

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MOM CA Investco LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10321 (BLS)

(Jointly Administered)

Requested Hearing Date: June 30, 2025 at 9:30 a.m. (ET)

Requested Objection Deadline: At or Before the Hearing

**EMERGENCY MOTION OF MOHAMMAD HONARKAR AND 4G WIRELESS, INC.
FOR ENTRY OF AN ORDER DISMISSING OR CONVERTING THE CHAPTER 11
CASES PURSUANT TO 11 U.S.C. § 1112(b)**

Mohammad Honarkar and 4G Wireless, Inc. (“**4G**” and together with Mr. Honarkar, the “**Honarkar Parties**”), by and through their undersigned counsel, hereby move (this “**Motion**”)² for entry of an order either dismissing the above-captioned bankruptcy cases (the “**Chapter 11 Cases**”) of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) or converting the Chapter 11 Cases to cases under chapter 7 pursuant to 11 U.S.C. § 1112(b). In support of this Motion, the Honarkar Parties respectfully state as follows:

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: MOM CA Investco LLC [6263], MOM AS Investco LLC [6049], MOM BS Investco LLC [6180], Retreat at Laguna Villas, LLC [2046], Sunset Cove Villas, LLC [9178], Duplex at Sleepy Hollow, LLC [9237], Cliff Drive Properties DE, LLC [0893], 694 NCH Apartments, LLC [0318], Heisler Laguna, LLC [4709], Laguna Festival Center, LLC [4073], 891 Laguna Canyon Road, LLC [0647], 777 AT Laguna, LLC [8715], Laguna Art District Complex, LLC [8316], Tesoro Redlands DE, LLC [2764], Aryabhata Group LLC [7332], Hotel Laguna, LLC [9580], 4110 West 3rd Street DE, LLC [8641], 314 S. Harvard DE, LLC [2057], Laguna HI, LLC [6408], Laguna HW, LLC [9470], The Masters Building, LLC [6134], 837 Park Avenue, LLC [3229], and Terra Laguna Beach, Inc. [2344] (interim). The Debtors’ headquarters are located at 520 Newport Center Drive, Suite 480, Newport Beach, CA 92660.

² Capitalized terms used but not defined in this Motion shall have the meaning ascribed to such terms in the Complaint (as defined herein).

INTRODUCTION

1. Now four months in, these Chapter 11 Cases have reached a breaking point. The Debtors have rejected the Honarkar Parties' proposed plan term sheet, which the Honarkar Parties believe presented the best path forward in these Chapter 11 Cases. Rather than work with the Honarkar Parties, as Debtors repeatedly represented to the Court that they would do, the Debtors have attacked and retaliated against them for their efforts to protect and preserve their interests in the Properties and their rights under the Partial Final Award. Notwithstanding assertions to the contrary, the conduct of the Debtors demonstrates that they have squarely aligned themselves with the Continuum Parties. They have opposed the Honarkar Parties' limited stay relief motion, served the Honarkar Parties with multiple discovery requests and demand letters, moved to reject their agreements with the Honarkar Parties, and, most recently, interfered with the Honarkar Parties' rights in an entirely separate litigation and sought to enforce, without any factual or legal basis, the agreements of the Joint Venture that were procured by fraud and under which the Honarkar Parties have no further duty to perform.

2. The Debtors' singular objective in these Chapter 11 Cases has been to sell and liquidate all of the Properties, beginning with the Tesoro Property. The Continuum Parties, for their part, have been very supportive of this strategy, which is unsurprising given that they have everything to gain if the Properties are sold before the Honarkar Parties can exercise rescission. However, the Honarkar Parties have objected to the sales and intend to oppose the closing of any sales, particularly if the Debtors continue to try to sell any of the Properties to individuals or entities associated with the Continuum Parties. The Honarkar Parties already had the Properties stolen from them once. They are not going to sit back while the Debtors try to sell the Properties out from

under them before they have an opportunity to exercise rescission. Thus, the Debtors do not have any viable strategy in these Chapter 11 Cases.

3. Meanwhile, the Debtors have incurred, and are continuing to incur, substantial administrative expenses and costs, and the Properties have suffered. The Debtors have incurred millions of dollars in fees and expenses, the vast majority of which seems to have gone towards attacks on the Honarkar Parties and their ill-fated sale process, while the Continuum Parties and their associates remain in control of the management and operations of most of the Properties. While in chapter 11, the Debtors have been operating at a net loss, and the condition of the Properties has continued to worsen. As just a few examples, the Hotel Laguna has been accused by the California Coastal Commission of operating in violation of California law, the occupancy rate at the Tesoro Property continues to be at an all-time low, and the Honarkar Parties have received numerous complaints from tenants at many of the Properties about management issues.

4. Critically, the Debtors have also been unable to secure any financing except from Specialty DIP, an entity formed and controlled by Mahender Makhijani. Although the Debtors are currently seeking to increase their loan with Specialty DIP, in exchange for multiple material modifications to the loan and increased power granted to Specialty DIP, this additional DIP financing is merely illusory. As proposed, the closing of the loan amendment, and thus Specialty DIP's obligation to provide any additional financing to the Debtors, is expressly contingent upon the approval of the sale of the Tesoro Property. But, as noted above, the Honarkar Parties have objected to, and continue to object to, the sale of the Tesoro Property. Thus, without this financing from Specialty DIP or any other lender, and per the Debtors' representations at the June 10, 2025 hearing that they would run out of liquidity within the next ten (10) days, the Debtors are now administratively insolvent, and this insolvency will only worsen if they remain in chapter 11.

5. Given the ongoing losses to the Debtors' estates, the lack of any viable plan of rehabilitation or reorganization, and the Debtors' administrative insolvency, there is more than sufficient cause to convert or dismiss these Chapter 11 Cases. Conversion would enable a chapter 7 trustee to administer the Debtors' estates while the Honarkar Parties proceed with the Arbitration, or, alternatively, dismissal would allow the Honarkar Parties to immediately appoint a receiver for all of the Debtors and the Properties. Either way, a truly independent, impartial third party would be able to protect and preserve the Properties and conduct the accounting that the Debtors require and that the Debtors have failed to even begin. Given all of the highly unusual circumstances surrounding these Chapter 11 Cases, and the apparent commitment of the Debtors to further the interests of the Continuum Parties, dismissal or conversion is the only option left in these Chapter 11 Cases to serve the best interests of the Debtors' estates and all of their creditors.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

7. In accordance with Rule 9013-1(f) of the Local Rules of Bankruptcy Procedure for the District of Delaware, the Honarkar Parties hereby consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

8. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory bases for this Motion are 11 U.S.C. §§ 105(a) and 1112(b).

BACKGROUND

A. The Chapter 11 Cases

11. On February 28, 2025, MOM CA Investco LLC, MOM AS Investco LLC, and MOM BS Investco LLC (collectively, the “**MOM Investcos**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

12. On March 10, 2025, nineteen of the MOM Investcos’ subsidiaries (collectively, the “**SPEs**”) each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court. The Chapter 11 Cases of each of the MOM Investcos and the SPEs are being jointly administered under Case No. 25-10321-BLS. *See* Docket No. 56.

13. On March 31, 2025, Terra Laguna Beach, Inc. (“**Terra**”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court. Terra’s Chapter 11 Case is being jointly administered with the Chapter 11 Cases of the other Debtors under Case No. 25-10321-BLS on an interim basis.³ *See* Docket No. 220.

14. The Debtors are currently operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in these Chapter 11 Cases.

³ On April 10, 2025, the Honarkar Parties filed in Terra’s Chapter 11 Case the *Motion of Mohammad Honarkar and 4G Wireless, Inc. for Entry of an Order Dismissing Debtor’s Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b)* (the “**Terra Dismissal Motion**”), seeking to dismiss case for lack of authority for the bankruptcy filing. *See* Case No. 25-10641 (BLS), Docket No. 3. Pursuant to the Settlement Stipulation (as defined herein), the Terra Dismissal Motion has been adjourned indefinitely. The Honarkar Parties expressly reserve and preserve, and do not waive, the arguments raised in the Terra Dismissal Motion, and this Motion is filed without any prejudice to the Terra Dismissal Motion.

B. The Chapter 11 Trustee Motion

15. Shortly after the commencement of the Chapter 11 Cases, on March 13, 2025 the Honarkar Parties filed the *Motion of Mohammad Honarkar and 4G Wireless, Inc. for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104(a)* [Docket No. 29] (the “**Chapter 11 Trustee Motion**”), seeking the appointment of a chapter 11 trustee for all of the Debtors (other than Terra, whose Chapter 11 Case had not yet been filed at the time).

16. As set forth in the Chapter 11 Trustee Motion, the Honarkar Parties were not given any advance notice of, and did not consent to, the filing of the MOM Investcos’ Chapter 11 Cases, which were filed just one week after the issuance of the Partial Interim Award in the Arbitration.

17. The Honarkar Parties also were not given any advance notice of the appointment of Mark Shinderman as the CRO and/or of Robbin Itkin as the Independent Manager for the Debtors, each of whom were unilaterally appointed by the Continuum Parties shortly after the issuance of the Partial Interim Award and, in the case of the Independent Manager, after the MOM Investcos’ Chapter 11 Cases were filed.

