see it. Let me just make a comment</b></p> <p>18 <b>to you about my vision is not the best. I have impacted</b></p> <p>19 <b>vision. So it takes me a while to get through the</b></p> <p>20 <b>sentence.</b></p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. Okay. Do you want me -- can I just go ahead</p> <p>23 and read that sentence into the record so we're all on</p> <p>24 the same page as to what we're reading?</p> <p>25 <b>A. Go ahead.</b></p>	<p>29</p> <p>1 that the trust should be held accountable to this</p> <p>2 dispute resolution clause in the operating agreement?</p> <p>3 MR. MUSHKIN: Objection. Calls for a legal</p> <p>4 conclusion. He can only testify to facts that he knows,</p> <p>5 Counsel.</p> <p>6 BY MS. BARRAZA:</p> <p>7 Q. So go ahead. You can answer the question.</p> <p>8 <b>A. I'm not sure.</b></p> <p>9 Q. Okay. Now, going back -- let me just ask you</p> <p>10 this: Why didn't the trust -- if the trust felt it had</p> <p>11 a breach of the contract claim against SJC, why didn't</p> <p>12 it bring that claim in arbitration?</p> <p>13 MR. MUSHKIN: Objection. Calls for a legal</p> <p>14 conclusion.</p> <p>15 BY MS. BARRAZA:</p> <p>16 Q. Go ahead.</p> <p>17 <b>A. I was not aware of all -- all of this as -- as,</b></p> <p>18 <b>you know, it says it here.</b></p> <p>19 Q. Okay. And you agree you did sign off on this</p> <p>20 agreement; correct?</p> <p>21 <b>A. We did at the time, yes.</b></p> <p>22 Q. Okay. And when did the trust first realize</p> <p>23 that there was an alleged breach of the operating</p> <p>24 agreement?</p> <p>25 <b>A. How much time do you have?</b></p>

<p>30</p> <p>1 Q. I'm asking you when.</p> <p>2 <b>A. Ask it again, please.</b></p> <p>3 Q. When did the trust first realize that there was</p> <p>4 an alleged breach of the SHAC operating agreement?</p> <p>5 <b>A. When we learned that Mr. Bloom was not paying</b></p> <p>6 <b>committed funds and trying -- and not closing on the</b></p> <p>7 <b>house.</b></p> <p>8 Q. So exactly when -- I'm asking you when?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. What year? What month? When did that happen?</p> <p>11 <b>A. I have no idea what -- what day or month or a</b></p> <p>12 <b>year. It's been going on for --</b></p> <p>13 Q. Was it this year? Was it last year?</p> <p>14 MR. MUSHKIN: Hang on, Counsel. You're</p> <p>15 interrupting him. He didn't get a chance to finish his</p> <p>16 sentence.</p> <p>17 Go ahead and finish your sentence.</p> <p>18 <b>THE WITNESS: This has been going on for such a</b></p> <p>19 <b>long time now, I don't recall which -- exactly the date</b></p> <p>20 <b>it was on.</b></p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. Okay. So I'm not asking --</p> <p>23 <b>A. -- years.</b></p> <p>24 Q. Sorry. What did you say?</p> <p>25 <b>A. Within the past three years.</b></p>	<p>32</p> <p>1 collection of documents that have been provided to us by</p> <p>2 the defendants. I want to turn your attention to, I</p> <p>3 believe, just the last page, which is -- at the bottom</p> <p>4 it says L 001.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. So do you recognize what L 001 is?</p> <p>7 <b>A. Assignment of Company and Membership Interests.</b></p> <p>8 Q. So what does that mean to you?</p> <p>9 <b>A. In this case, I believe it meant that John</b></p> <p>10 <b>Otter and CBC Partners were given authority over the</b></p> <p>11 <b>interest.</b></p> <p>12 Q. So is that your signature on this L 001</p> <p>13 document where it says "Kenneth M. Antos, Trustee"?</p> <p>14 I didn't hear you. Did you say "yes"?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. So you signed up on this document.</p> <p>17 And this document is not dated. Do you know</p> <p>18 when you signed this document?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Okay. And did you have any legal counsel at</p> <p>21 the time -- at the time you signed this document?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Okay. You had no legal counsel?</p> <p>24 How did you -- how did you get this document?</p> <p>25 Who gave it to you?</p>
<p>31</p> <p>1 Q. Within the past three years.</p> <p>2 So it could have been -- according to your</p> <p>3 testimony, the alleged breach, you could have found out</p> <p>4 about it last year, the year before, or the year before</p> <p>5 that?</p> <p>6 <b>A. I have no idea when.</b></p> <p>7 Q. Okay. You have no idea when.</p> <p>8 And what I'm trying to figure out is why is the</p> <p>9 trust -- this counterclaim was asserted in July of this</p> <p>10 year. Why is the trust just now asserting a breach of</p> <p>11 contract claim against SJC?</p> <p>12 MR. MUSHKIN: Objection. Calls for a legal</p> <p>13 conclusion.</p> <p>14 <b>THE WITNESS: I was not -- I'm not aware of the</b></p> <p>15 <b>July date.</b></p> <p>16 BY MS. BARRAZA:</p> <p>17 Q. Okay. And -- let's go to Exhibit 19, if we</p> <p>18 can.</p> <p>19 <b>A. Okay.</b></p> <p>20 (Exhibit 19 was marked for the</p> <p>21 record.)</p> <p>22 BY MS. BARRAZA:</p> <p>23 Q. You're there?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. I'll represent to you this is a</p>	<p>33</p> <p>1 <b>A. If you look at 19, it says Mr. Mushkin sent it</b></p> <p>2 <b>out.</b></p> <p>3 Q. You are saying Mr. Mushkin sent it over via</p> <p>4 email?</p> <p>5 <b>A. No. It says it was sent from Mr. Mushkin. So</b></p> <p>6 <b>I don't know how I got it. I'm not sure. To me,</b></p> <p>7 <b>April's a long time.</b></p> <p>8 Q. So you somehow got this document, L 001, and</p> <p>9 you decided to sign it; correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Who did you speak to before deciding to sign</p> <p>12 it?</p> <p>13 <b>A. I didn't speak to anyone other than trying to</b></p> <p>14 <b>get this thing expedited through so that Mr. Otter would</b></p> <p>15 <b>have what he needs to do whatever he's doing here.</b></p> <p>16 Q. Okay. And you didn't consult any attorneys or</p> <p>17 anything like that before signing off on this; correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Okay. And is it your understanding that by</p> <p>20 signing this document, what this is doing is</p> <p>21 transferring any interest that the trust has in SHAC to</p> <p>22 CBC Partners, LLC?</p> <p>23 MR. MUSHKIN: Objection. Calls for a legal</p> <p>24 conclusion. The document speaks for itself.</p> <p>25 But you can answer.</p>

<p>34</p> <p>1 <b>THE WITNESS: I'm not sure. They already had a</b>  <b>2 third position on the house, though, that -- exceeded --</b>  3 BY MS. BARRAZA:  4 Q. Okay. Is it your testimony that -- is it  5 your --  6 MR. MUSHKIN: You interrupted him again,  7 Counsel. Let him finish his sentence.  8 BY MS. BARRAZA:  9 Q. Go ahead. Finish your sentence, please. Go  10 ahead.  11 <b>A. I said that they already had a third position</b>  <b>12 on the house which, when added to the first and second,</b>  <b>13 exceeded the value of the house. So there was -- to me,</b>  <b>14 there was no negative side here.</b>  15 Q. Okay. What did you understand the effect to be  16 of signing this?  17 MR. MUSHKIN: Objection. Calls for a legal  18 conclusion.  19 <b>THE WITNESS: Are you waiting for me?</b>  20 MR. MUSHKIN: Yeah. Answer.  21 BY MS. BARRAZA:  22 Q. I'm waiting for you to answer my question.  23 <b>A. Okay. He gave John the authority to do what he</b>  <b>24 needed to do to expedite the transaction.</b>  25 (Court reporter interrupts.)</p>	<p>36</p> <p>1 Q. Okay. What was that loan -- what amount was  2 that loan for?  3 <b>A. A variety of amounts starting at a lower</b>  <b>4 amount -- excuse me -- and then increasing as funds were</b>  <b>5 required, and they added more to it.</b>  6 Q. Okay. And are you aware that -- well, as you  7 sit here today, since you do not know what the doctrine  8 of merger is, is it correct that you have no knowledge  9 as to whether or not you would want it to apply in this  10 case; is that correct?  11 MR. MUSHKIN: Objection to the form of the  12 question. Vague and ambiguous and calls for a legal  13 conclusion.  14 <b>THE WITNESS: I don't even know what you said.</b>  15 BY MS. BARRAZA:  16 Q. Okay. So what I'm asking you is because you  17 don't know what the doctrine of merger is, you can't  18 offer me any testimony as to whether or not you want it  19 to apply in this case; is that correct?  20 MR. MUSHKIN: Same objection.  21 <b>THE WITNESS: If it is what you just</b>  <b>22 iterated --</b>  23 MR. MUSHKIN: Do you understand her question?  24 <b>THE WITNESS: Yeah, I think so. She's asking</b>  <b>25 me -- well, let me just answer this.</b></p>
<p>35</p> <p>1 <b>THE WITNESS: Yes.</b>  2 THE COURT REPORTER: Thank you.  3 BY MS. BARRAZA:  4 Q. Now, did anybody speak to you about the  5 doctrine of merger before you had signed off on this  6 document?  7 <b>A. I don't even know what a doctrine of merger is.</b>  8 Q. Okay. So nobody had spoken to you about what  9 it was and what it would mean; correct?  10 <b>A. That's correct.</b>  11 Q. Okay. Now, it's a -- would you agree with me  12 that you did not affirmatively waive any kind of  13 doctrine of merger by signing this; correct?  14 MR. MUSHKIN: Objection. Calls for a legal  15 conclusion.  16 <b>THE WITNESS: Once again, I have no idea what a</b>  <b>17 doctrine of merger is; so I don't know how I could</b>  <b>18 answer that question.</b>  19 BY MS. BARRAZA:  20 Q. Okay. All right. And so the -- let me just  21 ask you this: At some point did CBC issue a note to you  22 or to any of your companies?  23 <b>A. A note?</b>  24 Q. A loan.  25 <b>A. Yes.</b></p>	<p>37</p> <p>1 <b>I can't answer that because I don't know what</b>  <b>2 the doctrine is.</b>  3 BY MS. BARRAZA:  4 Q. Okay. All right. And -- well, let me ask you  5 this: So you signed off on this document purportedly  6 assigning the trust interest in SHAC to CBC.  7 You would agree with me; correct?  8 <b>A. That's what it says I did, yes.</b>  9 Q. Okay. So then what I'm trying to figure out is  10 why is the trust now trying to assert a breach of  11 contract claim against SJC based on the operating  12 agreement?  13 MR. MUSHKIN: Objection. Calls for a legal  14 conclusion.  15 BY MS. BARRAZA:  16 Q. So you can answer.  17 MR. MUSHKIN: It's been asked and answered as  18 well, Counsel.  19 But certainly answer it again, if you can.  20 <b>THE WITNESS: Please repeat the question again.</b>  21 BY MS. BARRAZA:  22 Q. Yeah.  23 So what I'm trying to figure out is why is the  24 trust asserting a breach of contract claim against SJC  25 based on the breach -- a purported breach of the SHAC</p>

<p>38</p> <p>1 operating agreement if the trust is no longer claiming 2 to hold any interest in SHAC? 3 MR. MUSHKIN: Same objection. Calls for a 4 legal conclusion. 5 <b>THE WITNESS: Just trying to help John and CBC</b> 6 <b>and -- to the best of my ability. So that's -- that's</b> 7 <b>why. That's why.</b> 8 BY MS. BARRAZA: 9 Q. Okay. Now, the -- what damages is the trust 10 claiming for breach of contract? 11 MR. MUSHKIN: To the extent it calls for a 12 legal conclusion, we object. 13 You may certainly answer. 14 <b>THE WITNESS: There is a whole list of things</b> 15 <b>that Bloom was supposed to do that have not been done.</b> 16 BY MS. BARRAZA: 17 Q. So what -- how is the trust damaged and what 18 damages is the trust claiming specifically? 19 MR. MUSHKIN: Same objection. 20 <b>THE WITNESS: I'm sitting on a piece of</b> 21 <b>property that I shouldn't have to. He was to close out</b> 22 <b>this deal well over a year ago.</b> 23 BY MS. BARRAZA: 24 Q. So how has the trust been damaged? 25 <b>A. For liability on the house.</b></p>	<p>40</p> <p>1 <b>A. I don't know.</b> 2 Q. Okay. Well, you can go through it and tell me 3 if you see any mention of doctrine of merger on there. 4 <b>A. Once again, I may have missed it because I</b> 5 <b>have, as I just told you, I have impacted vision. So</b> 6 <b>I -- I don't see it offhand.</b> 7 Q. And when you originally signed off on this 8 document, did you understand everything that was written 9 on here? 10 <b>A. Everything? I have no idea whether I did or</b> 11 <b>didn't.</b> 12 Q. Okay. You have no idea whether you understood 13 what you signed; is that correct? 14 <b>A. At that time, yes.</b> 15 Q. Okay. And so would you agree with me that, to 16 your knowledge, you have not agreed to any waiver of the 17 doctrine of merger? 18 MR. MUSHKIN: Objection. Calls for a legal 19 conclusion. 20 You certainly -- 21 <b>THE WITNESS: Once again, I have no idea what</b> 22 <b>the doctrine of merger is.</b> 23 BY MS. BARRAZA: 24 Q. Okay. So what I'm trying to figure out is 25 since you have no idea what it is, would you also agree</p>
<p>39</p> <p>1 Q. Okay. So exactly what kind of monetary damages 2 is the trust seeking for its breach of contract claim? 3 <b>A. We'd have to accumulate them, and we'd answer</b> 4 <b>that question.</b> 5 Q. Okay. So you have no idea how much damages, 6 monetary damages? 7 <b>A. No, not without calculating it.</b> 8 Q. Okay. Now, what's the trust's basis for 9 asserting a breach of contract claim when it's already 10 transferred its interest to CBC? 11 MR. MUSHKIN: Objection. Calls for a legal 12 conclusion. It's been asked and answered. Counsel, you 13 asked the exact same question five minutes ago. 14 BY MS. BARRAZA: 15 Q. Okay. You're not going to answer that 16 question? We'll move on. 17 So going back -- I want to move on to the 18 exhibit that you were on, Exhibit 19. So would you 19 agree with me that this document, L 001 on Exhibit 19 -- 20 tell me when you're there. 21 <b>A. Yeah, okay.</b> 22 Q. Are you there? 23 <b>A. Yes.</b> 24 Q. There is no mention on this document of the 25 doctrine of merger; is that correct?</p>	<p>41</p> <p>1 with me that you've never agreed to waive it off? 2 <b>A. I'm not even sure how those two tie together.</b> 3 (Court reporter interrupts.) 4 <b>THE WITNESS: -- how they tie together.</b> 5 BY MS. BARRAZA: 6 Q. Okay. Well, let me ask you this: Do you have 7 any specific personal recollection of ever waiving off a 8 doctrine of merger? 9 <b>A. No.</b> 10 Q. Thank you. Okay. All right. 11 So I want to go back to -- back to the 12 counterclaim. So do you have any idea what other 13 counterclaim the trust is asserting against SJC? 14 <b>A. Not without reviewing it.</b> 15 Q. Okay. Are you familiar that the trust has 16 asserted a claim against SJC for alter ego? 17 <b>A. Sounds logical.</b> 18 Q. Okay. So what's your basis for that? What's 19 the trust's basis for that claim? 20 <b>A. Just all the kinds of things that Mr. Bloom has</b> 21 <b>perpetrated.</b> 22 Q. Like what? 23 <b>A. Hasn't paid for and hasn't closed, hasn't</b> 24 <b>provided by the time frames available to him for the</b> 25 <b>pending of the forbearance. I want this house done</b></p>

<p>42</p> <p>1 with.</p> <p>2 Q. Okay. Have you personally reviewed SJC's</p> <p>3 accounting and financial records?</p> <p>4 A. Never saw them.</p> <p>5 Q. Sorry. Did you say "never saw them"?</p> <p>6 A. I have never seen the --</p> <p>7 (Court reporter interrupts.)</p> <p>8 THE WITNESS: -- the records.</p> <p>9 MR. MUSHKIN: Are you talking about SJC, or are</p> <p>10 you talking about SHAC?</p> <p>11 MS. BARRAZA: I'm talking about SJC.</p> <p>12 MR. MUSHKIN: Objection to the form of the</p> <p>13 question. Vague and ambiguous. He has no interest in</p> <p>14 SJC. Why would he see their financial records?</p> <p>15 He already answered the question. I just want</p> <p>16 to register my objection.</p> <p>17 BY MS. BARRAZA:</p> <p>18 Q. Okay. Now, are you familiar --</p> <p>19 MR. MUSHKIN: Of SHAC. I'm sorry.</p> <p>20 BY MS. BARRAZA:</p> <p>21 Q. Are you familiar that your alter -- the trust's</p> <p>22 alter ego counterclaim is with respect to SJC? Are you</p> <p>23 familiar with that?</p> <p>24 A. Not without referring to it.</p> <p>25 Q. Okay. And are you familiar that the -- the</p>	<p>44</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. And do you have any personal knowledge</p> <p>3 of SJC failing to observe corporate formalities?</p> <p>4 A. I don't even know who they are.</p> <p>5 Q. Okay. All right. And so moving on, getting</p> <p>6 back to the property, were you the original owner of the</p> <p>7 property at issue here?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And can you give me just some brief</p> <p>10 background as to how you came about purchasing this</p> <p>11 property.</p> <p>12 A. I bought the lot from the builder, from the</p> <p>13 developer, and I contracted a contracting company to</p> <p>14 build the house.</p> <p>15 Q. Okay. And how much was -- was it to buy the</p> <p>16 lot?</p> <p>17 A. A million-eight.</p> <p>18 Q. Okay. And if we could turn to Exhibit 1.</p> <p>19 (Exhibit 1 was marked for the record.)</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. Are you there?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. What do you recognize Exhibit 1 to be?</p> <p>25 A. Part of the escrow transaction acquiring the</p>
<p>43</p> <p>1 trust's alter ego claim is claiming that Jay Bloom is</p> <p>2 the alter ego of SJC Ventures?</p> <p>3 MR. MUSHKIN: Asked and answered.</p> <p>4 You can answer it again.</p> <p>5 THE WITNESS: It sure -- sure seems like it's</p> <p>6 an alter ego of --</p> <p>7 (Court reporter interrupts.)</p> <p>8 THE WITNESS: -- Bloom's.</p> <p>9 BY MS. BARRAZA:</p> <p>10 Q. Okay. You're saying it seems like SJC is an</p> <p>11 alter ego of Bloom's; is that what you're saying?</p> <p>12 A. Absolutely.</p> <p>13 Q. Okay. And you've never seen SJC's financial</p> <p>14 records. Do you have any personal knowledge of SJC</p> <p>15 being undercapitalized?</p> <p>16 A. I have no idea.</p> <p>17 Q. Do you have any personal knowledge of SJC being</p> <p>18 insolvent?</p> <p>19 A. I have no idea.</p> <p>20 Q. Do you have any personal knowledge of Jay Bloom</p> <p>21 commingling any of SJC's funds with his own personal</p> <p>22 funds?</p> <p>23 A. No, but it sounds like something he'd probably</p> <p>24 do.</p> <p>25 Q. Okay. That's just your speculation; right?</p>	<p>45</p> <p>1 lot.</p> <p>2 Q. Okay. And would you agree with me that Exhibit</p> <p>3 1 is a Grant, Bargain, Sale Deed where the -- it's</p> <p>4 indicating that the property is being issued to Kenneth</p> <p>5 M. Antos and Sheila M. Neumann-Antos, husband and wife,</p> <p>6 as joint tenants?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And this was dated -- it was recorded</p> <p>9 April 16th, 20-- 2007.</p> <p>10 Does that sound about right to you?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And so is it -- would you agree that</p> <p>13 this Grant, Bargain, Sale Deed is evidencing you and</p> <p>14 your wife purchasing the property and owning it as joint</p> <p>15 tenants?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And so originally the property was put</p> <p>18 into your name and your wife's name as individuals and</p> <p>19 as joint tenants and not into any kind of trust; is that</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It was later on down the line that the</p> <p>23 property was transferred to a trust; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Now, do you recall whether there was</p>



<p style="text-align: right;">46</p> <p>1 a -- a deed of trust initially associated with this  2 purchase?  3 <b>A. It's been a while. I have no idea. I assume</b>  4 <b>there is.</b>  5 Q. Okay. That's fine. We can turn to Exhibit 2.  6 (Exhibit 2 was marked for the record.)  7 <b>THE WITNESS: Hang on.</b>  8 <b>Okay.</b>  9 BY MS. BARRAZA:  10 Q. Okay. And I'll represent to you this is -- is  11 a -- it's titled "Deed of Trust," and it was recorded  12 April 16, 2007, and it's with respect to Colonial Bank.  13 Do you recall having, you know, business  14 relations with Colonial Bank regarding the property?  15 <b>A. Yes.</b>  16 Q. Okay. Does that refresh any of your  17 recollection about what Colonial Bank was doing?  18 <b>A. Well, I remember Colonial Bank, but I don't</b>  19 <b>know what your question is.</b>  20 Q. Did Colonial Bank provide any kind of loan to  21 you?  22 <b>A. I believe they did.</b>  23 Q. Okay. Do you recall the amount of the loan?  24 <b>A. No.</b>  25 Q. Okay. And you would agree that this Deed of</p>	<p style="text-align: right;">48</p> <p>1 BY MS. BARRAZA:  2 Q. And this, I'll represent, is titled  3 "Construction Deed of Trust," and it's recorded December  4 22nd, 2008, and with Southwest USA Bank.  5 <b>A. Yes.</b>  6 Q. Is that --  7 <b>A. Okay.</b>  8 Q. Do you have any reason to dispute the  9 legitimacy and the authenticity of that Construction  10 Deed of Trust with Southwest USA Bank?  11 <b>A. No.</b>  12 Q. Okay. Do you have a personal recollection of  13 Southwest USA Bank providing a construction deed of -- a  14 construction loan to you?  15 <b>A. Yes.</b>  16 Q. Okay. Do you recall the amount of the loan?  17 <b>A. I don't have the exact amount. Three</b>  18 <b>million-something.</b>  19 Q. Okay. And were those funds used for purposes  20 of constructing and building the building on the  21 property?  22 <b>A. All of them.</b>  23 MR. MUSHKIN: A little louder.  24 <b>THE WITNESS: All of the funds came out of</b>  25 <b>the -- Southwest to build the house.</b></p>
<p style="text-align: right;">47</p> <p>1 Trust, Exhibit 2, is evidencing Colonial Bank having a  2 deed of trust with respect to this property; correct?  3 <b>A. I'm not sure what it -- what it represents.</b>  4 Q. Okay. Do you have any reason to dispute that?  5 <b>A. I don't --</b>  6 MR. MUSHKIN: Objection to the form of the  7 question. Vague and ambiguous. The document speaks for  8 itself.  9 Are you asking him if the Deed of Trust is  10 valid today, or are you asking him was it valid at the  11 time of the signing?  12 BY MS. BARRAZA:  13 Q. I'll ask you was it valid at the time of  14 signing?  15 <b>A. As far as I know, it was.</b>  16 Q. Sorry. I didn't hear you.  17 <b>A. As far as I know, it was.</b>  18 Q. Okay. And it's your testimony you have no  19 reason to dispute the legitimacy and authenticity of  20 this Exhibit 2; correct?  21 <b>A. Correct.</b>  22 Q. Okay. Moving on to Exhibit 3. Tell me  23 whenever you're there.  24 (Exhibit 3 was marked for the record.)  25 <b>THE WITNESS: Okay. I'm there.</b></p>	<p style="text-align: right;">49</p> <p>1 BY MS. BARRAZA:  2 Q. Okay. Understood.  3 Going on, tell me whenever you're at Exhibit 4.  4 (Exhibit 4 was marked for the record.)  5 <b>THE WITNESS: Okay.</b>  6 BY MS. BARRAZA:  7 Q. Okay. Exhibit 4, I'll represent to you, is  8 titled a "Substitution of Trustee and Deed of Full  9 Reconveyance" recorded March 17th, 2009, and this is --  10 do you recall this document at all?  11 <b>A. No.</b>  12 Q. Okay. Do you have any reason to dispute the  13 authenticity and legitimacy of this document?  14 <b>A. Upon -- if I had a chance to understand it, I</b>  15 <b>would -- it says Colonial Bank or whatever. I assume</b>  16 <b>it's correct.</b>  17 Q. Okay. Let's go to Exhibit 5.  18 (Exhibit 5 was marked for the record.)  19 <b>THE WITNESS: Okay.</b>  20 BY MS. BARRAZA:  21 Q. Now, Exhibit 5, I'll represent, is titled  22 "Grant, Bargain, Sale Deed"; it's recorded October 14th,  23 2010. And my understanding of this document, tell me if  24 it's also your understanding, this is appearing to  25 transfer the deed of the property from you and your wife</p>