18. Given the circumstances surrounding these Chapter 11 Cases, including the Arbitrator’s definitive and well-supported findings in the Partial Interim Award, and the appointment of the Debtors’ current management, the Honarkar Parties filed the Chapter 11 Trustee Motion out of a grave and justified concern as to how these Chapter 11 Cases would be run and that they would be used as an attempt to undermine and interfere with the Arbitration and the Arbitrator’s findings in the Partial Interim Award.

19. However, cautiously optimistic that the Honarkar Parties could work with the Debtors to formulate a proposed chapter 11 plan of reorganization that would honor the findings and remedies granted in the Partial Interim Award, the Honarkar Parties withdrew the Chapter 11

Trustee Motion in accordance with the *Stipulation By and Among the Debtors and the Honarkar Parties Regarding Resolution of Several Contested Matters* approved by this Court on May 9, 2025. See Docket No. 379, 395.

20. Unfortunately, as set forth herein, it is now abundantly clear that the Debtors have no intent to honor the Arbitrator's findings in the Arbitration and have instead aligned themselves completely with the Continuum Parties, who are the entities and individuals conclusively found by the Arbitrator to have grossly mismanaged and stolen from the Debtors (as well as the Honarkar Parties) and who necessitated these Chapter 11 Cases.

C. The Adversary Proceeding

21. On May 27, 2025, the Honarkar Parties filed the *Complaint for Declaratory Judgment, Imposition of Constructive Trust, and Turnover of Property* [Docket No. 454] (the "**Complaint**") against the MOM Investcos and the SPEs commencing an adversary proceeding that is currently pending before the Court and captioned as *Honarkar v. MOM CA Investco, LLC, et al.*, Adv. No. 25-50959 (the "**Adversary Proceeding**").

22. By the Complaint, the Honarkar Parties are seeking a declaratory judgment under section 541(d) of the Bankruptcy Code against the MOM Investcos (Count I), a declaratory judgment under section 541(d) of the Bankruptcy Code against the SPEs (Count II), imposition of a constructive trust upon the membership interests in the SPEs, the Properties and turnover of the proceeds of any and all sales of the Properties (Count III), and turnover by the Debtors of any legal title they possess in the membership interests and/or the Properties to the Honarkar Parties and the proceeds of any and all sales of the Properties (Count IV).

23. The Honarkar Parties hereby incorporate all of the factual background set forth in the Complaint as if set forth herein in full.

D. The Arbitration Awards

24. On February 21, 2025, just one week before the filing of the MOM Investcos' Chapter 11 Cases, the Honorable David A. Thompson (the "**Arbitrator**") issued the *Partial Interim Award* (the "**Partial Interim Award**") in the pending arbitration proceeding captioned as *Honarkar v. Makhijani*, JAMS No. 5220003126, as consolidated with *MOM AS Investco LLC v. Honarkar*, JAMS No. 5200001122 (the "**Arbitration**"). A true and correct copy of the Partial Interim Award was filed in these Chapter 11 Cases at Docket No. 27-1. As set forth in the Partial Interim Award, and as discussed in the Chapter 11 Trustee Motion and the Complaint, the Arbitrator found in the Honarkar Parties' favor on nearly all of their claims asserted.

25. The Arbitrator also denied all of the Continuum Parties' claims asserted against the Honarkar Parties. Specifically, the Arbitrator determined that:

All of these claims depend on the existence and enforceability of the Operating Agreements and the Other JV related Agreements. But the Arbitrator has found Claimants may rescind these agreements for fraud in the inducement and failure of consideration. In any event, the MOM Respondents' prior material breach of the Operating Agreements discharged Honarkar from any further duty to perform thereunder.

Partial Interim Award, p. 44.

26. On April 2, 2025, after it became clear to the Honarkar Parties that the Debtors would not consent to stay relief to allow the Honarkar Parties to proceed with the Arbitration against the Respondents, the Honarkar Parties filed the *Motion of Mohammad Honarkar and 4G Wireless, Inc. for Entry of an Order Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Docket No. 175] (the "**Stay Relief Motion**"), seeking limited relief from stay, if and to the extent applicable, to take the Arbitration to finality but not to exercise the Honarkar Parties' rights to rescission.

27. The Debtors along with Nano, the MOM Members, and Continuum Parties Bhajneet Singh Malik, Deba Shyam, and Andrew Stupin objected to the Stay Relief Motion. *See* Docket Nos. 223, 236, 237, 238.

28. Following a hearing held on April 22, 2025, the Court entered on April 28, 2025 the *Order Granting in Part and Adjourning in Part Motion of Mohammad Honarkar and 4G Wireless, Inc. for Entry of an Order Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Docket No. 303], lifting the stay, to the extent applicable, to allow the Honarkar Parties to obtain an award of their attorneys' fees and costs in the Arbitration and to proceed with the awarded accounting in the Chapter 11 Cases.

29. On May 23, 2025, the Arbitrator issued the *Partial Final Award* (the “**Partial Final Award**”). The Partial Final Award incorporates the Partial Interim Award, other than the Arbitrator's findings with respect to the derivative claims given the pendency of these Chapter 11 Cases, and includes the Arbitrator's since-clarified finding that Terra and various other entities “are not now and never have been owned by the MOM [Investcos].” *See* Partial Final Award, p. 40. As referenced in the Partial Final Award, the Arbitrator's *Ruling on Motion for Attorney Fees and Costs* was filed contemporaneously with the Partial Final Award and entitles the Honarkar Parties to recover their attorneys' fees in the amount of \$8,303,510.25 plus \$893,916.06 in costs, for a total of \$9,197,426.31.

30. On May 30, 2025, Mahender Makhijani, Continuum, the MOM Members, and the MOM Managers (*i.e.*, the MOM Respondents) filed the *MOM Respondents' Request to Correct the May 23, 2025 Partial Final Award* (the “**Correction Request**”), purportedly seeking to “correct” the Partial Final Award but, in truth, improperly attacking and seeking to relitigate the findings in the Partial Final Award and other issues previously decided in the Arbitration.

31. On June 6, 2025, the Arbitrator issued the *Ruling on Request for Correction* (the “**Correction Request Ruling**”), denying the Correction Request in its entirety. The Correction Request Ruling provides, among other things, that the “Partial Final Award is now final for all purposes.” See Correction Request Ruling ¶ 5.

32. On June 11, 2025, the Court entered the *Order Granting Motion of Mohammad Honarkar and 4G Wireless, Inc. for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Docket No. 525], lifting the automatic stay, if and to the extent applicable, to permit the Honarkar Parties to, among other things, seek and obtain confirmation of the Partial Final Award.

33. On June 18, 2025, the Honarkar Parties filed a petition with the Superior Court of California, County of Orange (the “**California Court**”) seeking confirmation of the Partial Final Award (the “**Petition to Confirm**”), to which the MOM Respondents filed a petition with the California Court seeking to vacate the Partial Final Award (The “**Petition to Vacate**”). True and correct copies of the Petition to Confirm and the Petition to Vacate are attached hereto as Exhibit A and Exhibit B, respectively.

34. The Petition to Vacate regurgitates many of the same arguments already made and rejected in the Correction Request, including the MOM Respondents’ baseless accusations of bias on the part of the Arbitrator and repeated attempts to circumvent the Arbitrator’s authority. The Honarkar Parties intend to timely oppose the Petition to Vacate.

35. The hearing on the Petition to Confirm and the Petition to Vacate is scheduled for December 22, 2025, but the Honarkar Parties also intend to obtain an earlier hearing date.

E. The Sale Motions and the Honarkar Parties’ Sale Objections

36. On April 22, 2025, the Debtors filed the *Motion of Debtors for Entry of Orders (A)(I) Approving Bidding Procedures for Tesoro Property, (II) Scheduling the Bid Deadlines, (III)*

*Scheduling Hearings and Objection Deadlines with Respect to the Sale of Tesoro Property, (IV) Approving the Form and Manner of Notice Thereof, (V) Approving Contract Assumption and Assignment Procedures, and (VI) Granting Related Relief; and (B)(I) Approving the Sale of Tesoro Property Free and Clear of All Interests, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Request to Adjourn Hearing, and (IV) Granting Related Relief [Docket No. 280] (the “**Tesoro Sale Motion**”) seeking, *inter alia*, authority to market and sell the Tesoro Property and certain related assets to a Successful Bidder, if any, free and clear.*

37. On May 13, 2025, the Debtors filed the *Debtors’ Motion for Order (I) Establishing Procedures for the (A) Sale of Real Estate Free and Clear of all Liens, Claims, Encumbrances, and Other Interests; (B) Assumption and Assignment of Executory Contracts and Unexpired Leases of Non-Residential Real Property; and (II) Granting Related Relief [Docket No. 394] (the “**Global Sale Procedures Motion**”) seeking, *inter alia*, approval of procedures pursuant to which the Debtors may sell some or all of the Properties, other than the Tesoro Property.*

38. On May 27, 2025, the Honarkar Parties filed the *Objection of Mohammad Honarkar and 4G Wireless, Inc. to Debtors’ Motion for Order (I) Establishing Procedures for the (A) Sale of Real Estate Free and Clear of all Liens, Claims, Encumbrances, and Other Interests; (B) Assumption and Assignment of Executory Contracts and Unexpired Leases of Non-Residential Real Property; and (II) Granting Related Relief [Docket No. 455] (the “**Global Sale Procedures Objection**”), objecting to the Sale Procedures Motion on various grounds, including that the Debtors cannot sell any of the Properties.*

39. On May 30, 2025, the Honarkar Parties filed the *363 Objection of Mohammad Honarkar and 4G Wireless, Inc. to Tesoro Sale Motion and Request to Adjourn Sale Hearing [Docket No. 460] (the “**Tesoro 363 Objection**”), objecting to the Debtors’ right to sell the Tesoro*

Property, whether pursuant to section 363 of the Bankruptcy Code, including section 363(f), or otherwise.

40. On June 2, 2025, the Debtors filed a notice identifying Patrick Theodora as the Successful Bidder for the Tesoro Property. *See* Docket No. 468.

41. On June 4, 2025, the Honarkar Parties filed the *Objection of Mohammad Honarkar and 4G Wireless, Inc. to Tesoro Sale* [Docket No. 483] (the “**Tesoro Sale Objection**,” and together with the Global Sale Procedures Objection and the Tesoro 363 Objection, the “**Sale Objections**”), objecting to the Debtors’ proposed sale of the Tesoro Property to Mr. Theodora on the additional grounds that the sale is an improper insider transaction and that Mr. Theodora is not entitled to the protection and benefits of section 363(m).

42. On June 18, 2025, the Honarkar Parties filed the *Declaration of Mohammad Honarkar in Support of Sale Objections* [Docket No. 548] (the “**Honarkar Declaration**”).

43. As set forth in the Tesoro Sale Objection, through Mr. Theodora’s close relationship with Gerald Marcil—one of Continuum’s largest investors and a shareholder in Nano—and Mr. Theodora’s documented history of doing business with entities related to Continuum and with Nano, Mr. Theodora has deep, longstanding ties to the Continuum Parties.

44. In fact, in the *Declaration of Patrick Theodora in Support of the Sale of Tesoro Property* [Docket No. 509] (the “**Theodora Declaration**”), Mr. Theodora admits that it was Mr. Marcil who told him about the potential sale of the Tesoro Property. Theodora Decl. ¶ 6 (“I first heard about the sale of the Tesoro Property through Gerald Marcil. He is my neighbor, friend, and someone who I have invested with in syndicated real estate investments in the past.”).

45. Accordingly, the Honarkar Parties believe, and the evidence shows, that the proposed sale of the Tesoro Property to Mr. Theodora was orchestrated by, and is intended to benefit, the Continuum Parties.

46. Further evidencing this fact, on June 25, 2025, the MOM Members filed the *MOM Members' Statement in Support of Debtors' (I) Tesoro Sale Motion and (II) Sale Procedures Motion* [Docket No. 582] (the “**MOM Members Sale Statement**”), urging this Court to ignore and disregard the Partial Final Award (which the MOM Members are continuing to try to collaterally attack in these Chapter 11 Cases)⁴ and to grant the Tesoro Sale Motion and the Global Procedures Sale Motion. The complete erasure of the Arbitration has undoubtedly been the goal of the MOM Members and the rest of the Continuum Parties throughout these Chapter 11 Cases. They knew that they could never achieve the sale of any of the Properties outside of bankruptcy. This is why they caused the MOM Investcos to file for bankruptcy, why they have been pushing the CRO and Independent Manager to sell the Tesoro Property since Day 1, and why they are still pushing for the sale of the Tesoro Property and all of the other Properties now.

⁴ Included in the MOM Members' ongoing attacks on the Partial Final Award is their claim that, to effectuate rescission, “Mr. Honarkar also must return the MOM Members' investments into the properties to restore the parties to their original positions as if the joint venture never existed.” MOM Members Sale Statement ¶ 7. The Debtors have apparently adopted this position as well, as demonstrated by their Ex Parte Reply (as defined and discussed further herein). However, this is refuted by the Partial Final Award itself. As the Arbitrator explained, while rescission generally requires that “each party must return the consideration they received, if defendant has been guilty of fraudulent acts or conduct which have induced the agreement between him and the plaintiffs”—as the MOM Members did here—“courts are not so much concerned with decreeing that defendant receive back the identical property with which he parted in the transaction, as they are in declaring that his nefarious practices shall result in no damage to the plaintiff.” Partial Final Award, p. 42 (internal quotations and citations omitted.) Further, “the defrauding party has the burden to prove any offsets to which they claim they are entitled.” *Id.* Thus, the Arbitrator found that, if the Honarkar Parties elect rescission, “they will be entitled to restitution and consequential damages in amounts to be determined following the accounting, and Respondents will have the burden of proving their rights to any offsets.” *Id.* The Partial Final Award is therefore clear that the burden is on the Respondents to prove that they are entitled to any offsets that would reduce the damages they owe to the Honarkar Parties. Any claim that it is somehow the Honarkar Parties, the victims of the Respondents' fraud, who have to pay any amounts in order to effectuate rescission is false.

47. However, for all of the reasons set forth in the Honarkar Parties' Sale Objections, the Adversary Proceeding, and the Honarkar Declaration, none of these sales can be approved.

48. The hearing on the Tesoro Sale Motion, the Global Sale Procedures Motion, and the Sale Objections is currently scheduled for June 30, 2025 at 9:30 a.m. (ET).

F. The Original Specialty DIP Loan and Amendment Motion

49. On March 19, 2025, the Debtors filed the *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing; and (II) Granting Related Relief* [Docket No. 89] (the "**Specialty DIP Motion**"), seeking authority to enter into and obtain a DIP loan ("**Specialty DIP Loan**") from Specialty DIP LLC ("**Specialty DIP**")—an entity formed and controlled by Mahender Makhijani—in the principal amount of up to \$5 million.

50. The Honarkar Parties objected to the Specialty DIP Motion on multiple grounds, including that the Specialty DIP Loan was an insider loan that sought to grant the Continuum Parties an improper advantage and control over these Chapter 11 Cases. *See* Docket No. 96. The Debtors' intent to enter into and obtain financing from an entity controlled by Mr. Makhijani was particularly troubling given the fraud, conversion, unjust enrichment, and other findings made against Mr. Makhijani in the Partial Interim Award (and now the Partial Final Award).

51. The hearing on interim approval of the Specialty DIP Motion initially went forward on March 24, 2025 and, as a direct result of Honarkar Parties' objection, was adjourned to March 31, 2025. During the March 31 hearing, the Honarkar Parties and the Debtors announced a partial resolution pursuant to which the Honarkar Parties did not oppose the approval of the Specialty DIP Motion on an interim basis, subject to certain conditions, including the Debtors' announcement on the record that they would work with the Honarkar Parties in good faith on a term sheet for a chapter 11 plan of reorganization.

52. Unfortunately, despite extensive negotiations between the Honarkar Parties, the Debtors, and Specialty DIP (through Mr. Makhijani), the parties could not reach a final agreement the terms of the Specialty DIP Loan, and, over the Honarkar Parties' objections, the Court entered the interim order granting the Specialty DIP Motion on April 4, 2025. *See* Docket No. 187

53. On May 1, 2025, the Court entered the final order granting the Specialty DIP Motion. *See* Docket No. 316.

54. On June 3, 2025, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Amend the DIP Credit Agreement and (II) Granting Related Relief* [Docket No. 475] (the "**Original DIP Amendment Motion**"), seeking authority to refinance and increase the principal amount of the Specialty DIP Loan by \$9.5 million to \$14.5 million and to materially modify certain of the other terms of the Specialty DIP Loan.

55. In support of the Original DIP Amendment Motion, the CRO stated in a declaration that:

Without approval of the Motion and access to the additional liquidity, I would have no choice but to seek to convert the Chapter 11 Cases to ones under Chapter 7. Assets would need to be liquidated on an expedited basis because there would not be any funds to pay payroll, costs to maintain and replace insurance as needed, post-petition property taxes, professional fees, and the like. Even with the sale of the Tesoro property proceeding, the funds generated from such sale would be insufficient to extend the Debtors' runway enough to allow the Debtors to fulfill their fiduciary duties and consummate a value maximizing sale process and/or may not be received in a timely manner to do so.

Original DIP Amendment Motion, Exh. B, ¶ 9.

56. On June 9, 2025, the Honarkar Parties filed the *Objection of Mohammad Honarkar and 4G Wireless, Inc. to Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Amend the DIP Credit Agreement and (II) Granting Related Relief* [Docket No. 508] (the "**DIP**

Amendment Objection”), objecting to the Original DIP Amendment Motion on various grounds, including that the Debtors were improperly seeking to materially modify the terms of the Specialty DIP Loan and, in so doing, to confer upon Specialty DIP and, thus, Mahender Makhijani even more control over these Chapter 11 Cases.

57. Various of the Debtors’ prepetition secured lenders filed objections to the Original DIP Amendment Motion, as well. *See* Docket Nos. 503, 504, 506, 507.