<p>50</p> <p>1 as joint tenants individ- -- and putting it into -- the 2 title into the trust. 3 Is that your understanding? 4 MR. MUSHKIN: To the extent it calls -- 5 <b>THE WITNESS: Yes.</b> 6 MR. MUSHKIN: -- for a legal conclusion, I 7 object, but, obviously, he can answer the question. 8 BY MS. BARRAZA: 9 Q. Sorry. What did you say? 10 <b>A. Yes.</b> 11 Q. Okay. So do you recall ever -- do you have a 12 personal recollection of getting this document prepared 13 and recorded? 14 <b>A. No.</b> 15 Q. Okay. What is your recollection as to why -- 16 what was the purpose of putting the property -- 17 transferring it from you and your wife as joint tenants 18 and putting it into a trust? What was the reasoning for 19 that? 20 <b>A. Advice based on quick escrow -- I mean, quick</b> 21 <b>handling of this in the event of one of our deaths.</b> 22 Q. Okay. So it was based on advice you had 23 received? 24 <b>A. Yes.</b> 25 Q. Okay. All right. We can go to Exhibit 6.</p>	<p>52</p> <p>1 state that the note was dated October 6, 2010. 2 Does that sound about right to you? 3 <b>A. Yes.</b> 4 Q. So if the note was dated October 6, 2010, and 5 then we have a deed of trust being recorded a few days 6 later, October 14th, 2010 -- do you see that? 7 <b>A. Yes.</b> 8 Q. Okay. And the 3,640,000, what was -- did you 9 use that for purposes of the property, or what did you 10 use that for? 11 <b>A. Purposes of the property.</b> 12 Q. Okay. What did you -- was it for building the 13 property? What was it for? 14 <b>A. Building the property.</b> 15 Q. Okay. All right. How did you -- do you recall 16 exactly how it came about that you would be getting this 17 loan specifically from City National Bank? 18 <b>A. I have -- I don't recall.</b> 19 Q. Okay. Let's go to Exhibit 7. Tell me whenever 20 you're there. 21 (Exhibit 7 was marked for the record.) 22 <b>THE WITNESS: I'm there.</b> 23 BY MS. BARRAZA: 24 Q. Exhibit 7, I'll represent, is called 25 "Substitution of Trustee and Deed of Reconveyance."</p>
<p>51</p> <p>1 Tell me whenever you're there. 2 (Exhibit 6 was marked for the record.) 3 MR. MUSHKIN: That was 6. 4 MS. BARRAZA: That was 5. 5 MR. MUSHKIN: Oops. Give me 6. I turned too 6 fast. Oh, no, we're at 6. Sorry. Never mind. 7 BY MS. BARRAZA: 8 Q. So 6, I'll represent, is titled "Deed of 9 Trust." It's recorded October 14th, 2010, and it's with 10 respect to City National Bank. 11 Do you see that? 12 <b>A. Yes.</b> 13 Q. Okay. Do you have any recollection of City 14 National Bank providing any kind of loan? 15 <b>A. Yes.</b> 16 Q. Okay. And what was the amount of that loan 17 that you recall? 18 <b>A. I believe it was 3 million -- 3.4 million, or</b> 19 <b>thereabouts.</b> 20 Q. Okay. And was that -- I'll represent to you 21 that on page 646 of Exhibit 6, which is the first page, 22 it does state the amount is 3,640,000. 23 Do you have any reason to dispute that? 24 <b>A. No.</b> 25 Q. Okay. And so that note -- and it does also</p>	<p>53</p> <p>1 It's recorded October 27th, 2010. It looks like it's 2 regarding Southwest USA Bank. 3 Do you see that? 4 <b>A. Yes.</b> 5 Q. Okay. Do you have any reason to dispute the 6 legitimacy of this document? 7 <b>A. No.</b> 8 Q. Let's go to Exhibit 8. 9 <b>A. Okay.</b> 10 (Exhibit 8 was marked for the record.) 11 BY MS. BARRAZA: 12 Q. Exhibit 8 is titled "Deed of Trust and 13 Assignment of Rents," and it's recorded November 30th, 14 2010, and it's regarding City National Bank. 15 Do you see that? 16 <b>A. Yes.</b> 17 Q. Okay. And do you have any reason to dispute 18 the authenticity of this document? 19 <b>A. No.</b> 20 Q. Okay. Now, I want to go back to discussing -- 21 I want to go back to discussing that 3- -- that note 22 that you had with City Bank for 3,640,000. 23 Do you recall that? 24 <b>A. Yes.</b> 25 Q. Okay. Now, that note, that was a note issued</p>

<p>54</p> <p>1 to the trust because the trust was the owner of the 2 property; is that correct? 3 <b>A. As far as I know.</b> 4 Q. Okay. All right. We can go to the next 5 exhibit, Exhibit 10. 6 <b>A. Yeah.</b> 7 Q. Actually, we're on Exhibit 9. If we can go to 8 Exhibit 9. 9 MR. MUSHKIN: We're on 9. 10 (Exhibit 9 was marked for the record.) 11 MS. BARRAZA: Are you there? 12 MR. MUSHKIN: Yes. 13 BY MS. BARRAZA: 14 Q. Okay. So Exhibit 9 is entitled "Revolving 15 Credit Deed of Trust Security Agreement and Assignment 16 of Rents" recorded April 4th, 2011, and it's regarding 17 Northern Trust Bank. 18 Do you see that? 19 <b>A. Yes.</b> 20 Q. Do you have any reason to dispute the 21 authenticity of this document? 22 <b>A. No.</b> 23 Q. Okay. What's your understanding of what was -- 24 what Northern Trust Bank was doing? 25 <b>A. It gave me a HELOC.</b></p>	<p>56</p> <p>1 2014. 2 Do you see that? 3 <b>A. Yes.</b> 4 Q. And it's with respect to -- this references CBC 5 Partners I, LLC, a Washington limited liability company. 6 Do you see that? 7 <b>A. Yes.</b> 8 Q. Okay. So what's your understanding of what 9 this deed of trust for CBC is doing? 10 <b>A. CBC lent the company I was with additional 11 funds and said, "If you guarantee this, we will lend the 12 funds, but we need a deed of trust to substantiate it," 13 and that's why this was prepared.</b> 14 (Court reporter interrupts.) 15 <b>THE WITNESS: -- this was prepared.</b> 16 BY MS. BARRAZA: 17 Q. Okay. And what company was CBC loaning that 18 money to? 19 <b>A. KCI Investments, I --</b> 20 Q. Okay. 21 <b>A. -- believe, at that time.</b> 22 Q. And what was KCI Investments in the business of 23 doing? 24 <b>A. Operating restaurants.</b> 25 Q. Okay. Now, were there -- so there was an</p>
<p>55</p> <p>1 Q. Okay. And that was issued to -- let me strike 2 that. 3 MR. MUSHKIN: It's to the trustees. 4 MS. BARRAZA: Perfect. Okay. 5 BY MS. BARRAZA: 6 Q. It's to the trustees, and I just want to 7 acknowledge page 700 of Exhibit 9. 8 Are you there? 9 <b>A. Yes.</b> 10 MR. MUSHKIN: The executed page? 11 MS. BARRAZA: Yes. 12 BY MS. BARRAZA: 13 Q. So I just want to confirm, this is your 14 signature here, you did execute this, and it was on 15 behalf of the trustee -- of the trust; correct? 16 <b>A. Correct.</b> 17 Q. Okay. Okay. We can go to Exhibit 10. 18 (Exhibit 10 was marked for the 19 record.) 20 BY MS. BARRAZA: 21 Q. Are you there? 22 <b>A. Yes.</b> 23 Q. Okay. So Exhibit 10, I'll represent, is -- it 24 says "Deed of Trust, Assignment of Rents, Security 25 Agreement and Fixture Filing" recorded on December 29th,</p>	<p>57</p> <p>1 underlying note, correct, between CBC and KCI; is that 2 correct? 3 <b>A. Correct.</b> 4 Q. Okay. And did that underlying note undergo 5 several amendments to it? 6 <b>A. Yes.</b> 7 Q. Okay. Do you recall -- as you sit here today, 8 do you have a recollection as to when the first note was 9 issued between CBC and KCI? 10 <b>A. I believe in 2012.</b> 11 Q. All right. So if we could turn to Exhibit 17 12 and then I'll tell you what page to go to. 13 (Exhibit 17 was marked for the 14 record.) 15 BY MS. BARRAZA: 16 Q. Are you on Exhibit 17? 17 <b>A. Yes.</b> 18 Q. Okay. All right. If we could go to page 912. 19 Are you there? 20 <b>A. Yes.</b> 21 Q. Okay. So this page 912 on Exhibit 17, at the 22 top of it, it says "Secured Promissory Note." It says 23 "300,000," and then it also has a date, June 22nd, 2012. 24 Do you see that? 25 <b>A. Yes.</b></p>



<p>58</p> <p>1 Q. And it references the borrower being KCI 2 Investments. I think like you testified earlier, KCI 3 Investments, LLC, and it's saying "...promises to pay 4 CBC Partners I, LLC..." and then it goes -- the amount 5 is 300,000. 6 Does that sound about right to you? 7 <b>A. As far as I can recall.</b> 8 Q. Okay. And your earlier testimony was the first 9 note was from 2012, which this is dated 2012. Do you 10 have any recollection of any prior notes to this Secured 11 Promissory Note, or is this, to your recollection, the 12 first note? 13 MR. MUSHKIN: Objection to the form of the 14 question. Vague and ambiguous. 15 Do you mean as to this transaction, of course? 16 BY MS. BARRAZA: 17 Q. Okay. So is this the first note as far as with 18 the transactions between CBC and KCI, to your knowledge? 19 <b>A. As far as I remember.</b> 20 Q. Okay. You have no reason to dispute that this 21 is the first note; correct? 22 <b>A. I believe it is.</b> 23 Q. Okay. I want to go to the signature on that, 24 which is -- hold on -- so it looks like it's on page 25 927. Tell me whenever you're there.</p>	<p>60</p> <p>1 Q. Okay. And you used it for -- it was a 2 commercial loan; correct? 3 <b>A. Yes.</b> 4 Q. Okay. And it was for the use of operating your 5 various businesses and sorts; correct? 6 <b>A. This business.</b> 7 Q. Okay. This KCI business; correct? 8 <b>A. Correct.</b> 9 Q. Okay. Understood. 10 All right. And I think you had touched on it 11 earlier, you did sign a guarantee; correct? 12 <b>A. Yes.</b> 13 Q. And that guarantee was signed in your 14 individual capacity; correct? 15 MR. MUSHKIN: Objection to the form of the 16 question. Calls for a legal conclusion. 17 What document, Counsel? 18 MS. BARRAZA: We can find one of the 19 guarantees. One second. Hold on. 20 There's a guarantee on -- 21 MR. MUSHKIN: I have -- 22 MS. BARRAZA: There's numerous guarantees in 23 this batch, but -- 24 MR. MUSHKIN: I'm on 952. 25 MS. BARRAZA: Let me go to 952. Hold on.</p>
<p>59</p> <p>1 <b>A. Okay.</b> 2 Q. Okay. And so you -- is it correct that you 3 signed off on this document? It says "By: Ken Antos" 4 in your capacity as the managing member of KCI 5 Investments; correct? 6 <b>A. Yes.</b> 7 Q. Okay. And then it looks like CBC Partners 8 signed off. Is that your understanding as well? 9 <b>A. Yes.</b> 10 Q. Okay. And then it looks like there was -- if 11 you go on to page 930, a few pages later, it looks like 12 there's a Security Agreement with this note. 13 Do you see that? 14 <b>A. Yes.</b> 15 Q. And it looks like the Security Agreement is 16 dated June 22nd, 2012; so same time frame. Do you recall 17 also signing a Security Agreement in addition to a note 18 with CBC Partners? 19 <b>A. Signed a guarantee. I -- probably a Security</b> 20 <b>Agreement. I don't recall it, but --</b> 21 Q. Okay. That's fine. 22 Now, this loan, this 300- -- it was initially 23 300,000, as we've seen. So this 300,000, what was it 24 for again? 25 <b>A. Operating capital.</b></p>	<p>61</p> <p>1 Okay. I'm on 952. 2 BY MS. BARRAZA: 3 Q. Okay. Yeah. 4 So this is an Acknowledgment and Agreement of 5 Guarantors. 6 Do you see that? 7 <b>A. Yes.</b> 8 Q. And do you see -- looks like you've signed off 9 on this document and so has Sheila Antos; correct? 10 <b>A. Yes.</b> 11 Q. Okay. Now, what did you understand this 12 guarantee to be? 13 <b>A. Guaranteeing that 300,000.</b> 14 Q. Okay. And did you understand that this would 15 be a personal guarantee, that you and Sheila are 16 personally guaranteeing this? 17 <b>A. Yes.</b> 18 Q. Okay. All right. And I think you had touched 19 on it earlier. You mentioned there were -- there were 20 various numerous modifications to this note; correct? 21 <b>A. Yes.</b> 22 Q. Okay. All right. 23 MR. MUSHKIN: Counsel, we've been going at it 24 for about an hour and a half. How about a five-minute 25 break?</p>

<p style="text-align: right;">62</p> <p>1 MS. BARRAZA: Yeah, that sounds good. No 2 problem. 3 MR. MUSHKIN: How much more do you have of him? 4 MS. BARRAZA: Maybe -- I want to say half an 5 hour, maybe. 6 MR. MUSHKIN: Great. See you in five minutes. 7 MS. BARRAZA: Okay. Thanks. 8 We can go off the record. 9 THE VIDEOGRAPHER: The time is now 10:26 a.m. 10 We are off the record. 11 (A recess was taken from 10:26 a.m. to 12 10:34 a.m.) 13 THE VIDEOGRAPHER: The time is now 10:34 a.m. 14 We are back on the record. 15 BY MS. BARRAZA: 16 Q. All right. Good morning, Mr. Antos. We're 17 back on the record. I'm sure you understand you're 18 still under oath; correct? Do you understand that? 19 <b>A. Yes.</b> 20 Q. Okay. Now, I want to go back. We do need to 21 just briefly authenticate some of these documents so 22 that there's no issue down the road. Going back to 23 Exhibit 17, 952, that guarantee that we were just 24 discussing, tell me whenever you're there. 25 <b>A. Okay.</b></p>	<p style="text-align: right;">64</p> <p>1 MR. MUSHKIN: As a general proposition, I'm not 2 aware of any authentication issues that exist. 3 MS. BARRAZA: Okay. 4 MR. MUSHKIN: 930 is -- what page do you want 5 to go to, the signature page? 6 MS. BARRAZA: Yeah, if you can look at 930 7 first. 8 BY MS. BARRAZA: 9 Q. And do you see how that's the Security 10 Agreement dated June 22nd, 2012? 11 <b>A. Yes.</b> 12 Q. Okay. And then do you see this is the Security 13 Agreement between KCI Investments as the debtor and CBC 14 Partners I, LLC, as the secured party? 15 Is that your understanding as well? 16 <b>A. Yes.</b> 17 Q. Okay. And then going to the signature page, 18 which it looks like is on 944, tell me whenever you're 19 there. 20 MR. MUSHKIN: I'm on 949. 21 MS. BARRAZA: Oh. 949? I think that's beyond 22 because that gets into the tenth modification. 23 MR. MUSHKIN: You might be right. 944, okay. 24 BY MS. BARRAZA: 25 Q. All right. 944, it looks like -- who's Robert</p>
<p style="text-align: right;">63</p> <p>1 MR. MUSHKIN: We just did that. 2 BY MS. BARRAZA: 3 Q. Yeah, and so I just want to make sure for the 4 record, this 952 document, this is an authentic 5 document, and there's no issues with its authenticity; 6 is that correct? 7 <b>A. Not as far as I know.</b> 8 Q. Okay. And that is your signature; correct? 9 <b>A. Yes.</b> 10 Q. Okay. I just want to make sure. 11 And for this guarantee, the trust is not a 12 guarantor; is that correct? 13 <b>A. That is correct.</b> 14 Q. Okay. And then going back to -- we also 15 discussed the Security Agreement, which it looks like 16 you signed on -- let me just go back to that Security 17 Agreement. 18 Okay. I'm seeing it on page 930, so tell me 19 whenever you're there, of Exhibit 17. 20 MR. MUSHKIN: I get 927 on the first grab. 21 Now, you're referencing the Security Agreement, 22 Counsel? 23 MS. BARRAZA: Yeah, I want to go to the 24 Security Agreement, and then I'll go to the note. So 25 930 -- 930.</p>	<p style="text-align: right;">65</p> <p>1 Walsh? Is he -- was he a managing member of KCI 2 Investments, LLC? 3 <b>A. At one point, he was.</b> 4 Q. Okay. And it looks like he signed off on this. 5 Is that your understanding as well? 6 <b>A. Yes.</b> 7 Q. Okay. So from your testimony here, you have no 8 reason to dispute the authenticity and legitimacy of the 9 Security Agreement; correct? 10 <b>A. No.</b> 11 Q. Okay. And then going back to the note, the 12 first note, the original note. I'll try to find the -- 13 I think it's page 912, tell me whenever you're there, of 14 Exhibit 17. 15 MR. MUSHKIN: We're there. 16 BY MS. BARRAZA: 17 Q. Okay. So page 912, this is the Secured 18 Promissory Note that we spoke about dated June 22nd, 19 2012, for the 300,000, and this is between KCI 20 Investments, LLC, and CBC Partners I, LLC. 21 Is that your understanding? 22 <b>A. Yes.</b> 23 Q. And then if you go through that and you get to 24 the signature page, which is -- looks like it's on 927. 25 Tell me whenever you're there.</p>

<p>66</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. Is that your signature where it says "Ken</p> <p>3 Antos" on 927?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. And you have no reason to dispute the</p> <p>6 legitimacy and authenticity of the original note between</p> <p>7 KCI Investments, LLC, and CBC Partners I, LLC; correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. All right. And I want to touch base -- it</p> <p>10 looks like, as we discussed, this original note was from</p> <p>11 2012, and then we discussed there's a deed of trust that</p> <p>12 was recorded some two years later in 2014. So I'm</p> <p>13 trying to understand, how did we get to the point of CBC</p> <p>14 having a deed of trust and that being recorded two years</p> <p>15 after the -- the initial note?</p> <p>16 <b>A. Dollars.</b></p> <p>17 (Court reporter interrupts.)</p> <p>18 <b>THE WITNESS: The amount of dollars increased</b></p> <p>19 <b>to the point they did not want to take the risk. So</b></p> <p>20 <b>they wanted collateral.</b></p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. Okay. So you're saying that there were --</p> <p>23 there were numerous modifications to this loan; correct?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. Okay. And you're saying that in one of the</p>	<p>68</p> <p>1 Q. And so tell me when you're there.</p> <p>2 <b>A. I'm there.</b></p> <p>3 Q. Okay. So this is, obviously, you're signing,</p> <p>4 and it looks like Sheila's signing in your capacities,</p> <p>5 obviously, as the -- the trustee of the -- of the trust;</p> <p>6 is that correct?</p> <p>7 <b>A. I don't see Sheila signing this.</b></p> <p>8 Q. It looks like on -- in the middle of page 723.</p> <p>9 MRS. NEUMANN-ANTOS: (Indicating).</p> <p>10 <b>THE WITNESS: Oh, yeah. Thank you.</b></p> <p>11 BY MS. BARRAZA:</p> <p>12 Q. Okay. So you would agree that you signed off</p> <p>13 on this -- on this Deed of Trust with CBC in your</p> <p>14 capacity as the trustee of the trust; correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Because the trust -- by this time, the trust</p> <p>17 was the -- the owner of record of the property; correct?</p> <p>18 <b>A. That is correct.</b></p> <p>19 Q. Okay. And so, you know, our question is why is</p> <p>20 the trust basically signing off on a deed of trust for</p> <p>21 whatever -- the underlying note was not issued to the</p> <p>22 trust? That's what we're trying to figure out.</p> <p>23 MR. MUSHKIN: Objection. Calls for a legal</p> <p>24 conclusion.</p> <p>25 Answer if you can, please.</p>
<p>67</p> <p>1 modifications, it got to the point where CBC was</p> <p>2 demanding to also have a deed of trust on the property;</p> <p>3 is that correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Okay. Now, do you recall what modification</p> <p>6 that was -- that was in?</p> <p>7 <b>A. I'm not understanding.</b></p> <p>8 Q. As far as do you recall if that agreement is</p> <p>9 set forth and memorialized in, like, the fourth</p> <p>10 modification, the fifth modification, the sixth</p> <p>11 modifica- --</p> <p>12 <b>A. Not that I can --</b></p> <p>13 Q. Okay. That's fine.</p> <p>14 And then looking through these documents, do</p> <p>15 you have any recollection of the -- the trust signing</p> <p>16 off on any -- on any of these modifications?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Okay. And do you have any recollection of</p> <p>19 the -- let me strike that.</p> <p>20 So the Deed of Trust -- if we go to Exhibit 10,</p> <p>21 if we can go back to Exhibit 10.</p> <p>22 <b>A. Okay. We're there.</b></p> <p>23 Q. Okay. And if we can go to the -- the signature</p> <p>24 page. It looks like it's on page 723 of Exhibit 10.</p> <p>25 <b>A. Okay.</b></p>	<p>69</p> <p>1 <b>THE WITNESS: I don't see any problem with it.</b></p> <p>2 BY MS. BARRAZA:</p> <p>3 Q. Okay. And did you ever have any legal counsel</p> <p>4 when you were signing off on all these modifications to</p> <p>5 the note between KCI and CBC?</p> <p>6 <b>A. Other than CBC's, no.</b></p> <p>7 Q. Okay. And was CBC drafting all these</p> <p>8 modifications to the note?</p> <p>9 <b>A. As far as I can remember.</b></p> <p>10 Q. Okay. And did you ever have a conversation</p> <p>11 with CBC about you and Sheila Antos not being the owners</p> <p>12 of the property, the owners of record of the property?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Okay. Now -- one second.</p> <p>15 Now, do you have any recollection of the trust</p> <p>16 ever receiving any kind of consideration in return for</p> <p>17 this Deed of Trust being signed?</p> <p>18 MR. MUSHKIN: Objection to the extent it calls</p> <p>19 for a legal conclusion.</p> <p>20 <b>THE WITNESS: Trust specifically, no, I don't.</b></p> <p>21 BY MS. BARRAZA:</p> <p>22 Q. Okay. Now, did you have any discussions</p> <p>23 with -- actually, going back a little bit with CBC and</p> <p>24 your relations with CBC, how exactly did it come about</p> <p>25 that CBC specifically would be issuing this note, the</p>