58. Later that same day, the Debtors filed a notice withdrawing the DIP Original Amendment Motion without prejudice. *See* Docket No. 515.

G. The Golden East DIP Term Sheet

59. On June 13, 2025, the Debtors informed the Honarkar Parties that they were considering entering into a term sheet for new postpetition financing with Golden East Investors, LLC (“**Golden East**”).

60. The following Monday, on June 16, 2025, the Debtors filed the *Notice of Filing of Summary of Proposed Terms and Conditions for Debtor-in-Possession Financing* [Docket No. 538], which included as an exhibit the executed term sheet between the Debtors and Golden East (the “**Golden East Term Sheet**”).

61. When the Honarkar Parties first learned of the potential Golden East DIP loan, they were hopeful that it would be a viable financing alternative that would enable the Debtors to remain in chapter 11 and to finally commence the accounting process.

62. However, among various other issues with the as-filed Golden East Term Sheet, it provided that one of the conditions precedent to Golden East providing any financing to the Debtors would be the Court’s approval of the sale of the Tesoro Property in the amount of \$55

million, which is the purchase price offered by, and only offered by, Patrick Theodora. As the Debtors were and still are aware, the Honarkar Parties are objecting to this sale.

63. At a status conference held on June 17, 2025, the Debtors represented to the Court and all parties that they would soon be filing a motion seeking approval of and authority to enter into the DIP loan with Golden East, and, therefore, requested and obtained from the Court June 23, 2025 at 11:00 a.m. (ET) as the hearing on interim approval of this forthcoming motion and June 22, 2025 at 5:00 p.m. (ET) as the objection deadline.

64. However, the Debtors did not file, and have not filed, a motion seeking approval of any loan from Golden East.

65. On June 20, 2025, counsel to the Debtors and to the Honarkar Parties met and conferred with respect to the June 23 hearing. During this meet and confer, Debtors' counsel informed the Honarkar Parties' counsel that the Golden East Term Sheet would not be going forward on June 23.

66. The Debtors subsequently filed an amended agenda for the June 23 hearing stating that all matters scheduled therefor, including the forthcoming Golden East DIP motion, had been continued to June 30, 2025 at 9:30 a.m. (ET), and that the objection deadline for the Golden East DIP motion was extended to June 29, 2025 at 5:00 p.m. (ET). *See* Docket No. 550.

67. On June 25, 2025, at approximately 10:00 p.m. (ET), the Debtors then filed a new motion again seeking to amend the terms of the Specialty DIP Loan, as discussed further below, which motion states that Golden East had decided not to proceed with Term Sheet.

H. The Honarkar Parties' Efforts To Secure Exit/DIP Financing

68. Although the Honarkar Parties did not authorize or consent to the filing of these Chapter 11 Cases (nor did the Honarkar Parties have any prior knowledge or advance notice of the

filing of the MOM Investcos' cases), the Honarkar Parties believed that a refinancing pursuant to a chapter 11 plan that would honor the Partial Interim Award and now the Partial Final Award was the best path forward in these Chapter 11 Cases.

69. Accordingly, from the beginning of these Chapter 11 Cases, the Honarkar Parties have had several discussions with potential sources of exit financing, which culminated in a plan term sheet (the "**Plan Term Sheet**") that the Honarkar Parties provided to the Debtors.

70. The Plan Term Sheet contemplated, among other things, \$200 million in financing, subject to due diligence and other standard contingencies, from Genesis Credit LLC, a well-established lender that specializes in commercial real estate loans.

71. However, the Debtors rejected each version of the Plan Term Sheet and proceeded to market and seek approval of the sale of the Tesoro Property and all of the other properties over the Honarkar Parties' multiple objections.

72. Following the hearing held on June 10, 2025, which was initially set as the hearing on approval of the sale of the Tesoro Property before the sale hearing was adjourned, the Debtors offered to make the Honarkar Parties the property managers for all of the Properties if the Honarkar Parties were able to secure replacement DIP financing in just seven (7) to (10) days thereafter.

73. Given this extremely narrow timeframe, the Honarkar Parties have not been able to secure alternative DIP financing. One of the major obstacles that the Honarkar Parties have faced in their numerous discussion with potential financing sources has been the exorbitant costs of these Chapter 11 Cases. Among other issues, the Debtors requested that any financing proposal presented by the Honarkar Parties include \$6 million to fund the Debtors' professionals' fees—which is six times the Debtors' financing needs for their actual operations and twice the amount estimated for a forensic accounting. The excessive administrative burn and the complex and

extraordinary facts and circumstances surrounding these Chapter 11 Cases, and set forth in the Partial Final Award, has made it exceedingly difficult for the Honarkar Parties to explain and justify the Debtors' financing requests to potential lenders.

I. Ongoing Property Management Issues

74. Also impairing the Honarkar Parties' ability to secure financing is the fact that, throughout the pendency of these Chapter 11 Cases, and despite the concerns repeatedly raised by the Honarkar Parties, the Debtors have continued to allow entities related to or historically used by the Continuum Parties to operate and manage many, if not most, of the Debtors' properties. This has already had potentially disastrous consequences.

75. As set forth in the Global Sale Objection, as a result of the Continuum Parties' ongoing mismanagement, a dispute arose just last month between the Hotel Laguna and the California Coastal Commission that could result in an enforcement action and daily fines against the Hotel Laguna based on allegations that it is obstructing public beach access in violation of California law. *See* Global Sale Objection ¶ 20; *see also* *Objection of Banc of California to Debtors' Motion Authorizing Debtors to Amend the DIP Credit Agreement* [Docket No. 503].

76. Further, the Tesoro Property, which was at 90% to 99% occupancy prior the formation of the joint venture, has dropped to nearly just 80% occupancy. Rather than retain a competent property manager to come in and improve the conditions and increase the occupancy of the Tesoro Property, the Debtors have instead decided to sell the Tesoro Property at a significantly discounted price to a person closely tied to the Continuum Parties.

77. Additionally, over the past two years, and during the pendency of these Chapter 11 Cases, many tenants of the Properties have raised concerns about the entities and individuals employed by the Continuum Parties for the Properties.

78. These and other ongoing issues with the Properties and the apparent control that the Continuum Parties and their associates continue to have over the Properties is particularly troubling as, on May 30, 2025, just three (3) days after the Honarkar Parties filed the Complaint commencing the Adversary Proceeding, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Reject the Alleged Honarkar Agreements, Effective as of Rejection Date, (II) Requiring Turnover of Books and Records, and (III) Granting Certain Related Relief* [Docket No. 462] (the “**Rejection Motion**”), seeking, among other things, to “reject” pursuant to section 365 of the Bankruptcy Code all of the “Alleged Honarkar Agreements,” which the Debtors define to include all “alleged oral agreements and historical course of dealing” and “any other agreements that the Honarkar Parties, or any of their affiliates, relatives, employees, or agents allege were established via oral contract or in the ordinary course of past dealing between the Debtors.” Rejection Motion ¶ 11.

79. The Rejection Motion fails to demonstrate any business justification for the relief sought nor does it identify any replacement property manager or any other companies to oversee the Properties more cost effectively or otherwise, so, presumably, the Debtors would turn to the Continuum Parties as the Honarkar Parties’ “replacement.” This is untenable.

J. Debtors’ Administrative Expenses and Net Operating Loss

80. Since commencing these Chapter 11 Cases four months ago, the Debtors have incurred millions in administrative expenses. Indeed, according to the Debtors, they have exhausted nearly all of the \$5 million advanced by Specialty DIP, and they estimate that they require at least an additional \$9.25 in financing to remain in chapter 11.

81. Meanwhile, according to the Debtors’ monthly operating reports (the “**MORs**”), most of the Debtors have been operating in chapter 11 at a net loss:

MOR INCOME STATEMENT – PROFIT/LOSS					
Debtor	Month Ending 2/28/25	Month Ending 3/31/2025	Month Ending 4/30/25	Month Ending 5/31/25	Cumulative
MOM CA Investco LLC	(\$30)	(\$30)	(\$73,243)	(\$543,217)	(\$616,520)
MOM AS Investco LLC	\$0	\$0	(\$50)	(\$310)	(\$360)
MOM BS Investco LLC	\$0	\$0	(\$50)	(\$310)	(\$360)
Retreat at Laguna Villas, LLC	N/A	\$37,043	\$22,470	\$58,243	\$117,756
Sunset Cove Villas, LLC	N/A	\$64,520	\$47,237	\$116,730	\$228,487
Duplex at Sleepy Hollow, LLC	N/A	\$1,805	(\$5,448)	\$17,960	\$14,316
Cliff Drive Properties DE, LLC	N/A	\$0	(\$24,595)	(\$1,831)	(\$26,425)
694 NCH Apartments, LLC	N/A	\$0	(\$16,246)	(\$6,942)	(\$23,188)
Heisler Laguna, LLC	N/A	\$0	(\$63,851)	\$29,533	(\$34,318)
Laguna Festival Center, LLC	N/A	\$28,785	(\$14,459)	\$57,255	\$42,796
891 Laguna Canyon Road, LLC	N/A	\$50	(\$21,246)	(\$160)	(\$21,407)
777 AT Laguna, LLC	N/A	\$22,396	\$49,134	\$21,855	\$93,385
Laguna Art District Complex, LLC	N/A	\$53,096	(\$15,432)	\$103,605	\$141,268
Tesoro Redlands DE, LLC	N/A	\$109,398	\$146,605	\$259,584	\$515,588
Aryabhata Group LLC	N/A	\$0	(\$163,705)	(\$2,649)	(\$166,354)
Hotel Laguna, LLC	N/A	\$383,999	(\$602,110)	(\$216,810)	(\$434,921)
4110 West 3rd Street DE, LLC	N/A	\$0	(\$23,938)	(\$275)	(\$24,213)

314 S. Harvard DE, LLC	N/A	\$0	(\$10,835)	(\$275)	(\$11,111)
Laguna HI, LLC	N/A	\$24,371	(\$12,015)	\$55,895	\$68,251
Laguna HW, LLC	N/A	\$48,570	\$10,966	\$52,940	\$112,476
The Masters Building, LLC	N/A	\$30	(\$33,468)	(\$345)	(\$33,783)
837 Park Avenue, LLC	N/A	\$0	(\$2,034)	(\$1,004)	(\$3,038)
Terra Laguna Beach, Inc.	N/A	\$0	(\$14,874)	(\$8,628)	(\$23,502)
				Total:	(\$85,177)

82. As set forth above, only nine (9) of the twenty-three (23) Debtors have managed to maintain a cumulative profit as of the month ending May 31, 2025, and, taken together, the Debtors are operating at an overall net loss.⁵

K. The Debtors’ Interference With The Cantor Litigation and PDCR Demands

83. Since 2023, the Honarkar Parties, one of their “Held-Back LLCs” and non-debtor Palm Desert Collective Resorts, LLC (“**PDCR**”), Debtor MOM CA Investco LLC (“**MOM CA**”), and Cantor Group IV, LLC (“**Cantor**”) have been parties to a lawsuit pending in the California Court under Case No. 30-2023-01325570-CU-BC-WJC (the “**Cantor Litigation**”).

84. As set forth in the Partial Interim Award and now the Partial Final Award, Cantor is an entity owned and controlled by Continuum Party Deba Shyam, who also owns and controls Continuum. Thus, the Cantor Litigation is one part of the larger litigation between the Honarkar Parties and the Continuum Parties.

85. The claims and cross-claims asserted in the Cantor Litigation have been administratively stayed pending the outcome of the Arbitration, but, in January 2025, the

⁵ Notably, the Debtors’ revenues as reported in the MORs are substantially lower than the revenues that the Debtors generated when Mr. Honarkar was the Administrative Manager for all of the Debtors three years ago.

California Court lifted this stay to allow one of the Honarkar Parties' and PDCR's causes of action against Cantor to go forward, as it is unrelated to the issues raised in the Arbitration.

86. This cause of action against Cantor relates to a certain deed of trust and assignment of rents (the "**Cantor Deed of Trust**") recorded against PDCR's properties, which has placed a \$5.5 million cloud on title with respect to such properties, that the Honarkar Parties are seeking to cancel on the basis that the Cantor Deed of Trust was forged and fraudulently recorded.⁶

87. The California Court scheduled the trial on the cancellation of the Cantor Deed of Trust for June 30, 2025 (the "**Trial**"), and this was the only matter set to go forward at the Trial.

88. On June 25, 2025, just before 9:00 a.m. (PT), the Honarkar Parties' litigation counsel received an email from the Debtors' special counsel, Bienert Katzman Littrell Williams LLP ("**BKLW**"), notifying the Honarkar Parties that MOM CA would be moving *ex parte* to request a 60-day continuance of the Trial. A true and correct copy of this email correspondence is attached hereto as Exhibit C.

89. Shortly thereafter, BKLW submitted the *ex parte* application (the "**Ex Parte**") with the California Court, a true and correct copy of which is attached hereto as Exhibit D.

90. On June 26, 2025, the Honarkar Parties filed their opposition to the Ex Parte (the "**Ex Parte Opposition**"), and MOM CA filed its reply in support of the Ex Parte (the "**Ex Parte Reply**"). True and correct copies of the Ex Parte Opposition and the Ex Parte Reply are attached hereto as Exhibit E and Exhibit F, respectively.

⁶ The Cantor Deed of Trust was recorded just one day after the Honarkar Parties served their demand for books and records on the Continuum Parties. Its timing and purpose were deliberate—it was recorded solely to disrupt the operations of the properties and to prevent Mr. Honarkar from securing the funds necessary to pursue the litigation that was anticipated to follow.

91. The Honarkar Parties were surprised by the Ex Parte, as the Trial had been scheduled for months, and none of the Debtors are parties to the only matter going forward at the Trial: the cancellation of the Cantor Deed of Trust.

92. The Debtors' asserted justification for their request to continue the Trial just three (3) business days before it was scheduled to begin is that over a month ago, sometime around May 20, 2025, the Debtors learned through a news article that there may have been a "refinancing" of the first-priority loan secured by PDCR's properties, and that, under the terms of the Asset Contribution Agreement (the "ACA") executed in connection with the Joint Venture, this "refinancing," if it in fact occurred, automatically caused PDCR to be contributed to the Joint Venture and to become a wholly-owned subsidiary of MOM CA.

93. However, the Debtors concede in their Ex Parte that the Honarkar Parties provided to the Debtors on May 30, 2025, at their request, documents demonstrating that the transaction at issue was an assignment, not a refinancing.⁷

94. More importantly, the Debtors' Ex Parte does not even mention or acknowledge the Partial Final Award at all, including the Arbitrator's findings that PDCR is a Held-Back LLC retained by the Honarkar Parties, that the ACA on which the Debtors are attempting to rely was procured by fraud and without consideration, and that, as a result of the Continuum Parties' prior material breaches of the MOM Investcos' operating agreements, Mr. Honarkar is excused of any further duty to perform thereunder. *See* Partial Final Award, p. 41.

⁷ The Honarkar Parties expressly reserve and preserve all of their rights with respect to PDCR and the Debtors' allegations regarding this purported "refinancing," including the rights to oppose or challenge or to seek a protective order in response to any discovery requests and to contest the applicability and/or enforceability of any agreements or other documents that purport to deem PDCR a contributed entity on any grounds. The Honarkar Parties further expressly reserve and preserve all potential claims against Debtors for the ongoing interference with PDCR's operations.

95. To make matters worse, after the Ex Parte was filed, Mr. Honarkar received a letter on June 25, 2025 (the “**June 25 Demand Letter**”) from the Debtors’ Independent Manager demanding that Mr. Honarkar produce various documents and information related to PDCR by close of business on June 27, 2025 based solely on the assumption that MOM CA is now the owner of PDCR. A true and correct copy of the June 25 Demand Letter is attached hereto as Exhibit G.

96. As set forth more fully in the Ex Parte Opposition, the Debtors’ entire position hinges on the unsupported claim that PDCR is now a contributed entity pursuant to the terms of an agreement that the Arbitrator has conclusively and preclusively found was induced by fraud and is unenforceable. In their Ex Parte Reply, the Debtors focus solely on the fact that the Honarkar Parties have not yet exercised rescission, and ignore the Arbitrator’s findings that the Honarkar Parties have no further duty to perform due to the Continuum Parties’ prior material breach.

97. Thus, while the Debtors claim to “respect” the Arbitrator’s findings, they simultaneously attempt to enforce the very agreements that have been indisputably found to be the product of fraud. At the same time, they purport to “acknowledge” rescission, but argue that Mr. Honarkar cannot yet exercise it because the accounting has not been completed. This asserted barrier to rescission is particularly disingenuous given that the accounting depends, at least in part, on the Debtors’ own cooperation and participation.

98. Unfortunately, despite the flaws in the Debtors’ arguments, the California Court granted the Ex Parte and rescheduled the trial in the Cantor Litigation for September 8, 2025. A true and correct copy of the minute order granting the Ex Parte is attached as Exhibit H.

99. The only parties who benefit from this continuance are Cantor and, by extension, the Continuum Parties. The Honarkar Parties’ cause of action to cancel the Cantor Deed of Trust is not asserted by or against any of the Debtors, and the cancellation would finally relieve PDCR

of an unlawful and fraudulent encumbrance that the Honarkar Parties have been fighting against for years. Only the Continuum Parties' interests, and not the interests of PDCR, are served by continuing the Trial and delaying justice to the PDCR and the Honarkar Parties.

100. Moreover, if PDCR has been contributed to the Joint Venture (which it has not), then that would make the MOM Members indirect partial members of PDCR (which they are not). Thus, by asserting that PDCR may have been contributed to the Joint Venture, the Debtors are putting forth an argument that, while ultimately unsuccessful, would give the MOM Members and the rest of the Continuum Parties access to and partial ownership of PDCR, furthering the Continuum Parties' theft and fraud to the exclusive detriment of the Honarkar Parties.