<p style="text-align: right;">70</p> <p>1 initial \$300,000 note?</p> <p>2 <b>A. Somebody who mutually knew them brought them to</b></p> <p>3 <b>me.</b></p> <p>4 Q. Okay. And do you recall who that was?</p> <p>5 <b>A. A gentleman out of Newport Beach.</b></p> <p>6 Q. Okay. Do you recall his name?</p> <p>7 <b>A. No, I don't.</b></p> <p>8 Q. Okay. And when you were negotiating the loan,</p> <p>9 the initial \$300,000 loan with CBC, did you have</p> <p>10 discussions as to whether CBC was authorized to conduct</p> <p>11 business in the state of Nevada?</p> <p>12 <b>A. No --</b></p> <p>13 Q. Okay.</p> <p>14 <b>A. -- I didn't have discussions.</b></p> <p>15 Q. And did CBC ever disclose to you whether they</p> <p>16 were a registered company with the Secretary of State to</p> <p>17 conduct business in Nevada?</p> <p>18 <b>A. I would say I do recall.</b></p> <p>19 Q. Okay. All right. So what I want you to do, do</p> <p>20 you recall providing these documents -- and when I say</p> <p>21 "these documents," I'm referring to Exhibit 17, which is</p> <p>22 the underlying note between KCI and CBC Partners and</p> <p>23 various modifications to the note. Do you recall</p> <p>24 providing those documents to Jay Bloom at some point?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">72</p> <p>1 <b>A. That is correct.</b></p> <p>2 Q. Okay. And so what exactly did the trust get</p> <p>3 for signing that deed of trust, which is Exhibit 10 --</p> <p>4 what did the trust get for signing that Deed of Trust</p> <p>5 for the property?</p> <p>6 MR. MUSHKIN: To the extent it calls for a</p> <p>7 legal conclusion, we object to the form of the question.</p> <p>8 <b>THE WITNESS: It got a, you know, continued</b></p> <p>9 <b>good relationship with the Otters and with CBC.</b></p> <p>10 BY MS. BARRAZA:</p> <p>11 Q. Okay. And I just want to clarify, there --</p> <p>12 there isn't going to be any documentation showing the</p> <p>13 trust getting any kind of monetary consideration;</p> <p>14 correct?</p> <p>15 <b>A. Not that I --</b></p> <p>16 Q. Okay. All right. And so what kind of a</p> <p>17 relationship did the trust have with CBC? Any kind of</p> <p>18 business relationship between the trust and CBC?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Okay. All right.</p> <p>21 All right. If we can go back to Exhibit 17 --</p> <p>22 tell me whenever you're there.</p> <p>23 MR. MUSHKIN: We're in Exhibit 17.</p> <p>24 MS. BARRAZA: Okay. Perfect.</p> <p>25 /////</p>
<p style="text-align: right;">71</p> <p>1 Q. Okay. So what I'm trying to figure out is do</p> <p>2 you -- are you going to have any dispute as to the</p> <p>3 authenticity of these various documents that appear to</p> <p>4 have your signature on them and that relate to the --</p> <p>5 the note that CBC provided to KCI? And if you want to</p> <p>6 go through them, you can. What we're trying to figure</p> <p>7 out is is there going to be any authenticity issues with</p> <p>8 this batch of documents in Exhibit 17?</p> <p>9 MR. MUSHKIN: To the extent it calls for a</p> <p>10 legal conclusion, we object to the form of the question.</p> <p>11 I think I've already stated on the record that generally</p> <p>12 speaking there are no authenticity issues, Counsel.</p> <p>13 MS. BARRAZA: Okay.</p> <p>14 MR. MUSHKIN: Most of the documents are</p> <p>15 recorded, and those that aren't make, you know, logical</p> <p>16 sense. So I don't believe there will be an authenticity</p> <p>17 issue.</p> <p>18 MS. BARRAZA: Okay.</p> <p>19 BY MS. BARRAZA:</p> <p>20 Q. Now, I just want to clarify for the record. So</p> <p>21 the Antos -- the trust itself was not the borrower on</p> <p>22 this commercial loan with CBC; is that correct?</p> <p>23 <b>A. That is correct.</b></p> <p>24 Q. Okay. And the trust itself also was not a</p> <p>25 guarantor on the note; is that correct?</p>	<p style="text-align: right;">73</p> <p>1 BY MS. BARRAZA:</p> <p>2 Q. I want -- I just want to look at that first</p> <p>3 page, 794. Do you see how it says "First Amendment to</p> <p>4 Intercreditor Agreement"?</p> <p>5 MR. MUSHKIN: Yes.</p> <p>6 MS. BARRAZA: Okay.</p> <p>7 MR. MUSHKIN: We're there.</p> <p>8 BY MS. BARRAZA:</p> <p>9 Q. And then it looks like there's a signature on</p> <p>10 page 796. Do you see that?</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. It looks like -- is Preferred Restaurant</p> <p>13 Brands, was that one of your companies?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. And it looks like somebody -- this looks</p> <p>16 like this says "Gary."</p> <p>17 Do you know a Gary?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Gary Dock or Deck?</p> <p>20 <b>A. Oh, hold on. Yeah.</b></p> <p>21 MR. MUSHKIN: (Indicating).</p> <p>22 <b>THE WITNESS: I'm not sure.</b></p> <p>23 BY MS. BARRAZA:</p> <p>24 Q. Okay. What I'm trying to figure out is is</p> <p>25 there any issue with this First Amendment to the</p>



<p>74</p> <p>1 Intercreditor Agreement? Do you agree that there was a 2 first amendment that was done with CBC to that 3 Intercreditor Agreement? 4 <b>A. Yes.</b> 5 Q. Okay. And you're not disputing the 6 authenticity of that agreement? 7 <b>A. No.</b> 8 Q. Okay. And then there was a first modification 9 to the promissory note, it looks like, on page 797. 10 Do you see that? 11 <b>A. Yes.</b> 12 Q. Okay. Is that a true and accurate copy of the 13 first modification, to your knowledge? 14 Do you want me to repeat it? 15 <b>A. I believe the answer's yes.</b> 16 Q. Oh, the answer is yes? Okay. All right. 17 And so you signed off on that first 18 modification; correct? 19 <b>A. Yes.</b> 20 Q. Okay. And then it looks like on page 7 -- 21 actually, page 801 of Exhibit 17, there's a second 22 modification. 23 Do you see that? 24 <b>A. Hold on.</b> 25 Q. 801.</p>	<p>76</p> <p>1 looks like that is the first Intercreditor Agreement 2 with TCA Global Credit Master Fund, CBC Partners, and 3 Preferred Restaurant Brands. Do you remember having an 4 intercreditor agreement that went to Preferred 5 Restaurant Brands? 6 <b>A. Yes.</b> 7 Q. Okay. So is that an authentic document as far 8 as -- as far as you know? 9 <b>A. Yes.</b> 10 Q. And then looks like there was a fifth 11 modification on page 818. 12 <b>A. Okay. We're there.</b> 13 Q. Does that look like a true and accurate copy of 14 the fifth modification where it was between KCI 15 Investments and CBC Partners? 16 <b>A. Yes.</b> 17 Q. All right. It looks like you signed off on 18 this document on page 821. So is that your signature? 19 MR. MUSHKIN: I can't decide which one of us is 20 worse at this. 21 <b>THE WITNESS: I know it's me.</b> 22 MR. MUSHKIN: I can't decide which one of us is 23 worse. 24 <b>THE WITNESS: Yes, it is.</b> 25 <b>////</b></p>
<p>75</p> <p>1 <b>A. Yes.</b> 2 Q. And is that a true and accurate copy of the 3 second modification, to your knowledge? 4 <b>A. Looks like it.</b> 5 MR. MUSHKIN: Here is the -- 6 <b>THE WITNESS: Yes.</b> 7 BY MS. BARRAZA: 8 Q. Okay. And you signed off on that; correct? 9 <b>A. Yes, I did.</b> 10 Q. Okay. And then there's -- there's various 11 acknowledgment and agreements of guarantors in this 12 packet of documents. So one of them is on page 805. 13 <b>A. Yes.</b> 14 Q. Is that your signature there? Is that 15 authentic right there? 16 <b>A. Yes.</b> 17 Q. Okay. And to your knowledge, are there any 18 documents out there where -- where the trust was a -- a 19 guarantor? 20 <b>A. No.</b> 21 Q. Okay. And you can look at page 807. That's an 22 authentic document as far as an acknowledgment and 23 agreement; correct? 24 <b>A. Looks like it. Yes.</b> 25 Q. All right. And then it looks like 809 -- it</p>	<p>77</p> <p>1 BY MS. BARRAZA: 2 Q. Okay. Looks like there's another guarantee 3 document on page 822. Is that an authentic document 4 that you signed off on? 5 <b>A. Yes.</b> 6 Q. Okay. And it looks like there's a seventh 7 modification on 823. Is that an authentic seventh 8 authentication document, to your knowledge? 9 <b>A. Yes.</b> 10 Q. And it looks like you signed off on that on 11 page 833; is that correct? 12 <b>A. Hold on.</b> 13 <b>Yes.</b> 14 Q. Okay. And then it looks like there's another 15 guarantee document that you signed personally and so did 16 Sheila, looks like on page 834; is that correct? 17 <b>A. Yes.</b> 18 Q. And that's authentic; correct? 19 <b>A. Yes.</b> 20 Q. Okay. It looks like there was a letter -- I 21 kind of want to touch on this a little bit -- on 835. 22 Do you recall getting any kind of correspondence from 23 CBC in January of 2017 regarding the loan? 24 <b>A. Well, it's here, but I -- I don't recall it.</b> 25 Q. Okay. All right. If we can go to the</p>

<p style="text-align: right;">78</p> <p>1 guarantee on page 841, it looks like there's a Guaranty,  2 and this is June 22nd, 2012. Is that an accurate,  3 authentic document, to your knowledge?  4 <b>A. Hold on.</b>  5 <b>As far as I can tell, yes.</b>  6 Q. Okay. It looks like there's another Security  7 Agreement on 852 from January of 2015. Do you have any  8 reason to dispute the authenticity of that document?  9 <b>A. No.</b>  10 Q. And it looks like you signed off on it on page  11 865; is that correct?  12 <b>A. Yes.</b>  13 Q. And then there's an eighth modification on 866.  14 Does that sound about right, doing an eighth  15 modification in January of 2015? And does that document  16 look accurate and authentic?  17 <b>A. Looks okay and it's -- I signed it.</b>  18 Q. And it looks like you signed off on it on 871.  19 Do you see that?  20 <b>A. Yes.</b>  21 Q. Okay. Any issues with the authenticity of that  22 document?  23 <b>A. No.</b>  24 Q. Looks like another Guaranty on page 872. Any  25 issues with the authenticity of that document that it</p>	<p style="text-align: right;">80</p> <p>1 901 of this guarantee?  2 <b>A. Yes.</b>  3 Q. Okay. Is that your signature also on 902?  4 <b>A. Yes.</b>  5 Q. Okay. Looks like there's a ninth modification  6 on 903. Is that authentic, to your knowledge, from  7 April of 2015?  8 <b>A. Looks it.</b>  9 Q. Is that your signature on page 910?  10 <b>A. Yes.</b>  11 Q. Is that your signature also on page 911?  12 <b>A. Yes.</b>  13 Q. Okay. And I think we already went through 912,  14 I believe.  15 MR. MUSHKIN: We did.  16 MS. BARRAZA: Okay.  17 BY MS. BARRAZA:  18 Q. So we went through 912. I just want to cover  19 all of our bases since we're the one producing these  20 documents.  21 Okay. I think we've gone through the rest of  22 these. I just want to circle back a little bit to you  23 mentioned -- you can actually go back to it, if it will  24 help you remember, Exhibit 19, and the last page of it,  25 the K001.</p>
<p style="text-align: right;">79</p> <p>1 looks like you signed off on in 880?  2 <b>A. No.</b>  3 Q. Does that document appear authentic to you?  4 <b>A. Yes.</b>  5 Q. Okay. And that is your signature on 880;  6 correct?  7 <b>A. Yes.</b>  8 Q. Okay. Another Intercreditor Agreement with  9 Preferred Restaurant Brands is on page 881. Does that  10 appear to be authentic to you?  11 <b>A. Yes.</b>  12 Q. Okay. And then there's another -- a third  13 modification on page 892 of the -- of the secured  14 promissory note. Does that appear to be accurate and  15 authentic?  16 <b>A. Yes.</b>  17 Q. Is that your signature on page 894?  18 <b>A. Yes.</b>  19 Q. And then there's a fourth modification on page  20 896. Does that appear to be accurate from November of  21 2013?  22 <b>A. Yes.</b>  23 Q. And is that your signature on page 900?  24 <b>A. Yes.</b>  25 Q. All right. And is that your signature on page</p>	<p style="text-align: right;">81</p> <p>1 <b>A. Okay.</b>  2 Q. And am I correct that earlier you had testified  3 that when you signed off on this transfer, you did not  4 have legal counsel; correct?  5 <b>A. That is correct.</b>  6 Q. Okay. And did you have any discussion with  7 Mr. Mushkin about this transfer during the time you were  8 considering signing it?  9 <b>A. No.</b>  10 Q. Sorry. Did you say "no"?  11 <b>A. No.</b>  12 Q. Okay. And when did you retain counsel to  13 represent you in this litigation?  14 <b>A. I can't remember the date.</b>  15 MR. MUSHKIN: I can tell you.  16 BY MS. BARRAZA:  17 Q. Do you recall if it was, you know, a few months  18 ago? Sorry?  19 MR. MUSHKIN: Counsel, it was after he got  20 served. He got sued.  21 MS. BARRAZA: Okay.  22 BY MS. BARRAZA:  23 Q. All right. So is that also your recollection,  24 that after you actually became -- got served, you  25 retained counsel?</p>

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# **EXHIBIT 5**

# **EXHIBIT 5**

## GUARANTY

This GUARANTY (the "Guaranty") is made as of June 22, 2012, by Kenneth Antos and Sheila Antos, married persons (jointly and severally referred to in this Guaranty as the "Guarantor"), in favor of CBC PARTNERS I, LLC, a Washington limited liability company (hereinafter "Lender").

## RECITALS

A. Lender has agreed to lend to KCI Investments, LLC (the "Borrower"), the sum of three hundred thousand Dollars (\$300,000.00) (the "Loan") in accordance with the terms and provisions of the Secured Promissory Note of even date (the "Note" and, collectively with all other documents executed by Borrower in connection therewith, as each may be amended from time to time, the "Loan Documents").

B. As a condition precedent to making the Loan, Lender requires that Borrower obtain the execution of this Guaranty by Guarantor and Lender will be relying on the terms hereof in making the Loan.

C. The making of the Loan by Lender to Borrower is of value to each Guarantor, is reasonably expected to benefit each Guarantor, directly or indirectly, and is in furtherance of each Guarantor's personal and business interests.

In consideration of Ten Dollars (\$10.00), Lender making the Loan, and as an inducement to Lender to do so, Guarantor hereby agrees, warrants, and covenants as follows:

1. Guarantor hereby unconditionally, irrevocably, and absolutely guarantees, without demand by Lender, the full and prompt payment when due, whether by acceleration or otherwise, of: (a) the entire amount of principal and accrued interest under the Note, and (b) all other indebtedness, obligations, and liabilities of Borrower under the Loan Documents, including, without limitation, all costs of collection, attorneys' fees, court costs, and other advances and extensions thereunder whether such indebtedness, obligations or liabilities have been incurred prior to the date hereof or are incurred from time to time hereafter and all without set-off, counterclaim, recoupment, or deduction of any amounts owing or alleged to be owing by Lender to Borrower. It is expressly understood that this Guaranty covers, without limitation: (a) any and all amendments, extensions, modifications, rearrangements, and renewals of the Loan or any of the Loan Documents; and (b) all interest, default interest, and other amounts that would have accrued under the Loan Documents but for the commencement of a case under the Federal Bankruptcy Code or any other similar federal or state law. Without limiting the foregoing,

Guarantor specifically guarantees payment of any judgment entered against the Borrower and any damages that may be awarded in any action brought against the Borrower by Lender arising out of or relating to the Loan or any Loan Document. All of the indebtedness, obligations, and liabilities described in this paragraph are referred to herein as the "Guaranteed Obligations." This Guaranty is a guaranty of payment and not merely of collection.

2. This Guaranty shall take effect when received by Lender without the necessity of any acceptance by Lender or of any notice to Guarantor or to Borrower, shall be continuing and irrevocable, and shall remain in full force and effect until the Guaranteed Obligations are fully and finally paid. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Guaranteed Obligations and thereafter Lender is forced to remit, rescind or restore the amount of that payment under any federal or state bankruptcy law or law for the relief of debtors, or for any other reason: (a) the amount of such payment shall be considered to have been unpaid at all times for the purposes of enforcement of this Guaranty; (b) the obligations of Borrower guaranteed herein shall be automatically reinstated to the extent of such payment; and (c) Guarantor will, on demand, indemnify for and hold Lender harmless from all losses and all reasonable costs and expenses, including legal fees, incurred by Lender in connection with such remission, rescission or restoration. In the event this Guaranty is preceded or followed by any other agreement of suretyship or guaranty by the Guarantor or others, all shall be deemed to be cumulative, and the obligations of the Guarantor hereunder shall be in addition to those stated in any other suretyship or guaranty agreement.

3. The obligations of Guarantor hereunder are separate and independent of the obligations of Borrower. Guarantor expressly agrees that a separate action may be brought against Guarantor whether or not Borrower is joined in such action.

4. Guarantor represents, warrants, and covenants to Lender that: (a) Guarantor has derived or expects to derive financial and other advantages and benefits, directly or indirectly, from the making of this Guaranty and the Guaranteed Obligations; (b) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (c) this Guaranty is executed at Borrower's request and not at the request of Lender; (d) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; (e) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition; (f) Guarantor will keep adequately informed of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty; (g) Lender shall have no obligation to disclose to Guarantor any information or documents (financial or otherwise) heretofore or hereafter acquired by Lender in the course of its relationship with Borrower; and (h) Guarantor will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or take any other action, directly or indirectly which might reasonably be expected to have a material adverse effect to Guarantor's financial condition, including, without limitation, the

business prospects, financial viability or marketability of any business entities in which Guarantor owns an equity interest other than in the ordinary course of business.

5. The Guarantor hereby consents to all terms and conditions of agreements heretofore or hereafter made between Lender and the Borrower (including without limitation the Note and other Loan Documents) and further agrees that Lender may without further consent or disclosure and without affecting or releasing the obligations of Guarantor hereunder: (a) surrender, exchange, release, assign, or sell any collateral or waive, release, assign, sell, or subordinate any security interest, in whole or in part; (b) waive, delay the exercise of, release, compromise, or grant indulgences in respect of any rights or remedies of Lender against the Borrower or any surety or guarantor (including, without limitation, rights or remedies of Lender against Guarantor under this Guaranty); (c) waive or delay the exercise of any rights or remedies of Lender in respect of any collateral or security interest now or hereafter held; (d) renew, extend, waive, extend, accelerate, or modify the terms of any Guaranteed Obligation or the obligations of any surety or guarantor, including, without limitation, changes to the rate of interest, or any instrument or agreement (including, without limitation, the Loan Documents) evidencing or relating to the same; (e) realize on any security interest judicially or nonjudicially, with or without preservation of a deficiency judgment; (f) apply payments received from Borrower or any surety or guarantor (including Guarantor) or from any collateral, to any indebtedness, liability, or obligations of Borrower or such sureties or guarantors whether or not a Guaranteed Obligation hereunder; or (g) adjust, compromise, or receive less than the amount due upon any collateral or the Guaranteed Obligations, and enter into any accord and satisfaction or novation agreement with respect to the same as Lender shall deem advisable.

6. Guarantor waives notice of: (a) Lender's acceptance of this Guaranty or its intention to act or its actions in reliance hereon; (b) the present existence or future incurring of any Guaranteed Obligations or any terms or amounts thereof or any change therein; (c) any default by the Borrower or any surety or guarantor; (d) the obtaining of any guaranty or surety agreement (in addition to this Guaranty); (e) the obtaining of any pledge, assignment or other security for any Guaranteed Obligations; (f) the release of the Borrower or any surety or guarantor; (g) the release of any collateral; (h) any change in Borrower's business or financial condition; (i) any renewal, extension or modification of the terms of any Guaranteed Obligation or of the obligations or liabilities of any surety or guarantor or of any instruments or agreements evidencing the same; (j) any acts or omissions of Lender consented to in Section 6 hereof; and (k) any other demands or notices whatsoever with respect to the Guaranteed Obligations or this Guaranty. The Guarantor further waives notice of presentment, demand, protest, notice of nonpayment, notice of intent to accelerate, and notice of protest in relation to any instrument or agreement evidencing any Guaranteed Obligation.

7. Guarantor expressly waives any and all rights to defenses arising by reason of: (a) any "one-action" or "anti-deficiency" law or any other law which may prevent Lender from

bringing any action, including a claim for deficiency against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (b) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Guaranteed Obligations; (c) any disability or related defense of Borrower, or any other Guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than full and final payment in legal tender of the Guaranteed Obligations; or (d) any right to claim discharge of the Guaranteed Obligations on the basis of unjustified impairment of any collateral for the Guaranteed Obligations. Guarantor further: (a) agrees that any part payment by Borrower or other circumstance which operates to toll any statute of limitations as to Borrower shall toll the statute of limitations as to Guarantor; (b) waives any right to cause a marshaling of Borrower's assets; and (c) waives all exemptions and homestead laws. Guarantor agrees that Lender may proceed against any collateral securing the Guaranteed Obligations by way of either judicial or nonjudicial foreclosure. Guarantor understands that a nonjudicial foreclosure of any security instrument securing the Guaranteed Obligations could impair or eliminate any subrogation or reimbursement rights Guarantor may have against Borrower, nevertheless Guarantor hereby waives and relinquishes any defense based upon the loss of any such reimbursement or subrogation rights or any other defense which may otherwise arise therefrom and any defense that may arise out of election of remedies, discharge or satisfaction of the Guaranteed Obligations. In the event any such security instrument is foreclosed judicially or nonjudicially, Guarantor's liability under this Guaranty shall be that portion of the Guaranteed Obligations representing a deficiency resulting from a judicial or nonjudicial sale, i.e., the difference between the amount due and owing on the Guaranteed Obligations on the day of the foreclosure sale (including without limitation principal, accrued interest, attorneys' fees, late payments, if any, and costs of foreclosure) and the amount of the successful bid at any such judicial or nonjudicial foreclosure sale. Guarantor hereby waives the right to object to the amount which may be bid by Lender at such foreclosure sale. Guarantor specifically waives the limitations on the amount of money judgments as may be prescribed by Washington statute.