101. This is not the first time that the Debtors have acted in disregard of the Arbitrator's findings and harmed the Honarkar Parties as a result. Indeed, the Ex Parte is reminiscent of the filing of Terra's Chapter 11 Case, which was filed without the Honarkar Parties' prior knowledge or consent notwithstanding the Arbitrator's clear and unambiguous award in the Honarkar Parties' favor on their declaratory relief claim that Terra (along with the other declaratory relief entities, including PDCR) was never contributed to the Joint Venture and instead wholly retained by the Honarkar Parties. *See generally*, Terra Dismissal Motion.

102. Furthermore, and notably, while the Ex Parte was submitted by BKLW as MOM CA's special counsel, this Court approved BKLW's retention as the Debtors' section 327(e) counsel only in connection with the Arbitration, *not* the Cantor Litigation. That is, the Debtors sought to retain, and the Court approved the retention of, BKLW to provide the following services:

- a. Advise the Debtors with respect to matters related to the Arbitration;
- b. Represent the Debtors in any proceeding or hearing in the Arbitration or, to the extent necessary and appropriate, before this Court as it relates to the Arbitration;

- c. To assist Debtors' general bankruptcy counsel, if and when requested, with respect to any matter impacting the Debtors' reorganization and/or estates as it relates to the Arbitration;
- d. File any motions, applications, or other pleadings as may be necessary or appropriate to protect the interests of the Debtors with respect to the Arbitration; and
- e. Perform any and all other legal services necessary to represent the Debtors with respect to the Arbitration.

See Application of Debtors Pursuant to 11 U.S.C. § 327 and Fed. R. Bankr. P. 2014 and 2016 for Authorization to Employ and Retain Bienert Katzman Littrell Williams LLP as Special Counsel Effective as of April 11, 2025 [Docket No. 315], ¶ 19; Order Authorizing Debtors Pursuant to 11 U.S.C. § 327 and Fed. R. Bankr. P. 2014 and 2016 for Authorization to Employ and Retain Bienert Katzman Littrell Williams LLP as Special Counsel Effective as of April 11, 2025 [Docket No. 499] ¶ 2 ("Pursuant to section 327(e) of the Bankruptcy Code, the Debtors are hereby authorized and empowered to employ BKLW as counsel in these cases on the terms set forth in the Application, the Bisconti Declaration, and the Shinderman Declaration, effective as of April 11, 2025.").

103. The Honarkar Parties' cause of action to cancel the Cantor Deed of Trust is not related to the Arbitration, which is why the California Court lifted the administrative stay to allow the claim to go forward, and, as such, the Debtors' Ex Parte does not fall within the scope of BKLW's approved retention. To the contrary, the Ex Parte goes directly against the Arbitration and the Arbitrator's findings therein. Thus, the Ex Parte was not only an attack on the Partial Final Award, but disregarded the limited scope of BKLW's representation authorized by this Court.

L. The New Specialty DIP Amendment Motion

104. Late on June 25, 2025, just hours after the Debtors filed the Ex Parte in the Cantor Litigation and after the Independent Manager sent the June 25 Demand Letter, the Debtors filed the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Amend the*

DIP Credit Agreement and (II) Granting Related Relief [Docket No. 583] (the “**New DIP Amendment Motion**”), renewing their request to amend and expand the Specialty DIP Loan.

105. As of the filing of this Motion, the Debtors have not filed any motion to shorten the notice period for the New DIP Amendment Motion. Yet, the Debtors noticed the New DIP Amendment Motion for the June 30 hearing, with a purported objection deadline of Sunday, June 29 at 5:00 p.m. (ET).⁸

106. Because the New DIP Amendment Motion was just filed, the Honarkar Parties have not yet had an opportunity to complete their review of the new proposed terms for the Specialty DIP Loan, and the Honarkar Parties reserve all rights with respect to.

107. However, it does not appear that the Debtors have cured the fatal flaws raised in the Honarkar Parties’ Original DIP Amendment Objection. To the contrary, the Debtors’ renewed request to amend the Specialty DIP Loan pursuant to the New DIP Amendment Motion is, incredibly, even worse.

108. Among other issues, if the proposed amendment is approved, it would now be a condition precedent for Specialty DIP to advance any of the contemplated additional funding, including the funding for the forensic accounting, that the Court enter an order approving the Tesoro Sale Motion by June 30, 2025, “which order shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended (in whole or in part).” *See* DIP Amendment § 2(j).

⁸ On June 26, 2025, the Debtors filed the agenda for the June 30 hearing, on which the Debtors apparently intended to include the New DIP Amendment Motion. *See* Docket No. 584. However, the agenda lists the same name used as a placeholder for the never-filed Golden East DIP motion on the agenda for the now-adjourned June 23 hearing, not the actual name of the New DIP Amendment Motion. The only difference is the inclusion of the docket number for the New DIP Amendment Motion. The Honarkar Parties reserve all rights to oppose the New DIP Amendment Motion going forward at the June 30 hearing.

109. However, as noted above, the Honarkar Parties intend to contest the approval and closing of any sale of the Tesoro Property.

110. Thus, the additional financing proposed to be provided by Specialty DIP is nothing short of illusory, and is yet another improper attempt to finance and force through the approval of the Tesoro sale while holding the accounting process hostage.

111. With no one other than the Continuum Parties and their associates willing to finance these Chapter 11 Cases, and given that the only financing options proposed by the Debtors have all been subject to and conditioned upon the improper sale of the Tesoro Property, it is clear that the time has come for these Chapter 11 Cases to either be dismissed or converted to chapter 7.

RELIEF REQUESTED

112. The Honarkar Parties seek entry of an order either dismissing these Chapter 11 Cases or converting them to cases under chapter 7 for cause pursuant to section 1112(b) of the Bankruptcy Code because: (i) the Debtors' estates are suffering a substantial and/or continuing loss without any reasonable likelihood of rehabilitation, (ii) the Debtors are administratively insolvent and have not presented any viable proposal for postpetition financing, and (iii) all of the highly unusual circumstances surrounding these Chapter 11 Cases overwhelmingly support and demonstrate that dismissal or conversion is the only path forward.

BASIS FOR REQUESTED RELIEF

A. The Court Should Dismiss Or Convert The Chapter 11 Cases Pursuant To Section 1112(b)(4).

113. Section 1112(b) of the Bankruptcy Code provides that a bankruptcy court "shall" either convert a chapter 11 case to a case under chapter 7 or dismiss the case, "whichever is in the best interests of creditors and the estate, *for cause* unless the court determines that the appointment

... of a trustee or an examiner is in the best interests of creditors and the estate.” 11 U.S.C. § 1112(b)(1) (emphasis added).

114. Section 1112(b)(4) lists sixteen examples of what constitutes cause for dismissal or conversion, but this list is non-exhaustive. *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 161 (3d Cir. 2012). As such, this Court has wide discretion in determining whether cause exists to dismiss or convert a chapter 11 case. *In re SGL Carbon Corp.*, 200 F.3d 154, 160 (3d Cir. 1999).

115. One of the enumerated examples of cause under section 1112(b)(4) is a “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A).

116. Here, the Debtors’ estates are suffering substantial losses that are very likely to continue if the Debtors remain in bankruptcy, and the Debtors do not have any reasonable likelihood of rehabilitation in bankruptcy.

1. The Debtors’ Estates Are Suffering Continuing Losses.

117. Since the Continuum Parties fraudulently induced the Honarkar Parties to enter into the Joint Venture, and stole the SPEs and the Properties from the Honarkar Parties in the process, the Continuum Parties grossly mismanaged the MOM Investcos and the SPEs. As set forth in the Partial Final Award, the Continuum Parties repeatedly converted the Debtors’ assets, encumbered them with unlawful and invalid debts, and failed to pay nearly all of the SPEs’ mortgages. Then, just one week after the entry of the Partial Interim Award, the Continuum Parties unilaterally appointed the CRO and Independent Manager and caused the MOM Investcos to file for bankruptcy, all without the Honarkar Parties’ prior knowledge or consent.

118. Despite all of this, and despite the Honarkar Parties’ multiple requests to the contrary, from the commencement of the Chapter 11 Cases, the CRO and Independent Manager

have allowed the Continuum Parties and their affiliates and associates to remain in control of most of the Debtors and the Properties. As a result of the Continuum Parties' ongoing mismanagement, the Hotel Laguna has been embroiled during the pendency of these Chapter 11 Cases in multiple allegations that it is operating in violation of California law, the Tesoro Property has continued to maintain a historically low occupancy rate, and the Honarkar Parties are continuing to field numerous complaints from the tenants at the Properties.

119. Rather than adequately address any of these issues, the Debtors have been preoccupied with attacking and engaging in vexatious litigation tactics against the Honarkar Parties. They have incurred millions of dollars in fees and expenses in opposing the Honarkar Parties' request for limited stay relief to proceed with the Arbitration, serving the Honarkar Parties with multiple discovery requests, moving to reject the Honarkar Parties' agreements with the Debtors, pursuing sales of all of the Properties over the Honarkar Parties' objections, and repeatedly attempting to enforce the terms of the Joint Venture agreements that have been adjudicated as procured by fraud. What the Debtors have not done is serve the Continuum Parties with any discovery requests, commence any adversary proceeding or litigation against the Continuum Parties, seek to move forward with the derivative claims in the Arbitration, or even begin the accounting process. All of the Debtors' actions, and inaction, in these Chapter 11 Cases have one thing in common: they serve the interests of the Continuum Parties.