8. No act of commission or omission of any kind or at any time on the part of Lender with respect to any matter whatsoever shall in any way affect or impair this Guaranty. Without limiting the foregoing, the obligations, covenants, agreements, and duties of Guarantor under this Guaranty shall not be released or impaired in any manner whatsoever, without the written consent of Lender, on account of any or all of the following: (a) any act or omission of Lender consented to in Section 5 hereof; (b) the failure to receive any notice, demand, presentment, or protest waived in Sections 4 and 6 hereof; (c) the occurrence of any event as to which Guarantor has provided its waiver under Section 7 hereof; (d) any failure by the Borrower or any other guarantor or surety to perform or comply with the Guaranteed Obligations or the terms of any instrument or agreement relating thereto; (e) any change in the name, purpose, capital stock or constitution of the Borrower or any other guarantor or surety;



(f) any irregularity, defect or unauthorized action by Borrower or any other guarantor or surety or any of their respective officers, directors, or other agents in executing and delivering any instrument or agreements relating to the Guaranteed Obligations or in carrying out or attempting to carry out the terms of any such agreements; (g) any receivership, insolvency, bankruptcy, reorganization or similar proceeding by or against Borrower, Lender, Guarantor or any other surety or guarantor; (h) any assignment, endorsement or transfer, in whole or in part, of the Guaranteed Obligations, whether made with or without notice to or the consent of Guarantor; (i) the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of Borrower or any guarantor; (j) the acceptance of additional or substitute property as security for or any additional guaranty as surety for any Guaranteed Obligation; (k) the operation of law or any other cause, whether similar or dissimilar to the foregoing; (l) the failure by Lender to file or enforce a claim against the estate (either in administration, bankruptcy or other proceeding) of Borrower or any other person or entity (including, without limitation, any guarantor); (m) if the recovery from Borrower or any other person or entity (including, without limitation, any other guarantor) becomes barred by any statute of limitations or is otherwise prevented; (n) any impairment, modification, change, release or limitation of liability of, or stay of actions of lien enforcement proceedings against Borrower, Borrower's property, or its estate in bankruptcy resulting from the operation of any present or future provision of the Federal Bankruptcy Code or any other similar federal or state statute, or from the decision of any court; or (o) any neglect, delay, omission, failure or refusal of Lender to take or prosecute any action for the collection of any of the Guaranteed Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Guaranteed Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Guaranteed Obligations notwithstanding any act, omission or event which might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

9. Guarantor acknowledges that Lender intends to obtain other guarantees and collateral to secure the repayment of the Guaranteed Obligations. Guarantor represents and warrants to Lender, however, that in making this Guaranty it is not relying upon the Lender's obtaining any guaranty agreements (other than this Guaranty) or any collateral pledged or assigned to secure repayment of the Guaranteed Obligations. Guarantor specifically acknowledges that Lender's obtaining any such guaranty agreements or collateral is not a condition to the enforcement of this Guaranty. If Lender should simultaneously or hereafter elect to attempt to take additional guaranty agreements or collateral to secure repayment of the Guaranteed Obligations and if its efforts to do so should fail in any respect including, without limitation, a determination that the agreement purporting to provide such additional guaranty or security interest is invalid or unenforceable for any reason, this Guaranty shall, nonetheless, remain in full force and effect.



10. Guarantor hereby irrevocably waives all claims it has or may acquire against Borrower in respect of the Guaranteed Obligations, including rights of exoneration, reimbursement and subrogation. Guarantor has received no indemnification or other agreement of reimbursement from Borrower in connection with the execution and delivery of this Guaranty.

11. This Guaranty shall inure to the benefit of Lender, and Lender's successors and assigns, and shall be binding upon Guarantor and his heirs, personal or legal representatives, administrators, executors, successors, and assigns. Lender may, without any notice whatsoever to Guarantor, or to anyone else, sell, assign or transfer the Note, with or without any security therefore, and in that event each and every immediate and successive assignee, transferee, or holder of all or any part of the Loan and the Note shall have the right to enforce this Guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder as though such parties were herein by name specifically given those rights, powers and benefits.

12. Guarantor agrees to pay all costs and expenses which may be incurred by Lender in the enforcement or interpretation of this Guaranty, including reasonable attorneys' fees and costs (to be determined by the court and not by a jury), and including all costs and reasonable attorneys' fees and costs incurred in any bankruptcy or insolvency proceeding or on appeal to one or more appellate courts.

13. This Guaranty shall be governed by and construed and enforced under the laws of the State of Washington, and venue for any action shall lie exclusively in King County.

14. No delay on the part of Lender in exercising any right, power or privilege under this Guaranty shall operate as a waiver of any such right, power or privilege, nor shall any exercise or waiver of any privilege or right preclude any other or further exercise of such privilege or right or the exercise of any other right, power or privilege. All of Lender's rights and remedies shall be cumulative. In the event Lender in its sole discretion elects to give notice of any action with respect to the sale of collateral, if any, securing the Guaranteed Obligations or any part thereof, Guarantor agrees that ten (10) days prior written notice shall be deemed reasonable notice of any matters contained in such notice.

15. Any indebtedness of Borrower now or hereafter held by Guarantor is hereby subordinated to the Guaranteed Obligations. If Lender so requests, such indebtedness of Borrower to Guarantor shall be collected, enforced and received by Guarantor in trust for Lender, and be paid over to Lender on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty. Guarantor shall file all claims against Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law upon any indebtedness of Borrower to Guarantor and will assign to Lender all rights of Guarantor thereunder. If Guarantor does not file any such claim, Guarantor hereby appoints and constitutes Lender as Guarantor's attorney-in-fact and hereby authorizes Lender to do so in the name of Guarantor or, in Lender's

discretion, to assign the claim and to cause the claim to be filed in the name of Lender's nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Lender the full amount thereof, and Guarantor hereby assigns to Lender, to the full extent necessary for that purpose, all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled. Nothing in this paragraph shall be construed to create a duty in Lender to take any action whatsoever to protect any right Guarantor may have as to Borrower.

16. If any provision of this Guaranty or any portion of any provision of this Guaranty shall be deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Guaranty shall be deemed severable from all other provisions hereof.

17. This Guaranty shall be so construed that, wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, and the use of any gender shall be applicable to all genders, and shall likewise be so construed as applicable to and including a corporation, partnership, or other entity. Each married individual who executes this Guaranty intends to bind both his or her separate estate and the community estate of that married individual and his or her spouse. If this Guaranty is executed by more than one person or entity, the obligations of each Guarantor hereunder shall be joint and several and this Guaranty shall apply to each of the individuals or entities comprising Guarantor as if each had executed a separate guaranty. Each Guarantor agrees that Lender, in its discretion, may: (a) bring suit against all Guarantors jointly and severally or against any one or more of them, (b) compound or settle with any one or more of Guarantors for such consideration as Lender may deem proper; and (c) release any one or more of Guarantors from liability hereunder, and that no such action shall impair the rights of Lender to collect the Guaranteed Obligations (or the unpaid balance thereof) from the other Guarantors not so sued, settled with or released.

18. All agreements between Guarantor and Lender, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the final maturity of the Loan or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to Lender under or in connection with the Loan exceed the maximum amount permissible under applicable law. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period (including any renewal or extension) until payment in full of the principal balance of the Loan so that the interest hereon for such full period shall not exceed the maximum amount permissible under applicable law. Lender expressly disavows any intent to contract for, charge or receive interest in an amount which exceeds the maximum amount permissible under applicable law. This paragraph shall control all agreements between Guarantor and Lender.

19. For the convenience of the parties hereto, this Guaranty has been prepared for execution by multiple parties (and, where applicable, their spouses), each of which is a Guarantor for all purposes hereunder. Each of the parties signing this Guaranty hereby represents, warrants and covenants for the benefit of Lender that it is the intention of such party that this Guaranty be fully enforceable against it in accordance with its terms to the same extent as if such party had been the only party identified as a "Guarantor" hereunder and had executed a separate Guaranty (in the form hereof) in favor of Lender. Each of the parties signing this document expressly confirms that in making this Guaranty it is not relying upon Lender obtaining signatures from any of the other parties identified as a "Guarantor" herein. Each party signing this Guaranty expressly agrees that the failure by one or more of the other parties identified as "Guarantors" herein to sign this Guaranty shall not prevent the full enforcement of this Guaranty against each party who has signed the Guaranty.

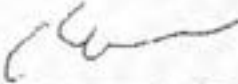
WAIVER OF JURY TRIAL. GUARANTOR(S) AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVE ANY AND ALL RIGHTS THAT EACH PARTY TO THIS GUARANTY MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR THE STATE OF WASHINGTON, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY THE LOAN DOCUMENTS OR ANY TRANSACTIONS CONTEMPLATED THEREBY OR RELATED THERETO.

GUARANTOR(S) UNDERSTANDS THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND EACH PARTY INDIVIDUALLY BELIEVES THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

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

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date written above.

GUARANTOR:




By: Kenneth Antos  
SS No.: 051 3444 98

Address:

5148 Spanish Heights Dr.  
Las Vegas, NV 89148

GUARANTOR



By: Sheila Antos  
SS No.:

Address:

5148 Spanish Heights Dr.  
Las Vegas, NV 89148

STATE OF NEVADA     )

      )ss.

COUNTY OF CLARK     )

I certify that I know or have satisfactory evidence that **Kenneth Antos** is the person who appeared before me, and that said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of June, 2012.



[STAMP]

*Christine S. Moreno*  
Print Name: Christine S. Moreno  
NOTARY PUBLIC in and for the State of  
Nevada, residing at Las Vegas  
My Commission expires: 11-13-13

STATE OF NEVADA     )

      )ss.

COUNTY OF CLARK     )

I certify that I know or have satisfactory evidence that **Sheila Antos** is the person who appeared before me, and that said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of June, 2012.



[STAMP]

Christine S. Moreno  
Print Name: Christine S. Moreno  
NOTARY PUBLIC in and for the State of  
Nevada, residing at Las Vegas  
My Commission expires: 11-13-13



## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

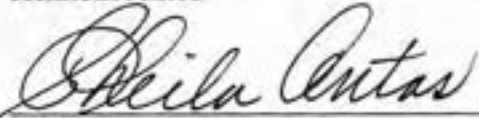
Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company (the "Borrower") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her Guaranty dated June 22, 2012, (the "Guaranty"), hereby (i)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

Dated as of the 19<sup>th</sup> day of July, 2012.

GUARANTORS:



Kenneth Antos



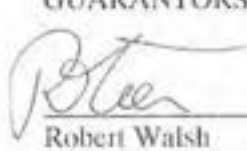
Shelia Antos

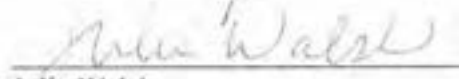
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Dated as of the 19<sup>TH</sup> day of July, 2012.

GUARANTORS:

  
Robert Walsh

  
Julie Walsh

## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

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

Dated as of the 14<sup>th</sup> day of October, 2012.

GUARANTORS:



Kenneth Antos



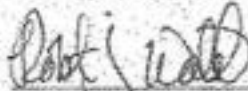
Shelia Antos

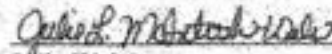
### ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

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

Dated as of the 17<sup>th</sup> day of October, 2012.

GUARANTORS:

  
Robert Walsh

  
Jolie Walsh

# **EXHIBIT 6**

# **EXHIBIT 6**

## FIRST MODIFICATION TO SECURED PROMISSORY NOTE

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

### RECITALS

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

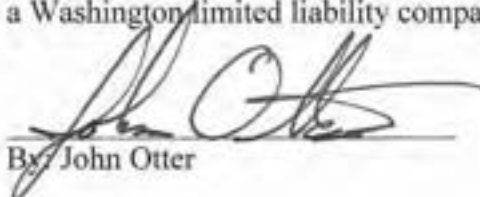
**BORROWER:** KCI INVESTMENTS, LLC, a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

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

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



By: John Otter

Its: Authorized Manager Representative

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

## SECOND MODIFICATION TO SECURED PROMISSORY NOTE

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

### RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

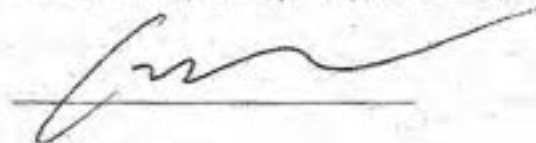
9. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

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

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

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company



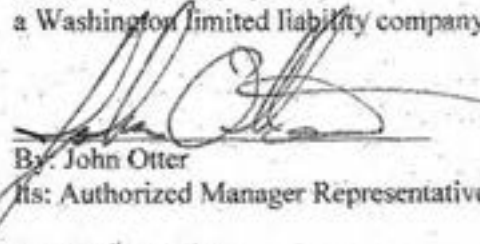


By: Ken Antos  
Its: Managing Member

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

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

Facsimile: (425) 688-7003

### THIRD MODIFICATION TO SECURED PROMISSORY NOTE

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

#### RECITALS

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

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

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

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

"Maturity Date" means October 19, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

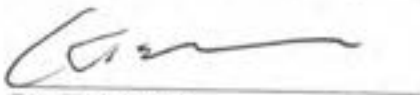
8. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

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

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

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

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

#### FOURTH MODIFICATION TO SECURED PROMISSORY NOTE

THIS FOURTH MODIFICATION TO SECURED PROMISSORY NOTE (this "Modification"), effective as of November 17, 2013, is entered into by and between KCI Investments, LLC, a Nevada limited liability company ("Borrower"), and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

#### RECITALS

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

WHEREAS, Borrower is in default under the Note as a result of (i) Borrower's failure to satisfy the Note upon the Maturity Date and (ii) the termination of the Alliance Agreement (as defined in the Antos Security Agreement) (collectively, the "Existing Defaults").

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

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

1. Amended Section 1.1.

(a) The following definition of "Fourth Modification" is added as a new defined term to Section 1.1:

"Fourth Modification" means that certain Fourth Modification to Secured Promissory Note by and between Borrower and Lender dated as of November \_\_, 2013.

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

"Maturity Date" means January 19, 2014.

2. Amended definition of "Note Rate". The definition of "Note Rate" as set forth in Section 2.2 of the Note is amended to be fifteen percent (15%).

3. Amended Section 2.4. Section 2.4 of the Note is deleted in its entirety and replaced with the following:

2.4 Payments. Borrower shall make (a) payments of principal in the amount of \$150,000 each on November 29, 2013, and December 31, 2013, and (b) monthly

payments of interest beginning on the first (1st) day of each month. On or before the Maturity Date, Borrower must pay to Lender all outstanding principal, accrued interest, and fees and costs owing under the Note. Borrower may prepay all or any portion of the Loan, at any time prior to the Maturity Date, without premium or penalty.

4. Amended Section 6. The following is added to Section 6 as a new Section 6.12:

6.12 Antos Debt. Permit guarantor Kenneth M. Antos ("Antos") to incur, create, assume or permit to exist any debt secured by the real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, other than the first and second position deeds of trust or mortgages, in favor of \_\_\_\_\_ and \_\_\_\_\_, respectively, which exist as of the date of the Fourth Modification.

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

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

6. Amended Section 11.2. Section 11.2 of the Note is deleted in its entirety and replaced with the following:

11.2 Antos has granted and pledged to Lender a first priority senior security interest in Antos's right, title and interest in, to and under all accounts, payment intangibles, general intangibles and rights to payment now or hereafter arising under that certain Settlement Agreement and Mutual Release, as amended, modified or supplemented from time to time, by and among Twin Towers Trading Site Management, LLC, Jeffrey Brandon, Eric Scholer, David L. Beacklean, SMG Group, Inc., and Antos, dated as of September 1, 2012 ("Antos Settlement Agreement"), pursuant to a security agreement ("Antos Security Agreement") dated as of November \_\_, 2013, as amended.

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

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

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



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

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

9. Amendment Fee and Expenses. Borrower shall owe to Lender a fully earned and nonrefundable amendment fee in the amount of forty-five thousand dollars (\$45,000.00) (the "Amendment Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 10 below are satisfied, to pay upon demand the Amendment Fee and all reasonable fees and expenses of Lender incurred in connection with this Modification and the Loan, including (without limitation) attorneys' fees and expenses for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

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

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

(b) Execution by Borrower and delivery to Lender of a Warrant Agreement for three million additional membership units of Borrower, in form and substance satisfactory to Lender.

(c) Execution by Antos and delivery to Lender of the Antos Security Agreement, in form and substance satisfactory to Lender.

(d) Execution by Borrower and delivery to Lender of resolutions of Borrower to enter into a Warrant Agreement, in form and substance satisfactory to Lender.

(e) Execution by Antos and delivery to Lender of a Name Affidavit, in form and substance satisfactory to Lender.

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

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

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

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

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

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

13. Waiver of Existing Defaults. Lender hereby waives its default rights with respect to the Existing Defaults. This waiver applies only to the Existing Defaults. It is not a waiver for any subsequent breach of the same provisions of the Note, nor is it a waiver of any breach of any other provision of the Note.

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


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

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

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

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

## FIFTH MODIFICATION TO SECURED PROMISSORY NOTE

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

### RECITALS

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

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

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

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

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

"Maturity Date" means April 19, 2014.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



By: Ken Antos  
Its: Managing Member

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

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



By: John Otter  
Its: Authorized Manager Representative

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

## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

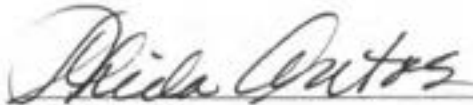
Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company (the "Borrower") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her respective Guaranty dated June 22, 2012, (the "Guaranty"),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

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

GUARANTORS:



Kenneth Antos



Shelia Antos

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

THIS SEVENTH MODIFICATION TO SECURED PROMISSORY NOTE AND WAIVER OF DEFAULTS (this "Modification"), effective as of October 31, 2014, is entered into by and among KCI INVESTMENTS, LLC, a Nevada limited liability company ("KCI"), PREFERRED RESTAURANT BRANDS, INC. f/k/a DIXIE FOODS INTERNATIONAL, INC., a Florida corporation ("Dixie" and, together with KCI, each a "Borrower" and collectively, "Borrowers") and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

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

WHEREAS, Lender consented in the Fifth Modification to a reverse merger of KCI into Dixie, a public shell corporation, subject to the conditions precedent in Section 2 of the Fifth Modification (the "Merger Conditions"), which KCI has failed to satisfy;

WHEREAS the actual transaction consummated by KCI and Dixie constituted an acquisition by Dixie of KCI (the "Acquisition"), the result of which is that KCI is now a wholly owned subsidiary of Dixie, which, in turn, is a subsidiary of KCI Holding 1, LLC ("Holdings"), and, in connection with such Acquisition, the indebtedness of the Note was assumed by Dixie and all warrants previously issued by KCI to Lender were assumed by or converted into membership units of Holdings;

WHEREAS, KCI is currently in default under the terms of the Note as a result of (i) failing to make the principal payment due no later than June 30, 2014, as set forth in Section 9 of the Sixth Modification, (ii) incurring debt to Bankers Trust of South Dakota, in its capacity as trustee of the Turpin Brown Trust; Bankers Trust of South Dakota, in its capacity as trustee of The Richard D. Doermer 1999 8% Charitable Remainder Unitrust; Bankers Trust of South Dakota, in its capacity as trustee of the Richard D. Doermer 2006 6% Charitable Lead Unitrust; Bankers Trust of South Dakota, in its capacity as trustee of the Richard D. Doermer 2006 6% Charitable Remainder Unitrust; Simpson VIII, L.L.C.; Simpson IV, L.L.C.; and Richard D. Doermer (the "Third Party Lenders") in violation of Section 6.4 of the Note, and (iii) granting security interests in certain of its assets to the Third Party Lenders in violation of Section 6.5 of the Note (the "Existing Defaults");

WHEREAS, KCI and Dixie have asked that Lender extend the maturity of the Note, increase the principal amount of the Note, and waive the Existing Defaults, and Lender has agreed to such requests, subject to the terms and conditions set forth in this Modification;

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

1. Waiver of Merger Conditions; Consent to the Acquisition. Lender hereby waives the Merger Conditions and consents to the Acquisition, subject to the terms and conditions herein.

2. Joinder of Dixie.

(a) Dixie hereby agrees to be bound with KCI, on a joint and several basis, as "Borrower" under the Note and agrees to be bound by the provisions of the Note in its entirety, as if a signatory thereto on the date of the Note as "Borrower", and Dixie shall comply with and be subject to and have the benefit of, and hereby assumes and agrees to be bound by, all of the terms, conditions, covenants, agreements and obligations set forth therein. All Advances under the Note shall be deemed to be jointly funded to and received by both Borrowers. Each Borrower jointly and severally agrees to pay, and shall be jointly and severally liable under the Note for, all Liabilities, regardless of the manner or amount in which proceeds of Advances are or were used, allocated, shared, or disbursed by or among Borrowers themselves, or the manner in which Lender accounts for such Advances or other extensions of credit on its books and records. Each Borrower acknowledges and expressly agrees that the joint and several liability of each Borrower is required solely as a condition to, and is given solely as inducement for and in consideration of, credit or accommodations extended or to be extended under this Modification, the Note and the other Ancillary Documents to any or all of Borrowers and is not required or given as a condition of extensions of credit to such Borrower. Upon any Event of Default, Lender may proceed directly and at once, without notice, against any Borrower or all to collect and recover the full amount, or any portion of the Liabilities, without first proceeding against any other Borrower or any other person, or against any security or collateral for the Liabilities. Each Borrower consents and agrees that Lender shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Liabilities. All references in the Note or the Ancillary Documents to "Borrower" shall be deemed to include KCI and Dixie, individually and collectively.

(b) To the extent that any Borrower shall, under the Note as a joint and several obligor, repay any of the Liabilities constituting Advances made to the other Borrower hereunder or other Liabilities incurred directly and primarily by the other Borrower (an "Accommodation Payment"), then such Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, the other Borrower in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of both Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments that could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (32) of the Bankruptcy

Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA. All rights and claims of contribution, indemnification, and reimbursement under this Section 2(b) shall be subordinate in right of payment to the prior payment in full of the Liabilities. The provisions of this Section 2(b) shall, to the extent expressly inconsistent with any provision in the Note or any Ancillary Document, supersede such inconsistent provision.

3. Representations and Warranties of Dixie. Dixie hereby represents and warrants, for the benefit of Lender, as follows: that (a) it is duly organized, validly existing and in good standing under the laws of the state of its organization as set forth above, and has all requisite power and authority to own its property and to carry on its business as now being conducted, to enter into this Modification and to carry out the provisions and conditions of this Modification and the Note; (b) this Modification and the Note constitute legal, valid and binding obligations of Dixie enforceable against Dixie in accordance with the terms hereof and thereof.

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

"Maturity Date" means April 30, 2015.

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

2.1 Advance. On June 25, 2012, \$300,000 of the principal balance of this Secured Promissory Note was advanced to Borrower. On July 19, 2012, an additional \$1,700,000 of the principal balance of this Secured Promissory Note was advanced to Borrower. On October 22, 2012, an additional \$900,000 of the principal balance of this Secured Promissory Note was advanced to Borrower and on December 21, 2012, an additional \$100,000 of the principal balance of this Secured Promissory Note was advanced to Borrower. As of December 17, 2014, Borrower has repaid \$300,000 of the principal on the Note. On or before January 30, 2015, Borrower may request an additional Advance in an amount not to exceed \$250,000.