120. Thus, it is no surprise to the Honarkar Parties that the vast majority of the Debtors have been operating at a net loss, and that all of the Debtors, collectively, have been losing more money than they have been making, as set forth in the MORs. However, while not surprising, this is nevertheless deeply troubling and disappointing to the Honarkar Parties, who know the true value and the potential profit that can be realized by all of the Properties if managed properly.

121. If the Debtors were to remain in chapter 11, they will only continue to incur more losses and administrative expenses that they cannot afford.

2. The Debtors Lack Any Likelihood of Rehabilitation in Chapter 11.

122. As the Debtors have stated since the commencement of these Chapter 11 Cases, they require financing in order to achieve any successful reorganization or rehabilitation. However, the only financing that the Debtors have been able to receive to date has been from Specialty DIP.

123. Although the Debtors are now seeking to increase this financing from Specialty DIP, this additional financing is just an illusion, as it is expressly conditioned upon this Court's approval of the Tesoro sale, which the Court cannot and should not approve.

124. The Debtors' financial proposals reveal their intent to use any financing as leverage to push through approval of the Tesoro sale. This is because the Debtors' sole strategy in these Chapter 11 Cases is, and has always been, to sell all of the Properties before the Honarkar Parties can effectuate rescission. This is despite the fact that the Honarkar Parties delivered to the Debtors the Plan Term Sheet, and have endeavored multiple times to reach an agreement with the Debtors on a path forward in these Chapter 11 Cases. Rather than meaningfully engage with the Honarkar Parties, the Debtors have insisted on pursuing their sale process.

125. However, the Honarkar Parties have objected to the sales of the Properties, and for all of the reasons set forth in the Honarkar Parties' Sale Objections, the Honarkar Declaration, and the Adversary Proceeding, none of the Properties can be sold without the Honarkar Parties' consent. The Honarkar Parties intend to proceed with their objections and to contest the approval and/or closing of any sales of the Properties.

126. Because the Debtors should not and cannot be able to sell any of the Properties, which has been and continues to be their exclusive focus in these Chapter 11 Cases, they have no

plan of rehabilitation that has any reasonable likelihood of being successful. As such, and given the continuing losses to the Debtors' estates, the Debtors' time in chapter 11 must end.

B. The Court Should Dismiss Or Convert The Chapter 11 Cases Because The Debtors Are Administratively Insolvent.

127. Courts have also held that a debtor's administrative insolvency constitutes cause for purposes of section 1112(b). *See, e.g., In re BH S & B Holdings, LLC*, 439 B.R. 342, 349 (Bankr. S.D.N.Y. 2010) ("Although section 1112(b)(4) does not list administrative insolvency as cause to convert or dismiss a chapter 11 case, a court may still consider this factor. Courts have converted cases, in part, on the basis of administrative insolvency.") (internal citations omitted); *See also In re Grasso*, 497 B.R. 448, 456 (Bankr. E.D. Pa. 2013), *aff'd sub nom. Grasso v. Madison Cap. Co.*, No. CIV.A. 13-4308, 2014 WL 1281123 (E.D. Pa. Mar. 31, 2014) ("Madison successfully established that the Debtor's estate is suffering a continuing loss as evidenced by the fact that it is presently administratively insolvent. The administrative insolvency of the Debtor's estate also established the absence of a reasonable likelihood of rehabilitation.").

128. By the Debtors' own admission, without immediate additional financing, the Debtors lack the funds to cover payroll or their professionals' fees, maintain their insurance, and pay property taxes. Indeed, the Debtors represented to the Court at the June 10 hearing that they would likely run out of liquidity within the next ten (10) days. Thus, the Debtors are administratively insolvent, and will continue to be insolvent without an immediate influx of cash.

129. However, the Debtors have not been able to secure any additional financing other than from their insider Specialty DIP, and the only offer that the Debtors have from Specialty DIP is contingent upon the approval of the Tesoro sale, which should not and cannot be granted. And to the extent the Debtors propose any alternative financing that will simply be used to finance the improper sales of the Properties, the Honarkar Parties intend to oppose any such financing.

130. Thus, the Debtors are administratively insolvent, and remaining in chapter 11 will only further deepen their administrative insolvency. This constitutes a separate, independent cause to dismiss or convert these Chapter 11 Cases.

C. The Unusual Circumstances Of These Chapter 11 Cases Overwhelmingly Support Dismissal Or Conversion.

131. Once a court determines that cause exists under section 1112(b), the court “shall” convert or dismiss the case, whichever is in the best interests of creditors and the estate, unless “the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate.” *See* 11 U.S.C. § 1112(b)(2). To be sure, there are highly unusual circumstances present in these Chapter 11 Cases, but these circumstances weigh heavily in favor of, not against, dismissal or conversion.

132. As set forth in the Chapter 11 Trustee Motion and in the Stay Relief Motion, these Chapter 11 Cases are unusual in the sense that the Honarkar Parties did not come into the cases with mere allegations against the Continuum Parties. Instead, the Chapter 11 Cases were filed fresh off the heels of the Partial Interim Award, in which the Arbitrator found definitively in the Honarkar Parties’ favor on nearly all of their asserted direct and derivative claims following nearly two years of litigation, a three-week long evidentiary hearing, and pre- and post-hearing briefing.

133. The Arbitrator’s findings on the Honarkar Parties’ direct claims are now set forth in the Partial Final Award, which is final as to liability and constitutes *res judicata* as to all parties to the Arbitration. *See, e.g., Cal Sierra Dev., Inc. v. George Reed, Inc.*, 14 Cal. App. 5th 663, 678 (2017) (“For purposes of res judicata, even an unconfirmed arbitral award is the equivalent to a final judgment.”); *Richard B. LeVine, Inc. v. Higashi*, 131 Cal. App. 4th 566, 579 (2005) (“[W]e perceive no reason why the ... claim preclusion rule should not be made available to a defendant ... sued on a conspiracy and aiding and abetting theory where plaintiff has already arbitrated or

litigated against the direct tortfeasor and lost.”); *Thibodeau v. Crum*, 4 Cal. App. 4th 749, 759 (1992) (“[I]n several cases, the courts have viewed an unconfirmed arbitration award as the equivalent of a final judgment.”); *In re Khaligh*, 338 B.R. 817, 828 (B.A.P. 9th Cir. 2006), *aff’d*, 506 F.3d 956 (9th Cir. 2007) (“The consensus within the California appellate courts is that an unconfirmed arbitration award may be ‘sufficiently firm’ as to warrant issue preclusion ...[.]”).

134. Nevertheless, the Debtors repeatedly undermine the Partial Interim Award and now the Partial Final Award to enforce agreements that the Arbitrator found were the result of fraud and lacked any consideration. Despite the Arbitrator’s finding that the Continuum Parties materially breached the terms of the Joint Venture, thereby excusing the Honarkar Parties from any further performance, the Debtors accuse the Honarkar Parties of somehow being the ones in breach without any factual or legal basis. This conduct should not be countenanced by the Court.

135. To make matters worse, the Debtors have completely aligned themselves with the Continuum Parties and have used the increasingly limited resources of the Debtors’ estates to take actions against the Honarkar Parties and in furtherance of the Continuum Parties’ interests. This is what the Debtors did when they spent months opposing the Honarkar Parties’ Stay Relief Motion, where the only other objectors were the Continuum Parties and Nano (*i.e.*, the Respondents in the Arbitration). This is also what the Debtors did by seeking a continuance of the Trial in the Cantor Litigation and by baselessly asserting control over PDCR, from which acts only the Continuum Parties stand to gain. As noted above, if PDCR was contributed to the MOM Investcos (which it was not), then that would mean that the MOM Members are indirect members of PDCR (which they are not). Thus, the Debtors are only trying to further damage the Honarkar Parties and take what are rightfully their assets and effectively give them to the Continuum Parties.

136. The conspicuous timing of the Debtors' interference with the Cantor Litigation and their demands with respect to PDCR is not lost on the Honarkar Parties. The Ex Parte was filed and the June 25 Demand Letter was sent just hours before the Debtors filed the New DIP Amendment Motion. So, the day that the Debtors suddenly acted to give the Continuum Parties a "win" in the Cantor Litigation is the same day that Mahender Makhijani and Specialty DIP came back to the table after previously withdrawing their prior financing offer on June 9. This was also the same day that the MOM Members suddenly filed their statement in support of the Property sales after being silent in these Chapter 11 Cases since their separate bad-faith chapter 11 cases were dismissed nearly two months ago. This all begs the question of whether the Debtors took these recent actions solely to appease Specialty DIP and, by extension, Mahender Makhijani, and whether the MOM Members knew that all of this was coming and were poised to join forces yet again with the Debtors at the same time.