The request for the additional Advance shall be in writing, specify Borrower's intended use for the requested Advance and be signed by Borrower in the form attached hereto as Exhibit A (the "Advance Request"). No Advance shall be made on or after the Maturity Date, or after the occurrence of a default or Event of Default which has not been cured or waived by Lender, any such waiver to be granted at Lender's sole discretion. Borrower agrees that Lender may rely on any Advance Request given by any person Lender reasonably believes is authorized to make such request without the necessity of independent investigation. Notwithstanding anything to the contrary contained herein, the aggregate

principal amount of all advances made hereunder shall not exceed Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000) at any time.

6. Amended Section 2.3. Section 2.3 of the Note is deleted in its entirety and replaced with the following:

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

7. Amended Section 2.4. Section 2.4 of the Note is deleted in its entirety and replaced with the following:

2.4 Payments. Borrower shall make (a) monthly payments of interest on the first (1st) day of each month, and (b) a principal payment of Two Hundred Fifty Thousand Dollars (\$250,000) on or before January 30, 2015. Borrower may prepay all or any portion of the Loan at any time prior to the Maturity Date, without premium or penalty. Borrower shall pay the outstanding principal balance of this Note, together with all accrued and unpaid interest, fees and costs, on or before the Maturity Date.

8. Amended Use of "Security Agreement" and "Ancillary Documents". The term "Security Agreement" in Sections 5.2, 5.4, 13.3 and 13.9 is amended to be "Ancillary Documents".

9. Amended Section 7. The following paragraphs are added to Section 7 of the Note as new subsections 7.1.9 and 7.1.10, with the appropriate, corresponding punctuation changes to Sections 7.1.7 and 7.1.8:

7.1.9 any payment of principal or prepayment of interest on any debt incurred in violation of Section 6.4, regardless of whether such violation has been waived by Lender; provided that Borrower may make principal payments in an aggregate amount not to exceed \$190,000 for all such payments, pursuant to those certain promissory notes (i) dated August 28, 2013, in the original principal amount of \$90,000, executed by Borrower in favor of Simpson IV, L.L.C. and (ii) dated October 30, 2013, in the original principal amount of \$100,000, executed by Borrower in favor Richard D. Doermer; and

7.1.10 any acceleration or delivery to Borrower of any notice of intent to accelerate with respect to, or the maturation of, any debt owing by Borrower to any person or entity other than Lender.



10. Amended Section 9. Section 9 of the Note is deleted in its entirety and replaced with the following:

**9. Attorneys' and Collection Fees.** Should the indebtedness evidenced by this Secured Promissory Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceedings, Borrower agrees to pay and indemnify Lender for, in addition to principal and interest due and payable hereon, all costs of collection, including, without limitation, reasonable attorneys' fees, costs and expenses, incurred by Lender in collecting on or enforcing this Secured Promissory Note and the Ancillary Documents. Without limiting the foregoing, Borrower shall indemnify Lender for, and pay immediately upon demand, all costs and expenses (including attorneys' fees) incurred in connection with the negotiation, drafting, closing, modification or amendment, execution, delivery, collection, or enforcement of this Note and the Ancillary Documents and any matters contemplated by this Note or any Ancillary Document, and will reimburse Lender for all out-of-pocket expenses (including reasonable attorneys' fees, expenses and charges) on demand as they are incurred in connection with any of the foregoing.

11. Amended Section 12.2. Section 12.2 of the Note is deleted in its entirety and replaced with the following:

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

12. Amended Section 13.1.

(a) The address for notices to Lender in Section 13.1 of the Note is hereby deleted in its entirety and replaced with the following:

CBC Partners I, LLC  
777 108th Ave NE, Suite 1895  
Bellevue, WA 98004  
Fax: (425) 688-7003  
Attention: Alan Hallberg

(b) The following address for notices to Dixie is added as an additional address to Section 13.1 of the Note:

Preferred Restaurant Brands, Inc.  
4033 S. Dean Martin Drive  
Las Vegas, NV 89103  
Fax: (704) 248-3752  
Attention: Kenneth Antos

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

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

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

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

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

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

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

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

17. Amendment Fee and Expenses. Borrowers shall jointly and severally owe to Lender a fully earned and nonrefundable amendment fee in the amount of Fifty-five Thousand Dollars (\$55,000.00) (the "Amendment Fee") contemporaneously with the earlier of Borrowers' execution and delivery to Lender of this Modification. Borrowers' execution of this Modification shall constitute their agreement, regardless of whether the conditions precedent set forth in Section 18 below are satisfied, to pay upon demand the Amendment Fee and all reasonable fees and expenses of Lender incurred in connection with this Modification and the Loan, including (without limitation) attorneys' fees and expenses for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and each Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

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

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

(b) Execution by Dixie and delivery to Lender of a Warrant Agreement for one million four hundred fifty thousand (1,450,000) shares of Dixie, in form and substance satisfactory to Lender.

(c) Execution by Dixie and delivery to Lender of a Security Agreement, in form and substance satisfactory to Lender.

(d) Delivery to Lender of certified resolutions of Dixie to enter into this Modification, including the joinder provisions in Section 2 hereof, and the Warrant Agreement referenced in clause (b), in each case, in form and substance satisfactory to Lender.

(e) Delivery to Lender of an incumbency certificate of Dixie, in form and substance satisfactory to Lender.

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

(g) Delivery to Lender of a trust certificate by the Antos Trust, in form and substance satisfactory to Lender.

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

(i) Delivery to Lender of a name affidavit of Sheila M. Neumann-Antos in form and substance satisfactory to Lender.

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

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

(l) Since September 30, 2014, there shall have been no material adverse change, as determined by Lender, in the financial condition or business of either Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of either Borrower (or any such guarantor).

19. Holdings Resolutions and Warrant.

(a) Within sixty (60) days of the date hereof (which date may be extended in Lender's sole discretion), Borrowers shall deliver to Lender evidence satisfactory to Lender in its discretion of the ratification of the conversion of 5,858,225 membership units of KCI into an equal number of membership units of Holdings and the issuance of 5,858,225 membership units of Holdings to Lender.

(b) Borrowers shall take all actions necessary, in good faith, to cause Holdings to issue membership units in Holdings to Lender, within sixty (60) days of the date hereof (which date may be extended in Lender's sole discretion), based upon the exercise of those certain Warrants to Purchase Membership Units issued by KCI dated July 19, 2012, October 22, 2012, and November 19, 2013, for an aggregate of 5,858,225 membership units in Holdings.

(c) Within sixty (60) days of the date hereof (which date may be extended in Lender's sole discretion), Borrowers shall deliver to Lender evidence satisfactory to Lender in its discretion of the assignment and assumption by Holdings reflecting the exchange of those certain Warrants to Purchase Membership Units issued by KCI dated April 19, 2014, for an aggregate of 1,818,574 membership units of KCI, for warrants issued by Holdings to Lender for an aggregate of 1,818,574 membership units of Holdings.

20. Title Policy. Within sixty (60) days of the date hereof (which date may be extended in Lender's sole discretion), Lender shall have received a policy of title insurance, with such endorsements as Bank may require, issued by a company and in form and substance satisfactory to Lender, in such amount as Lender shall require, insuring Lender's lien on the Real Property, subject only to such exceptions as Lender shall approve in its discretion, with all costs thereof to be paid by Borrower. Borrower agrees to cause any necessary parties to provide or obtain any customary affidavits and indemnities as may be required or necessary to obtain title insurance satisfactory to Lender.

21. Blocked Account. Within sixty (60) days of the date hereof (which date may be extended in Lender's sole discretion), Borrower shall deliver to Lender a fully executed (a) springing blocked account agreement by and among Kenneth M. Antos ("Antos"), Lender and JPMorgan Chase & Co. or its affiliate for account number xxxxx3477 (the "Account"), which is the Account in which Antos deposits or receives payments under that certain Settlement Agreement and Mutual Release, as amended by and among Twin Towers Trading Site Management, LLC, Jeffrey Brandon, Eric Scholer, David L. Beacklean, SMG Group, Inc., and Antos, dated as of September 1, 2012 (the "Settlement Agreement"), and (b) irrevocable payment directive directing all payments under the Settlement Agreement to be made into the Account, subject to change only upon the direction of Lender in Lender's sole discretion. Antos covenants and agrees not to direct payments from the Settlement Agreement into any account other than the Account without the prior written consent of Lender, such consent to be withheld in Lender's sole discretion.

22. Further Assurances. Promptly upon request, Borrowers and Guarantors shall deliver, and shall cause Holdings and Third Party Lenders to deliver, such instruments, assignments, title certificates, or other documents or agreements, and shall take such actions, as Lender deems appropriate to evidence or perfect its interest in any Collateral, or otherwise to give effect to the intent of this Modification and the documents, instruments and transactions contemplated hereby and under the other Ancillary Documents, as modified hereby.

23. Information. In addition to the requirements of Section 5.6 of the Note, each Borrower shall submit to Lender (a) notice of the occurrence of a default or Event of Default under the Note or any Ancillary Document, (b) notice of the threat or commencement of litigation against either Borrower or any Guarantor in an amount in excess of \$100,000, (c) notice regarding changes in either Borrower's structure, name, ownership, officers or manager, (d) any notice received by either Borrower or Holdings with respect to any debt or obligation owing by either Borrower to any other person or entity, including the Third Party Lenders, including but not limited to any notice of default, notice of intent to accelerate or notice of acceleration, and (e) such other information as Lender may reasonably request.



24. Agency of Dixie for KCI. KCI irrevocably appoints Dixie as its agent for all purposes relevant to this Modification, the Note and the Ancillary Documents, including the giving and receipt of notices and execution and delivery of all documents, instruments, and certificates contemplated herein and all modifications hereto. Any acknowledgment, consent, direction, certification, or other action that might otherwise be valid or effective only if given or taken by both Borrowers shall be valid and effective if given or taken only by Dixie, whether or not KCI joins therein, and Lender shall have no duty or obligation to make further inquiry with respect to the authority of Dixie under this Section 24; provided that nothing in this Section 24 shall limit the effectiveness of, nor the right of Lender to rely upon, any notice, document, instrument, certificate, acknowledgment, consent, direction, certification, or other action delivered by either Borrower pursuant to this Modification, the Note, or any Ancillary Document or to require the consent of both Borrowers to any such action.

25. Ownership. KCI and Dixie shall not issue any stock, warrant, option, or other ownership interest without the prior written consent of Lender.

26. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby, and any and all references in the Loan Documents to the Note shall be deemed to refer to the Note as amended hereby. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Note. Failure by any Borrower or Guarantor to strictly comply with the terms of this Modification shall constitute an Event of Default under the Note.

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

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

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

**BORROWERS:**

KCI INVESTMENTS, LLC,  
a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

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

PREFERRED RESTAURANT BRANDS, INC. f/k/a DIXIE  
FOODS INTERNATIONAL, INC.,  
a Florida corporation



By: Ken Antos  
Its: President

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative


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

## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company (the "KCI") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her respective Guaranty dated June 22, 2012, (the "Guaranty"), hereby (i) acknowledges receipt of the Seventh Modification to Secured Promissory Note and Waiver of Defaults (the "Seventh Modification"); (ii) consents to the terms and execution thereof; (iii) agrees and consents to the joinder of Preferred Restaurant Brands, Inc. f/k/a Dixie Foods International, Inc. ("Dixie") as a Borrower under the Note and agrees that the he/she guarantees all indebtedness of KCI and Dixie owing to Lender under the terms of the Note and Ancillary Documents pursuant to the Guaranty, (iv) agree the term "Borrower" set forth in the Guaranty is hereby modified to mean KCI and Dixie individually and collectively; (v) agrees and confirms that "Guaranteed Obligations" as defined in the Guaranty includes all indebtedness, obligations, and liabilities of KCI and Dixie, as more fully described in the Guaranty; (vi) reaffirms all obligations to Lender pursuant to the terms of the Guaranty; (vii) acknowledges that Lender may amend, restate, extend, renew or otherwise modify the Note and any indebtedness or agreement of KCI or Dixie, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Guaranty for all of the Borrower's present and future indebtedness to Lender; and (viii) agrees to join in and be bound by all of the terms and provisions of Section 21 (including executing the springing blocked account agreement), Section 22, and Section 26 of the Seventh Modification.

Dated effective as of the 31st day of October, 2014.

GUARANTORS:

  
\_\_\_\_\_  
Kenneth Antos

  
\_\_\_\_\_  
Shelia Antos

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

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

### RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

7. Holdings Resolutions and Warrant.

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

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

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

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

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



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

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

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

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

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

**BORROWERS:**

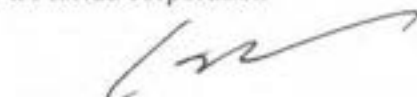
KCI INVESTMENTS, LLC,  
a Nevada limited liability company



By: Kenneth M. Antos  
Its: Manager

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

PREFERRED RESTAURANT BRANDS, INC.,  
a Florida corporation



By: Kenneth M. Antos  
Its: President

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

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

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

THIS NINTH MODIFICATION TO SECURED PROMISSORY NOTE AND WAIVER OF DEFAULTS (this "Modification"), effective as of April 30, 2015, is entered into by and among KCI INVESTMENTS, LLC, a Nevada limited liability company ("KCI"), PREFERRED RESTAURANT BRANDS, INC., a Florida corporation ("PRB" and, together with KCI, each a "Borrower" and collectively, "Borrowers") and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrowers are currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note by and among Borrowers and Lender dated as of June 22, 2012, as modified pursuant to that certain First Modification to Secured Promissory Note dated as of July 19, 2012, that certain Second Modification to Secured Promissory Note dated as of October 22, 2012, that certain Third Modification to Secured Promissory Note dated as of July 19, 2013, that certain Fourth Modification to Secured Promissory Note dated as of November 19, 2013, that certain Fifth Modification to Secured Promissory Note dated as of January 19, 2014, that certain Sixth Modification to Secured Promissory Note dated as of April 19, 2014, that certain Seventh Modification to Secured Promissory Note dated as of October 31, 2014, and that certain Eighth Modification to Secured Promissory Note dated as of January 23, 2015 (the "Eighth Modification") and as further amended from time to time (the "Note");

WHEREAS, Borrowers are currently in default under the terms of the Note as a result of (i) failing to make the principal payment due under the Note on January 30, 2015; (ii) failing to provide the certified resolutions and warrants of KCI Holding 1, LLC ("Holdings") in violation of Section 7 of the Eighth Modification, and (iii) failing to transfer ownership of Kenneth M. Antos's account with JPMorgan Chase & Co. or its affiliate in violation of Section 8 of the Eighth Modification (the "Existing Defaults"); and

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

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

1. Waiver. Lender waives its default rights with respect to the Existing Defaults. This waiver applies only to the Existing Defaults and, except as to the Existing Defaults, the execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect without waiver or modification. Each Borrower represents and warrants that as of the date hereof, there

are no claims or offsets against or defenses or counterclaims to such Borrower's obligations under the Note or any Ancillary Document.

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

"Maturity Date" means the earlier of (a) June 29, 2015, and (b) the date on which all amounts under this Secured Promissory Note shall become due and payable pursuant to Section 7.2 of this Secured Promissory Note.

3. Amended Section 2.3. Section 2.3 of the Note is deleted in its entirety and replaced with the following:

2.3 Default Interest. Upon the occurrence and during the continuation of an Event of Default, the unpaid principal amount of the Loan and accrued and unpaid interest thereon shall bear interest at a rate equal to the lesser of the (a) Maximum Rate or (b) Default Rate. Such interest shall accrue, commencing upon the occurrence of an Event of Default and continue until such Event of Default is cured or waived. Lender shall have no obligation to provide notice to Borrower or any guarantor prior to or while charging interest at the Default Rate.

4. Amended Section 2.4. Section 2.4 of the Note is deleted in its entirety and replaced with the following:

2.4 Payments. Borrower shall make monthly payments of interest on the first day of each month. Borrower may prepay all or any portion of the Loan, at any time prior to the Maturity Date, without premium or penalty. Borrower shall pay all outstanding principal, fees, costs, and accrued and unpaid interest owing under the Loan on the Maturity Date.

5. Amended Section 6.4. Section 6.4 of the Note is deleted in its entirety and replaced with the following:

6.4 Limitation on Debt. Incur, create, assume, permit to exist, or become liable in connection with, directly or indirectly, any indebtedness, obligations, or liabilities for borrowed money, or otherwise under any promissory note, bond, indenture, or similar instrument, other than the Loan and trade debt incurred in the ordinary course of business, without the execution of a subordination agreement (in form and substance satisfactory to Lender in its sole discretion), between Lender, Borrower, and the lender of such additional debt.

6. Amended Section 6.5. Section 6.5 of the Note is deleted in its entirety and replaced with the following:

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

7. Amended Section 7.1.

(a) Section 7.1.1 of the Note is deleted in its entirety and replaced with the following:

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

(b) Section 7.1.3 of the Note is deleted in its entirety and replaced with the following:

7.1.3 if any other default by Borrower or any guarantor (other than payment) occurs under this Secured Promissory Note or under any Ancillary Document and such default remains uncured for three (3) Business Days after written notice thereof from Lender;

(c) Section 7.1.10 of the Note is deleted in its entirety and replaced with the following:

7.1.10 if any debt owing by Borrower or any guarantor to any person or entity (a) is accelerated or Borrower or any guarantor receives any notice of intent to accelerate with respect thereto, (b) matures and is not timely satisfied in full, or (c) is in default or subject to an event of default.

8. Amended Section 7.2. Section 7.2 of the Note is deleted in its entirety and replaced with the following:

7.2 Acceleration. Upon each and every such Event of Default and at any time thereafter during the continuance of such Event of Default: (a) any and all indebtedness of Borrower to Lender under this Secured Promissory Note or otherwise shall at Lender's option and without notice become immediately due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest and any default interest) without presentment, demand, protest, notice of dishonor, notice of acceleration or notice of intent to accelerate, all of which are hereby expressly waived by Borrower, provided, however, that upon the occurrence of any Event of Default described in Sections 7.1.4 or 7.1.5, any and all indebtedness of Borrower to Lender under this Secured Promissory Note shall automatically and immediately become due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest and any default interest), without notice or demand of any kind and shall thereafter accrue interest at the Default Rate until paid in full; and (b) Lender may exercise all the rights of a creditor under applicable state and/or federal law.

9. Amended Section 7.3. Section 7.3 of the Note is deleted in its entirety and replaced with the following:

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

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

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

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

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

(c) Borrower hereby acknowledges that (i) as of April 30, 2015, the outstanding principal balance of the indebtedness evidenced by the Note is \$3,000,000.00, and (ii) as of the date hereof, it has no defenses, offsets, or claims against the enforceability of the Note and Ancillary Documents.

(d) As of the date of this Modification, there exists no Event of Default as defined in the Note, nor any condition, act or event which with the giving of notice or the



passage of time or both would constitute any such Event of Default, other than the Existing Defaults.

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

13. Fees and Expenses. Borrower shall owe to Lender a fully earned and nonrefundable amendment fee in the amount of Nineteen Thousand Five Hundred Dollars (\$19,500.00) (the "Amendment Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 14 below are satisfied, to pay from time to time and indemnify Lender for, upon demand, the Amendment Fee and all other fees, costs and expenses of Lender incurred in connection with this Modification, the documents executed and delivered in connection herewith, in connection with the Note and the Ancillary Documents and in connection with any matters contemplated by the Note or any Ancillary Document, including (without limitation) reasonable attorneys' fees and expenses for the preparation, modification, negotiation, examination, collection, and enforcement hereof and thereof. Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

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

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

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

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

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

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

(f) Since December 31, 2014, there shall have been no material adverse change, as determined by Lender, in the financial condition or business of either Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of either Borrower (or any such guarantor).

15. Holdings Resolutions and Warrant.

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

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

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

16. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby, and any and all references in the Ancillary Documents to the Note shall be deemed to refer to the Note as amended hereby. All references in the Note and all Modifications to Note to the "Loan Documents" shall be deemed to refer to, collectively, the "Note" and "Ancillary Documents," as such may be amended or modified. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Note. Failure by any Borrower or guarantor to strictly comply with the terms of this Modification shall constitute an Event of Default under the Note.

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

18. Agreement to Subsidiary Operating Agreements. In accordance with the pledge by KCI of its interest in its subsidiaries pursuant to, and as further defined in, that certain Pledge Agreement dated as of January 23, 2015, by and between KCI and Lender (the "Pledge Agreement"), Lender agrees it shall be bound by and be entitled to the economic benefits and obligations of all the provisions of the subsidiaries' operating agreement applicable to the interest acquired by Lender. Lender constitutes a "Permitted Transferee" under the subsidiaries' operating agreements because it (a) is a transferee based upon the interest it received under the Pledge Agreement, (b) is not a competitor to the subsidiaries or prohibited member, and (c) otherwise satisfies the definition provided thereunder.

19. General Release. Each Borrower and guarantor hereby absolutely and unconditionally release and forever discharge Lender, and any and all participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which Borrower or any such guarantor has had, now has or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Modification, whether such claims, demands and causes of action are matured or unmatured or known or unknown.

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

*Intentionally blank*

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

**BORROWERS:**

KCI INVESTMENTS, LLC,  
a Nevada limited liability company



By: Kenneth M. Antos  
Its: Manager

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

PREFERRED RESTAURANT BRANDS, INC.,  
a Florida corporation



By: Kenneth M. Antos  
Its: President

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

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

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




## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

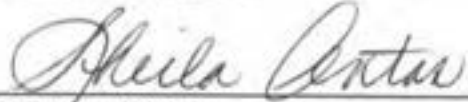
Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (each a "Borrower" and collectively, "Borrowers") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her/its respective Guaranty dated June 22, 2012, and January 23, 2015, (each, a "Guaranty"), hereby (i) acknowledges receipt of the Ninth Modification to Secured Promissory Note and Waiver of Defaults (the "Modification"); (ii) consents to the terms and execution thereof; (iii) agrees and confirms that "Guaranteed Obligations" as defined in the Guaranty includes all indebtedness, obligations, and liabilities of Borrowers, as more fully described in the Guaranty; (iv) reaffirms all obligations to Lender pursuant to the terms of the Guaranty; (v) acknowledges that Lender may amend, restate, extend, renew or otherwise modify the Note and any indebtedness or agreement of Borrowers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Guaranty for all of Borrower's present and future indebtedness to Lender; and (vi) agrees to join in and be bound by all of the terms and provisions of the General Release contained in Section 19 thereof.

Each of the undersigned that is a subsidiary of KCI Investments, LLC ("KCI") acknowledges that it has received written notice of the pledge of KCI's interest in such subsidiary pursuant to that certain Pledge Agreement dated as of January 23, 2015, by and between KCI and Lender, has reviewed the explanation of how Lender is a Permitted Transferee (as defined in the undersigned's operating agreement) in Section 18 of the Modification and acknowledges that Lender is a Permitted Transferee. Each of the undersigned hereby waives any further requirement to validate such transfer by KCI and ratifies and consents to such transfer.

Dated effective as of the 30th day of April, 2015.

GUARANTORS:

  
KENNETH ANTOS

  
SHEILA ANTOS

KCI RESTAURANT II LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

By:   
Kenneth M. Antos, Manager


KCI RESTAURANT I LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

By:   
Kenneth M. Antos, Manager

PRB I LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

By:   
Kenneth M. Antos, Manager

## TENTH MODIFICATION TO SECURED PROMISSORY NOTE

THIS TENTH MODIFICATION TO SECURED PROMISSORY NOTE (this "Modification"), effective as of December 2, 2016, is entered into by and among KCI INVESTMENTS, LLC, a Nevada limited liability company ("KCI"), PREFERRED RESTAURANT BRANDS, INC., a Florida corporation ("PRB") and, together with KCI, each a "Borrower" and collectively, "Borrowers") and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrowers are currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note by and among Borrowers and Lender dated as of June 22, 2012, as modified from time to time, including pursuant to that certain Ninth Modification to Secured Promissory Note dated as of April 30, 2015 (the "Ninth Modification"), and as further amended from time to time (the "Note");

WHEREAS, Borrowers are currently in default under the terms of the Note as a result of (i) failing to satisfy the Note upon the maturity thereof and (ii) failing to provide the certified resolutions and warrants of KCI Holding 1, LLC ("Holdings") in violation of Section 15 of the Ninth Modification (collectively, the "Existing Defaults");

WHEREAS, Borrowers are indebted to Lender in the principal amount of \$2,950,000, plus late charges of \$19,500, and accrued interest as of October 31, 2016, of \$838,396 (together with all amounts accruing hereafter, the "Accrued Interest"), together with fees, costs and expenses; and

WHEREAS, Borrowers have asked that Lender forbear from exercising its remedies based upon the Existing Defaults under applicable law, and Lender has agreed to such requests pursuant to the terms of a Forbearance Agreement of even date herewith, including severing \$15,000 from the principal amount of the Note pursuant to a severed note executed contemporaneously with this Modification, in the principal amount of \$15,000 (the "Severed Note");

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

1. Amended Principal Amount of Note. The principal amount of \$15,000 is hereby severed from the Note and is hereinafter evidenced by the Severed Note. The maximum principal amount that may be advanced under the Note and the face amount thereof are hereby decreased from \$2,950,000.00 to \$2,935,000.00. Such reduced principal obligation and all Accrued Interest, fees, costs and expenses remain due and owing pursuant to the terms of the Note, as amended hereby.

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



breach, default or event of default under the Note or any Ancillary Document. The parties agree that this Modification: (a) creates no obligations of any kind on Lender to make any future extensions or advances to any Borrower; (b) does not waive any Event of Default of a Borrower or any guarantor or under any term of the Note or any Ancillary Document; and (c) does not create any obligation on the part of Lender to forbear from exercising any of their rights and remedies under the Note or any Ancillary Document or applicable law.

3. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder. So long as Borrower owes Lender any payments or performance under the Note or the Ancillary Documents, the security interests and liens in favor of Lender granted by Borrower are and shall remain valid, enforceable, perfected and first priority security interests against the real and personal property pledged to secure the Obligations (with the exception of the unsecured Severed Note).

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

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

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

(c) Borrower hereby acknowledges that (i) the Recitals are true and correct, (ii) as of the date hereof, and after the severance of \$15,000, the outstanding principal balance of the indebtedness evidenced by the Note is \$2,935,000, plus all Accrued Interest, fees, costs and expenses, (iii) such principal balance continues to accrue interest at the Default Rate, and (iv) as of the date hereof, it has no defenses, offsets, or claims against the enforceability of the Note, Severed Note and Ancillary Documents.

5. Fees and Expenses. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 6 below are satisfied, to pay from time to time and indemnify Lender for, upon demand, all fees, costs and expenses of Lender incurred in connection with this Modification, the documents executed and delivered in connection herewith, in connection with the Note and the Ancillary Documents and in connection with any matters contemplated by the Note or any Ancillary Document, including

(without limitation) reasonable attorneys' fees and expenses for the preparation, modification, negotiation, examination, collection, and enforcement hereof and thereof. Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

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

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

(b) Execution by each Borrower of the Severed Note;

(c) Execution by each Borrower of a Forbearance Agreement and Debt Purchase Agreement, in form and substance acceptable to Lender;

(d) Execution by each of the guarantors of the Acknowledgment and Agreement of Guarantors attached hereto, and to each of the above-referenced agreements;

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

(f) Lender's receipt from First American Title Insurance Company of a commitment to issue a modification endorsement, in form and substance acceptable to Lender, insuring the validity and priority of the Deed of Trust and Lender's lien with respect to the Nevada Property, following the recordation of the DOT Modification;

(g) Delivery to Lender of satisfactory evidence of corporate authority of Borrowers to take the action and execute the documents required by this Modification, in form and substance satisfactory to Lender; and

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

7. References. All references in the Note to "this Secured Promissory Note" shall be deemed to exclude the Severed Note, and refer to the Note as amended hereby, and any and all references in the Ancillary Documents to the Note shall be deemed to refer to the Note as amended hereby. All references to the "Loan Documents" in the Note and all Modifications to the Note (including this Modification) shall be deemed to refer to, collectively, the "Note" and

"Ancillary Documents," as such may be amended or modified. Any references to Ancillary Documents or the Note shall not include the Severed Note. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Note.

8. Event of Default. Failure by any Borrower or guarantor to strictly comply with the terms of this Modification shall constitute an Event of Default under the Note.

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

10. General Release. Each Borrower and guarantor hereby absolutely and unconditionally release and forever discharge Lender, and any and all participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which Borrower or any such guarantor has had, now has or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Modification, whether such claims, demands and causes of action are matured or unmatured or known or unknown.

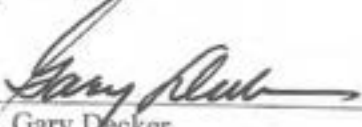
11. Statutory Notice. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

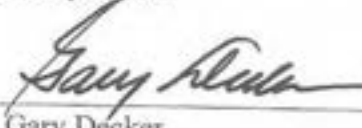
**BORROWERS:**

KCI INVESTMENTS, LLC, a Nevada limited liability company

By:   
Name: Gary Decker  
Title: Authorized Signatory

Address: 5035 Scholarship  
Irvine, CA 92612

PREFERRED RESTAURANT BRANDS, INC.,  
a Florida corporation

By:   
Name: Gary Decker  
Title: Authorized Signatory

Address: 5035 Scholarship  
Irvine, CA 92612

**LENDER:**

CBC PARTNERS I, LLC, a Washington limited liability company

By: \_\_\_\_\_  
Name: John Otter  
Title: Authorized Manager Representative

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

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

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

By: \_\_\_\_\_  
Name: Gary Decker  
Title: Authorized Signatory

Address: 5035 Scholarship  
Irvine, CA 92612

PREFERRED RESTAURANT BRANDS, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Name: Gary Decker  
Title: Authorized Signatory

Address: 5035 Scholarship  
Irvine, CA 92612

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

By:  \_\_\_\_\_  
Name: John Otter  
Title: Authorized Manager Representative

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

## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (each a "Borrower" and collectively, "Borrowers") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her/its respective Guaranty dated June 22, 2012, and January 23, 2015, (each, a "Guaranty"), hereby (i) acknowledges receipt of the Tenth Modification to Secured Promissory Note (the "Modification"); (ii) consents to the terms and execution thereof; (iii) agrees and confirms that "Guaranteed Obligations" as defined in the Guaranty includes all indebtedness, obligations, and liabilities of Borrowers, as more fully described in the Guaranty; (iv) reaffirms all obligations to Lender pursuant to the terms of the Guaranty; (v) acknowledges that Lender may amend, restate, extend, renew or otherwise modify the Note and any indebtedness or agreement of Borrowers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Guaranty for all of Borrower's present and future indebtedness to Lender; and (vi) agrees to join in and be bound by all of the terms and provisions of the General Release contained in Section 10 thereof.

DATED effective as the 2nd day of December, 2016.

### KCI RESTAURANT I LLC

\_\_\_\_\_  
Kenneth Antos

By KCI INVESTMENTS, LLC, its  
Managing Member

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

Name: Gary Decker

Its: Authorized Signatory

\_\_\_\_\_  
Shelia Antos

### KCI RESTAURANT II LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

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

Name: Gary Decker

Its: Authorized Signatory

### PRB I LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

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

Name: Gary Decker


Its: Authorized Signatory



## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (each a "Borrower" and collectively, "Borrowers") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her/its respective Guaranty dated June 22, 2012, and January 23, 2015, (each, a "Guaranty"), hereby (i) acknowledges receipt of the Tenth Modification to Secured Promissory Note (the "Modification"); (ii) consents to the terms and execution thereof; (iii) agrees and confirms that "Guaranteed Obligations" as defined in the Guaranty includes all indebtedness, obligations, and liabilities of Borrowers, as more fully described in the Guaranty; (iv) reaffirms all obligations to Lender pursuant to the terms of the Guaranty; (v) acknowledges that Lender may amend, restate, extend, renew or otherwise modify the Note and any indebtedness or agreement of Borrowers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Guaranty for all of Borrower's present and future indebtedness to Lender; and (vi) agrees to join in and be bound by all of the terms and provisions of the General Release contained in Section 10 thereof.

DATED effective as of the \_\_\_\_ day of November, 2016.

  
Kenneth Antos

  
Shelia Antos

KCI RESTAURANT I LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

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

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

Its: Authorized Signatory

KCI RESTAURANT II LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

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

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

Its: Authorized Signatory

PRB I LLC

By KCI INVESTMENTS, LLC, its  
Managing Member

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

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

Its: Authorized Signatory

# **EXHIBIT 7**

# **EXHIBIT 7**

APN: 163-29-615-007

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

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

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

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

**WITNESSETH**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### FOR THE PURPOSE OF SECURING:

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



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

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

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

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

## ARTICLE ONE

### TRUSTOR'S COVENANTS

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

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

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

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

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

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

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

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

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

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

1.04 [Reserved.]

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

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

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

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

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

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

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

1.11 [Reserved.]

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

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

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

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

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

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

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

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

1.15. [Reserved.]

## **ARTICLE TWO**

### **ASSIGNMENT OF RENTS**

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

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

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

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



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

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

### **ARTICLE THREE**

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

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

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

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

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

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

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

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

#### **ARTICLE FOUR**

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

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

(a) An Event of Default under the Note

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

4.09 [Reserved.]

## ARTICLE FIVE

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

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

## ARTICLE SIX

### **MISCELLANEOUS PROVISIONS**

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

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

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

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

(d) Accept additional security of any kind.

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

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

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

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

6.03 Irrevocable Trust. The trusts herein created are irrevocable.

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

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

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

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

6.08 [Reserved.]

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

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

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

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

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

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

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

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

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

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

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

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

6.21 Waivers.

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

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

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

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

*Intentionally blank*

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

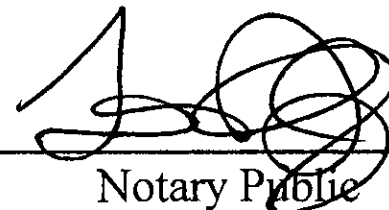
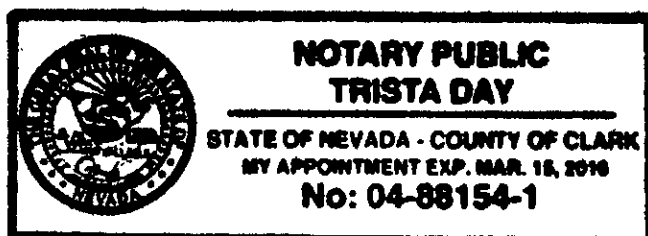



Kenneth M. Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto

STATE OF NEVADA

COUNTY OF CLARK


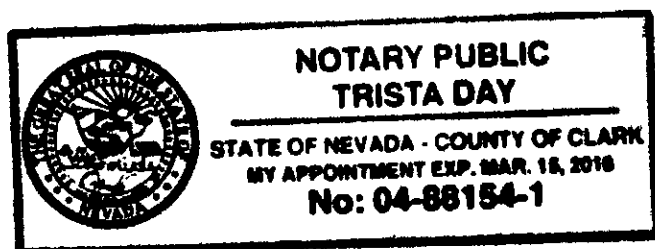
This instrument was acknowledged before me on December 17, 2014, by Kenneth M. Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto.

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

STATE OF NEVADA

COUNTY OF CLARK

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

  
Notary Public



## **EXHIBIT "A"**

### **Legal Description**

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

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

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

# **EXHIBIT 8**

# **EXHIBIT 8**

APN: 163-29-615-007

When recorded, return to:  
LANE POWELL PC  
601 SW Second Ave, Suite 2100  
Portland, OR 97204  
Attn: Skyler Tanner  
FATCO NCS 706877

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

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

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

**WITNESSETH**

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

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

**AGREEMENT**

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

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

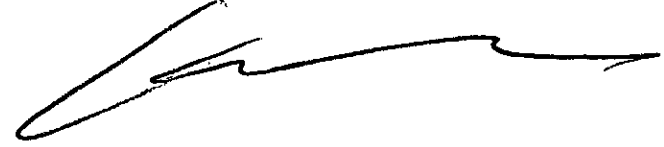
evidenced by that certain Secured Promissory Note (and any renewals, extensions, modifications and substitutions thereof) (collectively, the “**Note**”), by and among KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and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

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

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

*Intentionally blank*

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



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



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

CBC PARTNERS I, LLC,  
a Washington limited liability company

By: John Otter  
Its: Authorized Manager Representative

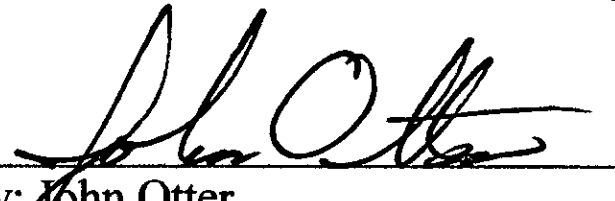
*Notary acknowledgements follow*

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

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

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

CBC PARTNERS I, LLC,  
a Washington limited liability company

  
\_\_\_\_\_  
By: John Otter  
Its: Authorized Manager Representative

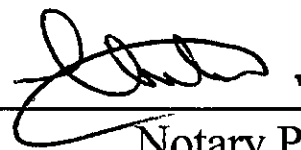
*Notary acknowledgements follow*



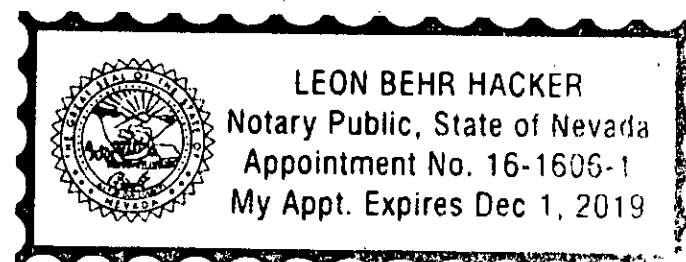
STATE OF NEVADA

COUNTY OF CLARK

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



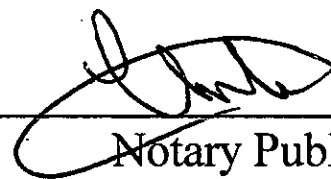
Notary Public



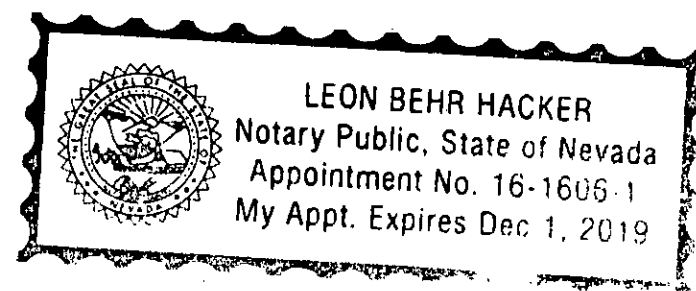
STATE OF NEVADA

COUNTY OF CLARK

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



Notary Public

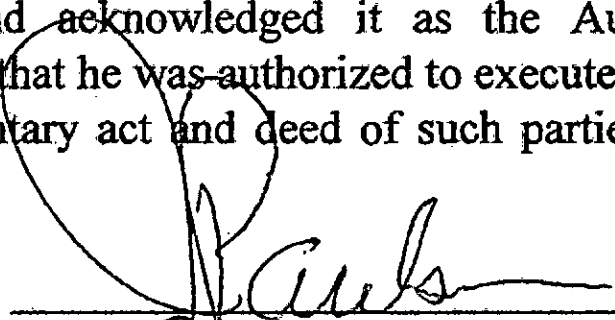


State of NEVADA  
County of CLARK

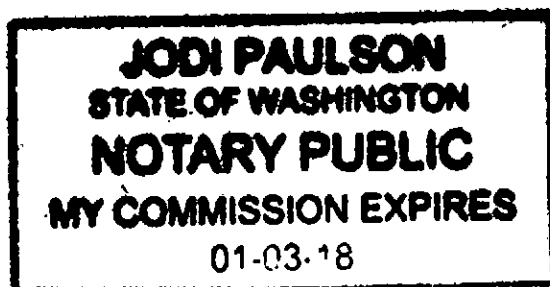
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

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

DATED: November 30 2016

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

My appointment expires: 1/3/2018



# **EXHIBIT 9**

# **EXHIBIT 9**

Inst #: 20171103-0002240

Fees: \$40.00

RPTT: \$0.00 Ex #: 009

11/03/2017 04:12:56 PM

Receipt #: 3240505

Requestor:

LEGAL WINGS

Recorded By: ANI Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: MAIN OFFICE

**APN#** 163-29-615-007

11-digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>

Deed of Sale

**Type of Document**

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

**Recording Requested By:**

Maier Gutierrez & Associates

**Return Documents To:**

**Name** Joseph A. Gutierrez, Esq., Maier Gutierrez Ayon

**Address** 8816 Spanish Ridge Avenue

**City/State/Zip** Las Vegas, Nevada 89148

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

OR Form 108 ~ 06/06/2007

Coversheet.pdf

APN: 163-29-615-007

Return document and mail tax statements to:

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

## DEED OF SALE

THIS INDENTURE WITNESSETH: That first party

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

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

**SPANISH HEIGHTS ACQUISITION COMPANY, LLC**

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

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

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

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

Subject to:

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

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

By:

  
Kenneth Antos, Trustee

By:

  
Sheila Neuman-Antos, Trustee

STATE OF NEVADA )  
COUNTY OF CLARK )

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

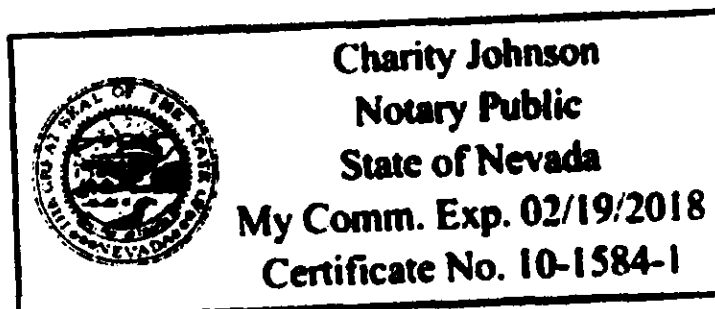
  
NOTARY PUBLIC

My Commission Expires:

2/19/18

My Certificate No.:

10-1584-1



STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-29-615-007

b.

c.

d.

2. Type of Property:

a. ☐ Vacant Land

b. ☒ Single Fam. Res.

c. ☐ Condo/Twnhse

d. ☐ 2-4 Plex

e. ☐ Apt. Bldg

f. ☐ Comm'l/Ind'l

g. ☐ Agricultural

h. ☐ Mobile Home

☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property

\$ 0.00

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

c. Transfer Tax Value:

\$ 0.00

d. Real Property Transfer Tax Due

\$ 0.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section #9

b. Explain Reason for Exemption: A transfer, assignment or other conveyance of real property to a corporation or other business organization if the person conveying the property

5. Partial Interest: Percentage being transferred: 100 % owns 100% of the corporation or organization

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

Signature \_\_\_\_\_

Capacity: Grantor/Seller

Signature Sheila Heumann-Grantor

Capacity: Grantor/Seller

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

Print Name: Antos, Kenneth and Sheila LT

Address: 5148 Spanish Heights, Dr

City: Las Vegas

State: NV

Zip: 89148

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

Print Name: Spanish Heights Acq. Co, LLC

Address: 5148 Spanish Heights Dr

City: Las Vegas

State: MV

Zip: 89148

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

Print Name: MAYER INTERPREZ & ASSOCIATES

Escrow # \_\_\_\_\_

Address: 8010 Spanish Ridge Avenue

City: Las Vegas

State: NV

Zip: 89148

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



# **EXHIBIT 10**

# **EXHIBIT 10**

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, 2017 

(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 (12<sup>th</sup>) 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 1<sup>st</sup> 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 any fines associated with such violations asserted.

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

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

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

EXHIBIT "1" - Definitions

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

ARTICLE II  
PREMISES

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

ARTICLE III  
TERM

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

3.2 Rent Commencement Date.

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

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

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

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

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



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

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

#### ARTICLE IV RENT

##### 4.1 Base Rent.

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

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

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

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

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

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

## ARTICLE V ADDITIONAL CHARGES

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

### 5.2 Operating Costs.

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

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

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

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

### 5.3 Real Property Taxes.

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

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

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

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

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

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

ARTICLE VI  
SECURITY DEPOSIT

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

ARTICLE VII  
UTILITIES AND OTHER SERVICES

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

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

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

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

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

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

## ARTICLE VIII MAINTENANCE

### 8.1 Maintenance by Landlord.

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

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



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

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

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

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

## ARTICLE IX CHANGES TO PREMISES

### 9.1 Alternations and Remodeling.

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

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

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

## ARTICLE X LIENS

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

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

## ARTICLE XI OWNERSHIP OF TENANT IMPROVEMENTS AND PERSONAL PROPERTY

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

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

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

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

## ARTICLE XII RIGHTS OF LANDLORD

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

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

## ARTICLE XIII INDEMNITY AND INSURANCE

13.1 Mutual Indemnification.

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

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

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

### 13.2 Tenant's Insurance.

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

#### (b) Required Insurance.

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

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

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

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

### 13.3 Landlord's Insurance.

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

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

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

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

#### ARTICLE XIV CASUALTY

##### 14.1 Landlord's Obligation to Repair and Reconstruct.

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

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

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

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



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

(a) the Premises are rendered wholly 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 ATTORNMEN BY TENANT

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

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

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

## ARTICLE XVII ASSIGNMENT AND SUBLETTING

### 17.1 Landlord's Consent Required.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XVIII  
DEFAULT

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

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

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

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

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

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

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

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

18.2 Remedies and Damages.

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

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

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

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

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

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

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

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

## ARTICLE XIX NOTICES

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



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

## ARTICLE XX MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


[Signature Page Follows]


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

LANDLORD:

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

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

By:   
Name: Kenneth Antos  
Title: Trustee  
Date:

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

TENANT:

SJC Ventures, LLC  
a Nevada limited liability company


By:   
Name: Jay Bloom  
Title: Manager  
Date:

EXHIBIT "1"  
DEFINITIONS

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

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

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

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

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

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

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

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

"Encumbrance" has the meaning given in Section 16.1.

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

"HVAC" means heating, ventilation and air conditioning.

"Landlord" has the meaning given in the preamble.

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

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

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

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



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

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

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

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

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

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

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

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

"Rent" means Base Rent and Additional Charges.

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

"Tenant" has the meaning given in the preamble.

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

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

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

"Premises" has the meaning given in Section 4.1.

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

EXHIBIT "2"

CONSENT TO LEASE

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

RECITALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

777 108th Ave NE Suite 1895  
Bellevue, WA 98004

With a copy to:

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

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

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

Spanish Heights Acquisition Company, LLC

BY: 

Its: Manager

Print  
Name: Jay Blam

CBC Partners I, LLC

BY: 

Its: president

Print  
Name: John Otter

# **EXHIBIT 11**

# **EXHIBIT 11**

## FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (the "Forbearance Agreement") is made and dated as of the 27<sup>th</sup> day of September 2017 by and among CBC Partners I, LLC ("CBCI"), Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below., Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJC")

### RECITALS

#### A. The Parties and Background

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

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

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

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

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

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

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

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

4. SHAC intends to rent the Property to SJCVC. SJCVC is a Nevada limited liability company. SJCVC owns a 24.912% Membership Interest in 1st One Hundred Holdings, LLC. 1st One Hundred Holdings, LLC, is the judgment creditor in possession of a final judgment in the amount of \$2.2 billion (the "Judgment"). The majority owner of 1st One Hundred Holdings, LLC is Tangled Web Family Trust. Jay Bloom is the Managing Member of 1st One Hundred Holdings LLC. Tangled Web Family Trust is the sole-member of SJCVC. Mr. Bloom is a trustee and beneficiary of the Tangled Web Family Trust. Mr. Bloom is also the Manager of SJCVC (the "SJCVC Parties." As a material term of the Forbearance Agreement, which forms the basis of the bargain, Mr. Bloom, as the Managing Member of 1st One Hundred Holdings, and as the Manager of SJCVC, have agreed that SJCVC will execute the "Security Agreement" described herein; and that 1st One Hundred Holdings will acknowledge its consent that SJCVC execute the Security Agreement, which will require 1st One Hundred Holdings and SJCVC to guaranty the obligations of SHAC and SJCVC under this Forbearance

#### **B. The Amended Note and the Events of Default**

1. Obligations Owed from Antos Parties to CBCI. As of August 21, 2017, the Antos Parties are indebted as follows to CBCI: (i) in the amount of \$2,935,001.14 for unpaid principal (the "Principal Balance"); (ii) certain Protection Payments (as defined in Exhibit "B") made by



CBCI prior to the effective date of this Forbearance Agreement in the amount of \$397,872.65 (the "Pre-Forbearance Protection Payments" as defined in Exhibit "B,"(iii) in the amount of \$1,315,105.24 in interest accrued at the rate of 20%; and (iv) in additional amounts for accrued and accruing interest, recoverable costs (including reasonable attorneys' fees), certain indemnities, Post-Forbearance Protection Payments and other "Note Expenses" as described below.

2. The Modified Deed of Trust. As part of the security for satisfaction of the Amended Note, CBCI holds the valid and perfected Modified Deed of Trust. Pursuant to the Modified Deed of Trust, CBCI is entitled to foreclose on the Property.

3. The Antos Parties and the SJCV Parties have no defenses, offsets, counterclaims, or adverse claims of any kind or amount with respect to the Loan Documents, including the Amended Note, the Modified Deed of Trust, and/or other collateral interests held by CBCI as security for satisfaction of the Note.

4. Identified Defaults. The Identified Defaults existing under the Loan Documents; including the Modified Deed of Trust are clearly set forth in the Loan Documents and are incorporated herein by reference.

**C. Request for Forbearance.**

1. The Antos Parties and the SJCV Parties have requested that, notwithstanding the existence of the Identified Defaults, CBCI forbear from exercising their rights and remedies with respect to the Identified Defaults through August 31, 2019.

2. Although CBCI is under no obligation to do so, CBCI is willing to agree to forbear pursuant to the terms and conditions of this Forbearance Agreement. The forbearance is being

provided by CBCI to allow SHAC to secure replacement financing to satisfy the amount owed to CBCI pursuant to the Note.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

**1. Accuracy of Recitals.** The Antos Parties and the SJCV parties acknowledge that the Recitals set forth above are true, accurate and correct. The Recitals are incorporated into this Forbearance Agreement without any difference or distinction between the two (2) segments of this Forbearance Agreement.

**2. Reaffirmation of Loans.** Except as modified by this Forbearance Agreement, the Antos Parties and the SJCV Parties reaffirm all obligations due to CBCI under the Amended Note and Modified Deed of Trust.

### **3. INTENTIONALLY LEFT BLANK**

**4. Forbearance.** Provided that the Antos Parties and the SJCV Parties satisfy all the conditions described in Exhibit "B" to this Forbearance Agreement, CBCI agrees to forbear from exercising its rights and remedies with respect to the Identified Defaults from the effective date of the Forbearance Agreement through August 31, 2019 (the "Forbearance Period").

As further consideration for CBCI's agreement, in addition, the forbearance provided by CBCI to the Antos Parties and the SJCV Parties are limited as follows:

**4.1 Forbearance Limited to Identified Defaults.** CBCI's forbearance is limited solely to the suspended exercise of its respective rights and remedies arising under the Amended Note and Modified Deed of Trust as a result of the Identified Defaults, and CBCI shall not be

deemed to have suspended or waived any rights or remedies it may have with respect to any other existing breach, default, or Event of Default under the Loan Documents, including the Amended Note and the Modified Deed of Trust.

**4.2 No New Events of Default.** During the Forbearance Period, there shall occur no new Event of Default or an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default under the Amended Note and Modified Deed of Trust or this Forbearance Agreement, nor shall there be a breach or failure of any warranty, representation or covenant as described in this Forbearance Agreement.

**4.3 Agreement in the Nature of Forbearance Only.** The Antos Parties and SJCVC Parties acknowledge that CBCI's obligations under this Forbearance Agreement are in the nature of a conditional forbearance only, and that CBCI has made no agreement or commitment to provide additional forbearance, to modify or to extend the Amended Note and Modified Deed of Trust beyond the Forbearance Period. Antos Parties and the SJCVC Parties also acknowledges that the Identified Defaults are not cured as a result of this Forbearance Agreement.

**4.4 Termination of the Forbearance Period.** The Forbearance Period shall end on the first to occur of the following:

4.4.1 Upon the expiration of the Forbearance Period.

4.4.2 A breach by the Antos Parties and the SJCVC Parties of any of the covenants, representations, and/or warranties set forth in this Forbearance Agreement.

4.4.3 The occurrence of any new Event of Default under any of the Loan Documents, including the Amended Note and Modified Deed of Trust, or the occurrence of any event which, with the passage of time or giving of notice or both, would constitute an Event of Default thereunder.

4.4.4 The filing of a bankruptcy petition by or against any Obligated Party.

4.4.5 Any Obligated Party makes any assignment for the benefit of its creditors, or a receiver is appointed for any Obligated Party's business.

**4.5 Exercise of Rights and Remedies Upon Termination of Forbearance**

**Period.** If upon termination of the Forbearance Period, the Note has not been satisfied as part of the transactions described in Exhibit "B," CBCI is free to exercise all of its rights and remedies under the Amended Note and Modified Deed of Trust, including but not limited to, the rights and remedies available to CBCI as a result of the Identified Defaults.

**5. Conditions to Forbearance.** In addition to all other conditions set forth in Section 4 above, the forbearance provided by CBCI under this Forbearance Agreement is strictly conditioned upon satisfaction by Antos Parties and the SJCV Parties of the following:

**5.1 No New Defaults.** That during the Forbearance Period, there will occur no new event which would allow CBCI with or without notice to accelerate the Loan Documents, including the Amended Note and Modified Deed of Trust, or to exercise any rights or remedies against any collateral for provided for in the Loan Documents including the Amended Note and Modified Deed of Trust, or an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default under any one or more of the Loan Documents, including the Amended Note and Modified Deed of Trust, or a default occurs under the Forbearance Agreement (collectively, an "Incipient Default"), and there will be no breach or failure of any warranty, representation or covenant contained in this Forbearance Agreement.

**5.2 Forbearance by Other Lenders.** That during the Forbearance Period, no other lender, creditor, or lessor (collectively "Other Lender(s)") undertakes efforts to enforce its rights or remedies relating to any default committed by the Antos Parties or SJCV Parties under

any loan agreement, lease, security agreement, or other financial agreement. If any Other Lender undertakes such efforts, CBCI may immediately terminate this Forbearance Agreement.

**5.3 Delivery of Outstanding Items.** By the time of execution of the Forbearance Agreement, the Antos Parties and the SJCV Parties will have delivered to CBCI any outstanding property, agreements, or other documents relating to the Property, or which are required to be provided pursuant to the Amended Note and Modified Deed of Trust or this Forbearance Agreement, including the agreements described in Exhibit "B" hereto.

**5.4 Delivery of Consents.** As evidenced by its signature below, any Guarantor which has guaranteed the obligations of the Antos Parties and the SJCV Parties, expressly consents to the terms, and conditions of this Forbearance Agreement, and confirms that its guarantee shall remain in full force and effect. This provision shall survive the termination of this Forbearance Agreement.

**5.5 Pursuit of Certain Sales, Financings, and Collection of the Judgment.** Upon execution of the Forbearance Agreement, Antos Parties and the SJCV Parties will undertake efforts to obtain financing to satisfy the Note prior to the termination of the Forbearance Period. Such efforts shall include: (1) efforts to obtain alternative financing; and (2) SJCV's efforts to collect on the Judgment described in Exhibit "B" and to use any monies collected to pay the Amended Note in accordance with the terms of the Judgment/Lien Pledge Agreement described in Exhibit "B."

**5.7 Full Cooperation with Consultants.** During the Forbearance Period, the Antos Parties and the SJCV Parties will cooperate fully with consultants engaged by CBCI to assess and address matters germane to Antos Parties and the SJCV Parties' performance under the Amended Note and Modified Deed of Trust or this Forbearance Agreement.

**5.8 Capital Expenditures.** During the Forbearance Period, and unless otherwise agreed to in writing by CBCI, the Antos Parties and the SJCVC Parties will not incur any liability or expend cash for capital expenditures or improvements over and above the amount of \$125,000 without the prior written approval of CBCI.

**5.9 Additional Collateral.** As additional security for satisfaction of the obligations of their obligations herein, the Antos Parties and SJCVC Parties grant to CBCI the additional collateral described in Exhibit "B" (collectively, the "Additional Collateral").

**5.10 Financial Information/Other Information.** The Antos Parties and the SJCVC parties will comply with reasonable requests made by CBCI to provide information about the Property; including information relating to the Antos Parties and SJCVC Parties efforts to comply with their obligations under section 5.5 of this Forbearance Agreement.

**5.11 Negative Covenants.** During the term of the Forbearance Period:

Except as is otherwise provided in this Forbearance Agreement, the Antos Parties and the SJCVC Parties will not incur any additional debt in excess of \$25,000. Notwithstanding the foregoing, the Antos Parties and the SJCVC Parties may incur debt from affiliated companies, or the principals of the Obligated Companies ("Affiliate Debt") so long as: (i) the Affiliate Debt is on terms acceptable to CBCI; (ii) the Affiliate Debt is subordinated in priority and payment to the Note; and (iii) no payments are made by the Antos Parties and the SJCVC Parties with respect to the Affiliate Debt unless and until all amounts due under the Amended Note are paid in full. In addition, the Antos Parties and the SJCVC Parties will not make any capital contributions, loans, or other advances to any of its affiliated companies outside of the ordinary course of business.

5.11.1 The Antos Parties and the SJCVC Parties will not make any payments of any kind (including principal, interest, or other amounts owed) on any existing or future loans from the principals of the Antos Parties and the SJCVC Parties.

5.11.2 Except for Liens arising under the Amended Note and Modified Deed of Trust, the Antos Parties and the SJCVC Parties will not allow any new liens to be secured by property which is owned or hereafter acquired by Antos Parties and the SJCVC Parties or any of their affiliated companies.

5.11.3 Subordination of other Obligations.

(a) For purposes of this Forbearance Agreement, "Senior Obligations" means (i) all principal, interest, fees, reimbursements, indemnifications, and other amounts, now or hereafter owed by the Antos Parties, or the SJCVC Parties to CBCI under or in connection with this Forbearance Agreement and of the other Agreements that are required to be executed pursuant to the terms of this Forbearance Agreement.

(b) For purposes of this Forbearance Agreement, "Senior Lien" means any and all Liens securing any of the Senior Obligations in favor of CBCI.

(c) For purposes of the Forbearance Agreement, a "Subordinate Creditor" is any party who extends credit to the Antos Parties and the SJCVC parties that is a "Subordinated Debt" as defined in this Forbearance Agreement.

(c) For purposes of this Forbearance Agreement, "Subordinated Debt" means all present and future indebtedness, liabilities, and obligations of any kind owed by the Antos Parties and/or the SJCVC Parties to any Subordinated Creditor.



(d) For purposes of this Forbearance Agreement, "Subordinated Lien" means any lien, secured by property of the Antos Parties and/or the SJCV Parties, that is intended to secure the repayment of all or any portion of the Subordinated Debt.

(e) Unless and until the Senior Obligations shall have been irrevocably paid in full; (i) any Subordinated Debt shall be subordinate to all Senior Debt; and (ii) any Subordinated Lien shall be subordinate to the Senior Lien.

(f) Unless and until the Senior Obligations shall have been irrevocably paid in full, there shall be no payments of any kind, direct or indirect, on the Subordinated Debt, unless expressly agreed to in a writing that is subject to CBCI's approval, which CBCI may withhold in its sole and absolute discretion.

(g) Notwithstanding subsection (f) above, if no Default or Event of Default is continuing or would be caused thereby, the Debtor may make regularly-scheduled payments of interest and principal with respect to a Subordinated Debt (such payments being referred to herein as "Permitted Payments"). The Subordinated Creditor shall consult with the Antos Parties, or SJCV Parties, as necessary, for the purpose of determining that each Permitted Payment to the Subordinated Creditor shall not cause a Default or Event of Default when made and the Subordinated Creditor shall bear the risk that the making of any Permitted Payments to the Subordinated Creditor violates the foregoing restriction. If at any time there shall occur a Default or Event of Default the Antos Parties, and the SJCV Parties, shall not make any payments with respect to any Subordinated Debt until the earlier of (i) the cure of the Default or Event of Default to the satisfaction of CBCI; or (ii) the irrevocable payment in full of the Senior

Obligations. The Antos Parties and the SJCVC Parties shall give any and all Subordinated Creditor(s) prompt notice of any such Default or Event of Default.

(h) If there shall exist an event of default, however denominated, with respect to the Subordinated Debt, the Subordinated Creditor shall not take any action with respect to such event of default until the earlier of (a) the irrevocable payment in full of the Senior Debt; or (b) the receipt of written consent from CBCI to commence Remedial Action.

(i) Upon any distribution to creditors of SHAC, the Antos Parties, or the SJCVC Parties (the "Debtor Parties"), in a liquidation or dissolution of any of the Debtor Parties, or in any Insolvency Proceeding with respect to any of the Debtor Parties, or any of their assets, all amounts due with respect to the Senior Obligations, shall be irrevocably paid in full before the Subordinated Creditor shall be entitled to collect or receive any payment with respect to the Subordinated Debt. Until CBCI has received all amounts due to CBCI, with respect to the Senior Debt in cash, or such payment is duly provided for, any distribution from the Debtor Parties or their assets to which the Subordinated Creditor should otherwise be entitled shall be made to CBCI.

(k) Any payments received by a Subordinated Creditor in violation of this Agreement shall be held by the Subordinated Creditor in trust for the benefit of CBCI and shall be immediately turned over to CBCI in the form received (together with any necessary endorsements) for application to the Senior Obligations, to the extent necessary to pay the Senior Debt in full.

(l) Other than a Subordinated Lien, the Subordinated Creditor will not create, assume, or suffer to exist any lien, security interest, or assignment of collateral securing the repayment of the Subordinated Debt. Any lien, security interest, or assignment existing in

violation of the foregoing and the Subordinated Lien shall be fully subordinate to the Senior Lien. At the request of CBCI, the Subordinated Creditor and the Debtor Parties will take any and all steps necessary to fully effect the release of any such lien, security interest, assignment, or collateral. Any financing statement filed with respect to the Subordinated Lien shall contain the following statement, "The security interest described in this financing statement is fully subordinate to the security interest in favor of CBC Partners I, LLC.

(m) The Subordinated Creditor, the Antos Parties, and the SJCVC Parties agree to execute any and all other documents requested by the Agent to further evidence the subordination of the Subordinated Debt to the Senior Debt and/or the Subordinated Lien to the Senior Lien.

(n) Any Subordinated Creditor will cause all Subordinated Debt to be evidenced by a note, debenture, instrument, or other writing evidencing such Subordinated Debt and will inscribe a statement or legend thereon to the effect that such note, debenture, instrument, or other writing is subordinated to the Senior Obligations in favor of CBCI in the manner and to the extent set forth in this Agreement. The Subordinated Creditor shall inscribe a statement or legend on the Security Agreement to the effect that the security interest created thereby is fully subordinated to the security interest in favor of CBCI.

(o) The Subordinated Creditor shall not assign or otherwise transfer to any other person any interest in the Subordinated Debt unless the Subordinated Creditor causes the assignee or other transferee to execute and deliver to CBCI a subordination agreement acceptable to CBCI or otherwise acknowledges to the reasonable satisfaction of CBCI the subordination of the applicable Subordinated Debt in accordance with this Agreement.

5.11.5 The Antos Parties and the SJCV Parties will not declare or pay any dividends, bonuses, and Antos Parties and the SJCV Parties will not repurchase any of their Membership Interests.

**6. Conditions Precedent.** Before this Forbearance Agreement becomes effective and CBCI becomes obligated under it, and in addition to any other conditions stated in this Forbearance Agreement, all of the following conditions shall have been satisfied at Antos Parties and the SJCV Parties' sole cost and expense in a manner acceptable to CBCI:

**6.1 Receipt of Documents.** CBCI will have received fully executed originals of this Forbearance Agreement, the Additional Guarantees, and any other documents that CBCI may require or request in accordance with this Forbearance Agreement and the Amended Note and Modified Deed of Trust, all in such form as CBCI may require in its reasonable discretion. Without limiting the foregoing, the Antos Parties and SJCV Parties acknowledge and agree that they shall be obligated to deliver to CBCI, duly executed by all parties thereto as applicable and in form and substance satisfactory to CBCI, each of the following: (a) such corporate resolutions, incumbency certificates, trust certifications and other authorizing documentation as CBCI may request and (b) all of the agreements, opinions of counsel and other documentation provided for in Exhibit "B" hereto.

**6.2 Reimbursement of CBCI's Costs and Expenses.** CBCI will receive reimbursement of all reasonable costs and expenses incurred by CBCI relating to this Forbearance Agreement, including charges for legal fees and expenses of CBCI's counsel ("Reimbursable Costs"). Reimbursable Costs may include the allocated costs, incurred to date or in the future, for services for CBCI's counsel and inhouse staffs, such as legal and appraisal, and Reimbursable Costs will be added to the amount due under the CBCI Note.

**8. Antos Parties and the SJCVC Parties' Representations and Warranties.** The Antos Parties and the SJCVC Parties represent and warrant to CBCI as follows:

8.1 Accuracy of Representations in Forbearance Agreement and Amended Note and Modified Deed of Trust. All representations and warranties made and given by Antos Parties and the SJCVC Parties in this Forbearance Agreement and in the Amended Note and Modified Deed of Trust are accurate and correct.

8.2 No Default. Other than the Identified Defaults, no Event of Default has occurred and/or is continuing under the Amended Note and Modified Deed of Trust, and no event has occurred and is continuing which, with notice or the passage of time or both, would be an Event of Default.

8.3 Property. To the extent applicable, the Antos Parties and the SJCVC Parties lawfully possess and hold a 100% ownership interest in the Property and Collateral for this Forbearance Agreement. The Antos Parties and the SJCVC Parties own all the Collateral for the Amended Note and Modified Deed of Trust free and clear of any defects, reservations of title and conditional sales contracts, and free and clear of any Liens, and security interest other than the liens and security interests in favor of CBCI. There is no financing statement affecting any Collateral for the obligations of the Antos Parties and the SJCVC Parties in any public office except for financing statements in favor of CBCI.

8.4 Disclosure with Respect to SJCVC's Judgment Interest. As is described above, SJCVC is a Member of 1<sup>st</sup> 100 Holdings LLC. 1<sup>st</sup> One Hundred Holdings, LLC is responsible for the payment of certain "Collection Attorneys" who may be owed fees relating to the collection of the Judgment. 1<sup>st</sup> 100 Holdings, LLC is obligated to pay the fees of the the Collection Attorneys prior to distribution to SJCVC. 1<sup>st</sup> One Hundred Holdings, also has about \$16,000,000

in obligations to repay from collection of the Judgment prior to distributions to Members, including SJCVC.

8.5 Good Standing. SHAC is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

8.6 Authorization. This Forbearance Agreement, and any instrument or agreement required hereunder, are within Antos Parties and the SJCVC Parties' powers, have been duly authorized, and do not conflict with any of its organizational papers.

8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal, valid and binding agreements of Antos Parties and the SJCVC Parties, enforceable in accordance with their respective terms, and any instrument or agreement required hereunder or thereunder, when executed and delivered, is (or will be) similarly legal, valid, binding, and enforceable. This Forbearance Agreement does not conflict with any law, agreement, or obligation by which Antos Parties and the SJCVC Parties is bound.

**9. Antos Parties and the SJCVC Parties Acknowledgments.** The Antos Parties and the SJCVC Parties hereby acknowledge and agree that:

9.1 No Breach By CBCI. CBCI has not breached any duty to the Antos Parties and the SJCVC Parties relating to the Forbearance Agreement or the Amended Note and Modified Deed of Trust, and CBCI has fully performed all obligations it may have had or now has to Antos Parties and the SJCVC Parties.

9.2 Interest, Fees, and Other Charges. All interest, fees, or other charges imposed, accrued, or collected CBCI under the Amended Note and Modified Deed of Trust or this Forbearance Agreement, and the method of computing the interest, fees, or other charges, were

and are reasonable, proper, and agreed to by Antos Parties and the SJCVC Parties and were properly computed and collected.

9.3 No Waiver. By entering into this Forbearance Agreement, CBCI does not waive any existing defaults (including the Identified Defaults) or any defaults hereafter occurring, and CBCI does not become obligated to waive any condition or obligation in any agreement between or among any of the parties hereto.

9.4 No Future Obligations. CBCI have no obligation to make any additional loan or extension of credit to or for the benefit of the Antos Parties and the SJCVC Parties, and CBCI has no obligation to provide additional forbearance or to extend further accommodations to the Antos Parties and the SJCVC Parties.

9.5 No Third-Party Beneficiaries. This Forbearance Agreement is not intended for, and shall not be construed to be for, the benefit of any person not a signatory hereto.

9.6 Loan Balances. The outstanding balances owing on the Note, as described in this Forbearance Agreement, are true and correct.

9.7 Fair Consideration. All payments made and security granted by Antos Parties and the SJCVC Parties to CBCI under the Amended Note and Modified Deed of Trust and this Forbearance Agreement are for fair consideration and reasonably equivalent value.

9.8 Notice of Identified Defaults. The Antos Parties and SJCVC Parties have received or waives all notice required from CBCI under the Amended Note and Modified Deed of Trust with respect to the Identified Defaults; and, subject to the terms this Forbearance Agreement, CBCI is free to exercise all of its rights and remedies under the Note and 3<sup>rd</sup> Mortgage as a result of the Identified Defaults committed by Antos Parties and the SJCVC Parties.



**10. Release of CBCI.** In consideration of the agreements of CBCI set forth in this herein, the Antos Parties and the SJCV Parties, and all their respective heirs, personal representatives, predecessors, successors, and assigns (the "Releasors"), hereby fully release, remise, and forever discharge CBCI, the parents of CBCI and all other affiliates and predecessors of CBCI, and all past and present officers, directors, agents, employees, servants, partners, shareholders, attorneys and managers of CBCI, for, from, and against any and all claims, counterclaims, liens, demands, causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, without limitation, any action, omission, misrepresentation or other basis of liability founded either in tort or contract and the duties arising thereunder, that the Releasors, or any one of more of them, has had in the past, or now has, whether known or unknown, whether asserted or unasserted, by reason of any matter, cause, or thing set forth in, relating to or arising out of, of in any way connected with or resulting from, the Amended Note and Modified Deed of Trust, this Forbearance Agreement, and any other agreement executed in connection this Forbearance Agreement.

**11. No Prejudice; Reservation of Rights.** Except for the limited forbearance specifically set forth herein, this Forbearance Agreement shall not prejudice any rights or remedies of CBCI under the Amended Note and Modified Deed of Trust. Except for the limited forbearance specifically set forth herein, CBCI reserves, without limitation, all its rights against any Obligated Party, indemnitor, guarantor, or endorser of any of the Amended Note and Modified Deed of Trust and any other party liable in any way for satisfaction of the Amended Note and Modified Deed of Trust or other losses suffered by CBCI.

**12. No Impairment/Security.** Except as otherwise specifically set forth herein, the Amended Note and Modified Deed of Trust remain unaffected by this Forbearance Agreement; and the Amended Note and Modified Deed of Trust shall remain in full force and effect. The Antos Parties and the SJCV Parties payment and performance of their various obligations to CBCI under the Amended Note and Modified Deed of Trust, including all extensions, amendments, renewals, or replacements thereof, continue to be and shall be secured by any and all liens arising under the Amended Note and Modified Deed of Trust. Nothing contained herein shall be deemed a waiver of any of the rights and remedies that CBCI may have against the Antos Parties and the SJCV Parties, or any other party, or of any of CBCI's rights and remedies arising out of the Amended Note and Modified Deed of Trust.

**13. INTENTIONALLY LEFT BLANK**

**14. Purpose and Effect of CBCI's Approval.** CBCI's approval of any matter in connection with the Amended Note and Modified Deed of Trust shall be for the sole purpose of protecting CBCI's security, rights, and remedies under the Note and Other 3rd Mortgage Documents. No such approval shall result in a waiver of any default of the Antos Parties and the SJCV Parties. In no event shall CBCI's approval be a representation by CBCI regarding the matter being approved.

**15. Integration.** The Amended Note and Modified Deed of Trust and this Forbearance Agreement and its exhibits: (a) integrate all the terms and conditions mentioned in or incidental to the 3<sup>rd</sup> Mortgage Documents; (b) supersede all oral negotiations and prior and other writings with respect to their subject matter; and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. If there is any conflict

between the terms, conditions and provisions of this Forbearance Agreement and the terms, conditions, or provisions of any other agreement or instrument, including any of the other Amended Note and Modified Deed of Trust, the terms, conditions, and provisions of this Forbearance Agreement shall prevail. No modification of this Forbearance Agreement or the Amended Note and Modified Deed of Trust shall be effective unless in writing and signed by the applicable parties to be bound thereby.

**16. Notices.** All notices, reports, and other communications provided for herein (collectively, for purposes of this paragraph 16, "notices") will be in writing and will be delivered: (a) in person; (b) by telecopier, telefax, or other facsimile communication; or (c) by overnight courier, postage prepaid, addressed as follows:

<b>CBC Partners I, LLC</b> <b>777 108th Ave NE Suite 1895,</b> <b>Bellevue, WA 98004</b>  <b>With a copy to:</b>  <b>The Law Office of Vernon Nelson</b> <b>9480 S. Eastern Ave., Suite 252</b> <b>Las Vegas, NV 89123</b>	<b>Spanish Heights Acquisition Company, LLC</b> <b>c/o Maier Gutierrez &amp; Associates</b> <b>8816 Spanish Ridge Ave,</b> <b>Las Vegas, NV 89148</b>
<b>Kenneth &amp; Sheila Antos Living Trust</b>	<b>SJC Ventures, LLC</b> <b>c/o Maier Gutierrez &amp; Associates</b> <b>8816 Spanish Ridge Ave,</b> <b>Las Vegas, NV 89148</b>
<b>Kenneth M. Antos &amp; Sheila M. Neumann-Antos Trust</b>	<b>Sheila Antos</b>
<b>Kenneth Antos</b>	

**17. Counterparts.** This Forbearance Agreement and any attached consents or exhibits requiring signatures may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same agreement.

**18. Invalidity.** If any court of competent jurisdiction determines any provision of this Forbearance Agreement or any of the Amended Note and Modified Deed of Trust to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal, or unenforceable portion had never been a part of the Forbearance Agreement or the Amended Note and Modified Deed of Trust.

**19. Governing Law, Venue, Forbearance of Jury Trial.** To the extent possible, this Forbearance Agreement shall be governed by and construed according to the laws of the State of Washington. The Antos Parties and the SJCV Parties hereby submit to jurisdiction and venue in King County, Washington, and, to the extent possible, agree that any and all pending or future litigation, arbitration, or bankruptcy proceedings relating to the Amended Note and Modified Deed of Trust may be venued and maintained in King County, Washington. The parties recognize that certain proceedings related to the possession of the Property may be required to be conducted in Clark County, Nevada and the parties submit to jurisdiction and venue in Clark County, Nevada. In the event of judicial proceedings relating to disputes arising under this Forbearance Agreement, the Antos Parties and the SJCV Parties agree that all issues (including defenses, cross-claims and counter-claims) shall be resolved by a judge and not a jury; and, therefore, the Antos Parties and the SJCV Parties waive their rights to a jury trial which it otherwise would have had.

**20. Successors and Assigns.** This Forbearance Agreement shall be binding upon and

inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, Antos Parties and the SJCVC Parties may not transfer its rights under the Forbearance Agreement or the Amended Note and Modified Deed of Trust without the prior written consent of CBCI. CBCI may transfer its rights under this Forbearance Agreement or the Amended Note and Modified Deed of Trust to any successor in interest.

**21. Construction.** As used herein, the word "include(s)" means "include(s), without limitation", and the word "including" means "including, but not limited to".

**22. Default.** The failure of Antos Parties and the SJCVC Parties to comply with any provision of this Forbearance Agreement or the failure of Antos Parties and the SJCVC Parties to comply with the terms and conditions of the Amended Note and Modified Deed of Trust (other than the Identified Defaults) shall constitute an Event of Default and shall entitle CBCI to exercise all of its rights and remedies under the Amended Note and Modified Deed of Trust and this Forbearance Agreement.

**23. No Waiver.** No failure to exercise, and no delay in exercising any right, power or remedy under any of the Amended Note and Modified Deed of Trust or under this Forbearance Agreement shall impair any right, power, or remedy that CBCI may have, nor shall such delay be construed to be a waiver of any of such rights, powers or remedies. No waiver of any default or breach of Antos Parties and the SJCVC Parties shall be a waiver of any other default or breach or of any default or breach subsequently occurring. CBCI shall not be deemed to have waived any right, power, or remedy except in writing signed by an officer of CBCI expressly stating that it is a waiver of same right, power or remedy.

**24. No Consent.** Except as specifically provided in this Forbearance Agreement, no

express or implied consent to any further forbearance or modifications involving any of the matters set forth in this Forbearance Agreement or otherwise shall be inferred or implied by CBCI's execution of this Forbearance Agreement or any other action of CBCI. CBCI's execution of this Forbearance Agreement shall not constitute a waiver, either express or implied, of the requirement that any further forbearance or modification of the Amended Note and Modified Deed of Trust shall require the express written approval of CBCI. CBCI must provide any consent required from the CBCI under this Forbearance Agreement.

**25. Cumulative Remedies.** The rights and remedies of CBCI under this Forbearance Agreement and the Amended Note and Modified Deed of Trust are cumulative and not exclusive of any rights or remedies that CBCI would otherwise have, and may be pursued at any time and from time to time and in such order as CBCI shall determine in its sole discretion.

**26. Mutual Agreement.** The parties hereto agree that the terms and provisions of this Forbearance Agreement embody their mutual intent and that such terms and provisions are not to be construed more liberally in favor, or more strictly against, any party. This Forbearance Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if it had been prepared by all of the parties.

**27. Time is of the Essence.** Time is of the essence of this Forbearance Agreement and the Amended Note and Modified Deed of Trust.

**28. Headings.** Section headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Forbearance Agreement.

**29. Further Performance.** The Antos Parties and the SJCV Parties, whenever and as often as shall be requested by CBCI, shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such further instruments and documents and to do any

and all things as may be requested by CBCI in order to carry out the intent and purpose of this Forbearance Agreement and the Amended Note and Modified Deed of Trust.

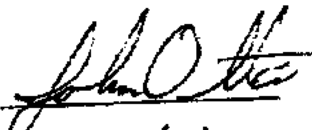
**30. Survival.** The representations, warranties, acknowledgments, and agreements set forth herein shall survive the date of this Forbearance Agreement.

**31. Binding Effect.** This Forbearance Agreement shall be binding upon and inure to the benefit of CBCI, the Antos Parties and SJCV Parties, and their respective successors and assigns.




IN WITNESS WHEREOF, the parties hereto have caused this Forbearance Agreement to be executed on the dates set forth below to be effective as of the day and year set forth above.

CBC Partners I, LLC

BY:   
Its: President

Print  
Name: John Otter

Kenneth & Sheila Antos Living Trust

BY:   
Kenneth Antos, Trustee


BY:   
Sheila Antos, Trustee

Kenneth M. Antos & Sheila M. Neumann-  
Antos Trust


BY:   
Kenneth Antos, Trustee

BY:   
Sheila Antos, Trustee

  
Kenneth Antos, Individually

  
Sheila Antos, Individually,

SJC Ventures, LLC

BY:   
Its: Manager

Print  
Name: Jay Blum

# **EXHIBIT 12**

# **EXHIBIT 12**

**AMENDMENT TO FORBEARANCE AGREEMENT  
AND RELATED AGREEMENTS**

THIS AMENDMENT TO FORBEARANCE AGREEMENT AND RELATED AGREEMENTS (the "Amendment") is made and dated as of the 1st day of December 2019 by and among CBC Partners I, LLC ("CBCI"), Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJC") (collectively the "Parties").

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge Agreement, an Assignment of Rents, and a Security Agreement (collectively the "Related Agreements").

WHEREAS, pursuant to the terms of the Forbearance Agreement and the Related Agreements, the Forbearance Period expired on or about August 31, 2019.

WHEREAS, subject to the terms of this Extension, the parties desire to extend the Forbearance Period until March 31<sup>st</sup>, 2020.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## AMENDMENT

**1. Extension of Forbearance Period.** By way of Amendment to Section 4 of the Forbearance Agreement, the parties agree the Forbearance Period shall be extended to March 31<sup>st</sup>, 2020 (the "Extended Forbearance Period"). CBCI's agreement to extend the Forbearance Period is subject to the following conditions:

**A. Conditions to Extension.** The parties shall adhere to their commitments and obligations under the Forbearance Agreement and the Related Agreements. Thus, the parties agree, without limitation, as follows:

1. The Forbearance Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Forbearance Agreement.

2. The "K & S Trust", Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below (collectively the "Antos Parties"), SHAC, and SJCVC represent and warrant they are not in default of the Forbearance Agreement or any of the Related Agreements.

3. SHAC and SJCVC continue to be limited liability companies, organized under the laws of the State of Nevada, and are duly authorized to execute this Amendment.

4. The Antos Parties and the SJCVC Parties represent that they have no knowledge of any Other Lenders having undertaken efforts to enforce any rights related to the Property.

5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership Pledge Agreement.

6. SHAC will provide CBCI with evidence of homeowner's insurance coverage that is effective through March 31<sup>st</sup>, 2020.

7. The payment of the Balloon Payment described in Exhibit "B" to the Forbearance Agreement shall be due on March 31<sup>st</sup>, 2020.

8. The parties acknowledge the extension of the Lease Agreement and such Agreement shall continue to govern the lease of the premises.

9. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership Pledge Agreement.

10. The Assignment of Rents Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Assignment of Rents Agreement.

11. The Account Control Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Account Control Agreement.

12. The Security Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Security Agreement. In addition, SJCVC agrees to obtain from counsel for SJCVC and 1st One Hundred Holdings, LLC, dated as of the effective date of this Amendment, in form and substance reasonably satisfactory to CBCI, to the effect that the Judgment/Lien Pledge Agreement: (i) constitutes valid and binding obligation of SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC in accordance with its terms; (ii) properly evidences CBCI's First Priority Position and that no other party, apart from the Collection Professionals has priority over CBCI to receive payments in relation to the Judgment, and (iii) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or 1<sup>st</sup> One Hundred Holdings is

required for the consummation of the transactions set forth therein. CBCI may require that the opinion of counsel address any other matters incident to the matters herein contemplated as CBCI may reasonably request.

13. SJCVC shall provide representations for SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC, dated as of the effective date of this Amendment, in form and substance reasonably satisfactory to CBCI, to the effect that: (i) both SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC are limited liability companies continue to be duly organized, validly existing and of active status under the laws of the State of Nevada; (ii) each party continues to have full power and authority to make, execute, deliver and perform the their obligations under the Security Agreement, and all corporate or other proceedings required to be taken by SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC to authorize the execution, delivery, and performance of this Security Agreement have all been duly and properly taken; (iii) the Security Agreement continues to constitute a valid and binding obligation of SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC in accordance with their respective terms,; and (iv) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or 1<sup>st</sup> One Hundred Holdings, LLC is required for the consummation of the transactions of the Security Agreement and the Amendment. Such opinion shall include any other matters incident to the matters herein contemplated as CBCI may reasonably request. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon certificates of officers of SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC.

14. SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC have provided CBCI with a representation that: (1) identifies any parties that may be liable to SJCVC and/or 1<sup>st</sup> One Hundred Holdings, LLC for the any portion of the Judgment; (2) provides an assessment of the current

status of efforts to collect amounts owed under the Judgment; (3) states whether any parties have undertaken legal action to oppose efforts to collect the Judgment; and (4) provides an evaluation of the likelihood of a favorable outcome before the end of the Extended Forbearance Period.

15. The Guarantees identified in Section 6 Security Agreement shall remain in Section 6(g) effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Guarantees.

16. The Antos Parties and the SJCV Parties represent that they have not incurred any liability or expended cash for any capital expenditures or improvements over and above \$350,000. The SJCV Parties and the Antos Parties shall provide CBCI with a statement that identifies all capital expenditures and/or capital improvement that have been made for the benefit of the Property.

17. The Antos Parties and the SJCV Parties represent and warrant:

- a. They have not incurred additional debt against the property from September 27, 2017 to present;
- b. They have not made payments of any kind (including principal, interest, or other amounts owed) on any existing or future loans related to the property from the principals of the Antos Parties and the SJCV Parties;
- c. They have not allowed any new liens to be secured by property which is owned or hereafter acquired by Antos Parties and the SJCV Parties or any of their affiliated companies;
- d. The Antos Parties and the SJCV Parties have not entered into any agreements for a party to acquire the Property; will not enter into any acquisitions without the prior approval of CBCI;



e. The Antos Parties have not declared or paid any dividends, bonuses, and Antos Parties and the SJCVC Parties did not repurchase any of their Membership Interests.

f. The Antos Parties and the SJCVC Parties represent SHAC, and SJCVC represent that the warranties and representations contained in Forbearance Agreement, the Related Agreements, and this Amendment are accurate and correct.

g. The Antos Parties and the SJCVC Parties represent they continue to lawfully possess and hold 100% of the ownership interest in the Property.

h. The Antos Parties and the SJCVC Parties represent they continue to acknowledge that the Amended Note, Modified Deed of Trust, and the Forbearance Agreement are legal, valid and binding agreements of the Antos Parties and the SJCVC Parties.

i. The Antos Parties and the SJCVC Parties represent they continue to acknowledge that CBCI has not breached any duty to the Antos Parties and the SJCVC Parties in connection with the Forbearance Agreement or the Amended Note and Modified Deed of Trust. The Antos Parties and the SJCVC Parties agree that CBCI has fully performed all obligations it may have had or now has to Antos Parties and the SJCVC Parties.

18. The Antos Parties and the SJCVC Parties represent they have not withdrawn funds in violation of the Account Control Agreement.

19. The Antos Parties and the SJCVC Parties represent they continue to acknowledge that they continue to pledge their stock in SHAC as collateral for the Forbearance Agreement. The Antos Parties and the SJCVC Parties represent and warrant they have not issued any new shares of stock that are not collateral for their obligation under the Forbearance Agreement.

## **B. Acknowledgements and Conditions Applicable to Lease Agreement.**

### **1. Options to Extend Have Terminated.**

The Lease Agreement between SHAC and SJCVC afforded SJCVC, the option to exercise two additional consecutive lease extensions consisting of a two years term for each of the two extensions (the "SJCVC Options"). The SJCVC Options were subject to certain conditions, which included: (1) that SJCVC provide written notice of its intent to exercise the SJCVC Options, and (2) that SJCVC not be in default of the Lease Agreement. The parties acknowledge that the conditions to which the SJCVC Options were subject have been satisfied and that the SJCVC Options have been exercised.

### **2. Extension of Lease Agreement**

The parties agree the Lease Agreement shall remain in effect and all terms and conditions thereunder shall continue in full force and effect.

## **C. Acknowledgements and Conditions Applicable to Refinancing.**

1. If the Antos Parties and the SJCVC Parties have not paid the amounts due under the Amended Note and the Modified Deed of Trust by the end of the Extend Forbearance Period, then the SJCVC Parties shall undertake good faith efforts to obtain new mortgages as part of the SJCVC Parties efforts to refinance the various loans secured by the Property (the "Refinancing Efforts"). Specifically, the SJCVC Parties shall undertake the Refinancing Efforts with the intention of obtaining new loans that provide SJCVC with the amounts necessary to pay to CBCI the amounts that are due under the Amended Note and the Modified Deed of Trust.

2. In connection with its obligations above, SJCVC will provide CBCI with written evidence, in a form reasonably satisfactory to CBCI, that SJCVC has filed applications for mortgages to refinance the Property.

**2. Conflict or Inconsistency.** All provisions of the Forbearance Agreement and the Related Agreements that are not modified by this Amendment shall remain in full force and effect. In the event of any conflict or inconsistency of any term or provision set forth in this Amendment and the Forbearance Agreement, or the Related Agreements, this Amendment shall control.

**3. Complete Agreement.** This Amendment, the Forbearance Agreement, and the Related Agreements represent the full and complete agreement and understanding of the parties with respect to the subject matter hereof (the "Complete Agreement"). The Complete Agreement supersedes and replaces all prior and contemporaneous understandings or agreements, whether oral, written or otherwise, regarding such subject matter. Any amendment thereof must be in writing and executed by the parties hereto.

**4. Multiple Counterparts.** This Amendment may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one agreement. This Amendment may be executed by the attachment of signature pages which have been previously executed.

IN WITNESS WHEREOF, the Parties have executed this Amendment this 1<sup>st</sup> day of December 2019.

**CBC Partners I, LLC ("CBCI")**

BY: 

Its: President

Print

Name John Ofter

**Kenneth & Sheila Antos Living Trust (the "Living Trust")**

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

**K&S Trust**

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

**Kenneth Antos**

\_\_\_\_\_  
Kenneth Antos, an Individual

**Sheila Neumann-Antos**

\_\_\_\_\_  
Sheila Neumann-Antos, an Individual


**Spanish Heights Acquisition Company ("SHAC")**

BY:  \_\_\_\_\_

Its: Manager \_\_\_\_\_

Print  
Name: Jay Bloom \_\_\_\_\_

**SJC Ventures, LLC ("SJCVC")**

BY:  \_\_\_\_\_

Its: Manager \_\_\_\_\_

Print  
Name: Jay Bloom \_\_\_\_\_

# **EXHIBIT 13**

# **EXHIBIT 13**

## PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT dated 27<sup>th</sup> (this "Agreement") is made by Kenneth & Sheila Antos Living Trust (the "Antos Trust"), SJC Ventures, LLC ("SJC") (collectively the "Pledgors" to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

### WITNESSETH:

WHEREAS, Pledgors and Secured Party are parties to a certain Forbearance Agreement (the "Forbearance Agreement") dated as of the 27<sup>th</sup> day of September 2017 by and among CBC Partners I, LLC ("CBCI"), Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJC").

WHEREAS, Pledgors are the owners of 100% of the membership interests (the "Membership Interests") of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

WHEREAS, the Forbearance Agreement provides that several conditions must be satisfied before CBCI agrees to forbear from exercising its rights and remedies under the Forbearance Agreement. In particular, one of the conditions requires the Antos Trust and SJC have agreed to pledge all right, title and interest in and to 100% of its membership interests in Spanish Heights Acquisition Company to Secured Party pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, Pledgors hereby agrees as follows:

1. Pledge. Pledgors hereby pledges to Secured Party, and grants to Secured Party security interests in and to the following (collectively, the "Pledged Collateral"):

- (a) the Membership Interests and the certificates representing the Membership Interests, if any, and all dividends, profits, income, cash, receipts, instruments, distributions (whether in cash or in-kind property) and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Membership Interests;
- (b) any and all additional membership interests in SHAC acquired by Pledgors in any manner, and all securities convertible into and warrants, options, and other rights to purchase or otherwise acquire interest in SHAC and the certificates representing such additional shares, and all dividends, profits, income, cash, receipts, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares, additional securities, warrants, options or other rights;

- (c) to the extent not covered by clauses (a) and (b) above, all proceeds of any or all of the foregoing Pledged Collateral.

For purposes of this Agreement, the term "proceeds" shall include whatever is receivable or received when Pledged Collateral or proceeds thereof are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, and shall include, without limitation, proceeds of any indemnity or guaranty payable to Pledgors from time to time with respect to any of the Pledged Collateral.

2. Security for Obligations. This Agreement partially secures all the obligations of Pledgors under the Forbearance Agreement and this Pledge (all such obligations being collectively referred to herein as the "Obligations").

3. Delivery of Pledged Collateral. All certificates or instruments representing or evidencing the Pledged Collateral shall be delivered to and held by or on behalf of Secured Party pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default (as defined below) after notice and a 30 day cure period having been provided to Pledgors, to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral, subject only to the revocable rights specified in Section 6(a). In addition, Secured Party shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

4. Representations and Warranties. Pledgors, covenant, represent, warrant and agree as follows:

- (a) The Membership Interests have been duly authorized and are validly issued.
- (b) Pledgors are the legal and beneficial owner of the Pledged Collateral free and clear of any liens, security interests, options or other charges or encumbrances, except for the security interest created by this Agreement.
- (c) Upon the filing of the Uniform Commercial Code Financing Statement with respect to the Pledged Collateral, the pledge of the Membership Interests pursuant to this Agreement creates a valid and perfected first priority security interest in the Pledged Collateral, securing the payment of the Obligations.
- (d) Subject to such other consents or approvals which have been obtained, no consent of any other person or entity and no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required (i) for the pledge by Pledgors of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Pledgors, (ii) for the perfection or maintenance of the security interests created hereby (including the first priority nature of such security interest), or (iii) for the exercise by Secured Party of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement (except as may be required in connection with any disposition of any portion of the Pledged Collateral by laws affecting the offering and sale of securities generally).