137. All of these unusual circumstances demonstrate that allowing the Debtors to remain in chapter 11 is against the best interests of their estates and their creditors. Rather than allow the Debtors to remain on this destructive path, conversion to chapter 7 will allow a truly independent and impartial chapter 7 trustee to come in and take the reigns and to finally perform the accounting that is so desperately needed and already awarded to the Honarkar Parties. Alternatively, if the Chapter 11 Cases are dismissed, then the Honarkar Parties can immediately move for the appointment of a receiver, as contemplated in the Partial Interim Award, which receiver could efficiently and effectively manage the Properties and perform the accounting.

138. Accordingly, only the dismissal or conversion to chapter 7 of these Chapter 11 Cases is in the best interests of the Debtors' estates and their creditors.

CONCLUSION

139. In sum, given the continuing losses suffered by the Debtors' estates, and the absence of any viable plan of rehabilitation, as well as the Debtors' administrative insolvency, dismissal or conversion is the only remaining option in these Chapter 11 Cases. Whether in the form of a chapter 7 trustee or a court-appointed receiver, what the Debtors require now is an independent, impartial third-party to come in and oversee the Debtors and the Properties and to perform the accounting while the Arbitration and the confirmation proceedings before the California Court go forward. This is the only way to reveal the full extent of the Continuum Parties' fraud and misconduct, and to allow the Honarkar Parties to realize their rights and remedies afforded to them under the Partial Final Award. Rather than allow the Debtors to remain in control and to continue to run these Chapter 11 Cases for the benefit of the Continuum Parties, dismissal or conversion will benefit all of the Debtors' legitimate creditors. Thus, the Court should immediately dismiss or convert these Chapter 11 Cases.

RESERVATION OF RIGHTS

140. The Honarkar Parties expressly reserve and preserve all rights with respect to these Chapter 11 Cases and to seek or pursue any additional or other forms of relief in these Chapter 11 Cases. The Honarkar Parties further expressly reserve and preserve all rights and remedies with respect to the Arbitration and the claims asserted therein, including, without limitation, all rights to exercise their remedies with respect to their claims or to otherwise pursue such remedies.

141. Finally, to the extent any assets are sold out of the Debtors' estates, the Honarkar Parties fully reserve all rights to include the amounts of such sales in their calculation of damages that will come out of the Arbitration. Nothing in these Chapter 11 Cases can or should be deemed to mean or imply that the Honarkar Parties have consented to the sale of any assets and/or waived

any of their rights in the Arbitration, including, without limitation, with respect to the amount or calculation of damages. The accounting and ultimate damages award to be issued by the Arbitrator will dictate the amount of damages due to the Honarkar Parties and no actions taken in these Chapter 11 Cases constitute a waiver of such rights and remedies in the Arbitration.

NOTICE

142. Notice of this Motion has been given to (i) counsel to the Debtors; (ii) the Office of the United States Trustee for the District of Delaware; (iii) the Debtor's 30 largest creditors, and (iv) all parties entitled to receive notice under Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Honarkar Parties submit that no other or further notice is necessary.

WHEREFORE, the Honarkar Parties respectfully request entry of an order: (i) either dismissing or converting the Chapter 11 Cases pursuant to section 1112(b) of the Bankruptcy Code; and (ii) granting the Honarkar Parties such other and further relief that the Court deems necessary or appropriate.

Dated: June 27, 2025
Wilmington, Delaware

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Exhibit A

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INC.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

MOHAMMAD HONARKAR, et al.,
Plaintiffs,

v.

MAHENDER MAKHIJANI; et al.,
Defendants,

and

MOM AS INVESTCO, LLC, et al.,
Nominal Defendants.

Case No. 30-2023-01323759-CU-OR-CJC

Related Case No. 30-2023-01322886-CU-OR-CJC
30-2023-01337525-CU-BC-WJC

Assigned for All Purposes to:
Hon. Bradley Erdosi, Dept. C27

**NOTICE OF PETITION AND PETITION TO
CONFIRM ARBITRATION AWARD AND
ENTER JUDGMENT**

*[Filed concurrently herewith [Proposed] Judgment
Confirming Arbitration Award]*

Date: December 22, 2025
Time: 2:00 p.m.
Dept.: C27

Reservation ID: 74590414

Action Filed: May 3, 2023
Trial Date: None

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF**
 2 **RECORD:**

3 PLEASE TAKE NOTICE THAT on December 22, 2025, in Department C27 of the
 4 above-titled Orange County Superior Court, located at 700 Civic Center Drive West, Santa Ana,
 5 California 92701, at 2:00 p.m. or as soon thereafter as the matter may be heard, Petitioners and
 6 claimants/cross-respondents Mohammad Honarkar and 4G Wireless, Inc. (collectively,
 7 “Petitioners”) hereby petition this Court for an Order confirming Arbitrator Hon. David A.
 8 Thompson’s (Ret.) May 23, 2025 Partial Final Award (the “Partial Final Award”) in the JAMS
 9 arbitration proceeding entitled *Mohammad Honarkar, et al. v. Mahender Makhijani, et al.*, Ref.
 10 No. 5220003126, consolidated with Ref. No. 5200001122 (the “Arbitration”), and for entry of
 11 judgment in Petitioners’ favor against respondents and cross-claimants Mahender Makhijani;
 12 Continuum Analytics, Inc.; MOM AS Investor Group LLC; MOM BS Investor Group LLC;
 13 MOM CA Investor Group LLC; MOM AS Manager LLC; MOM BS Manager LLC; MOM CA
 14 Manager LLC (collectively the “MOM Respondents”); and Nano Banc (collectively with the
 15 MOM Respondents, “Respondents”), in conformity with the Partial Final Award (attached hereto
 16 as **Exhibit A**) and in accordance with California Code of Civil Procedure section 1285, *et seq.*,
 17 and for such further relief as this Court may deem just and proper.

18 This Petition is based on the allegations set forth in the Petition, the Partial Final Award,
 19 the attached Exhibits, and upon such oral and documentary evidence and argument as may be
 20 presented in response to any submissions by Respondents and at the hearing on this Petition.

21 DATED: June 18, 2025

22 HALPERN MAY YBARRA GELBERG LLP
 23 AARON M. MAY
 24 JOSEPH J. YBARRA

25 By: 

26 AARON M. MAY

27 Attorneys for Plaintiffs MOHAMMAD
 28 HONARKAR and 4G WIRELESS, INC.

PETITION TO CONFIRM ARBITRATION AWARD AND ENTER JUDGMENT

Petitioners and claimants/cross-respondents Mohammad Honarkar and 4G Wireless, Inc. (collectively, “Petitioners”) hereby petition this Court for an Order confirming Arbitrator Hon. David A. Thompson’s (Ret.) May 23, 2025 Partial Final Award (the “Partial Final Award”) in the JAMS arbitration proceeding entitled *Mohammad Honarkar, et al. v. Mahender Makhijani, et al.*, Ref. No. 5220003126, consolidated with Ref No. 5200001122 (the “Arbitration”), and for entry of judgment in Petitioners’ favor against respondents and cross-claimants Mahender Makhijani; Continuum Analytics, Inc.; MOM AS Investor Group LLC; MOM BS Investor Group LLC; MOM CA Investor Group LLC; MOM AS Manager LLC; MOM BS Manager LLC; MOM CA Manager LLC (collectively the “MOM Respondents”); and Nano Banc (collectively with the MOM Respondents, “Respondents”), in conformity with the Partial Final Award (attached hereto as **Exhibit A**) and in accordance with California Code of Civil Procedure section 1285, *et seq.*, and for such further relief as this Court may deem just and proper.

In support thereof, Petitioners allege as follows:

1. This Petition requests that the Court confirm an arbitration award conducted according to a written agreement between the parties that is subject to California Code of Civil Procedure section 1285, *et seq.*

THE PARTIES

2. Petitioner Mohammad Honarkar is a California resident. Mr. Honarkar, either directly or indirectly through 4G Wireless, Inc., is a member of each of the following limited liability companies: MOM AS Investco, LLC; MOM BS Investco, LLC; and MOM CA Investco, LLC (together, the “MOM LLCs” or “Nominal Claimants”).¹

¹ Though not relevant to this Petition, each of the Nominal Claimants is a Delaware limited liability company doing business in California. On February 28, 2025, the MOM LLCs, each of which is a Nominal Claimant to the Arbitration, filed for Chapter 11 bankruptcy. On April 28, 2025, the Bankruptcy Court modified its automatic stay so as to allow Petitioners to pursue and obtain an award of attorneys’ fees in the parties’ Arbitration and to proceed in the bankruptcy cases with the accounting granted in the arbitration award. On June 11, 2025, the Bankruptcy Court granted Petitioners further relief from the automatic stay so as to permit Petitioners to,

(Continued...)

3. Petitioner 4G Wireless, Inc. (d/b/a 4G Ventures) is a California corporation, with its principal place of business located in Laguna Beach, California. Pursuant to a letter agreement dated July 14, 2022, 4G Wireless, Inc. is a member in each of the MOM LLCs.

4. Respondent Mahender Makhijani is a California resident. Mr. Makhijani is the owner, shareholder, managing member, and/or principal of each of the following respondents: Continuum Analytics, Inc.; MOM AS Investor Group LLC; MOM BS Investor Group LLC; MOM CA Investor Group LLC; MOM AS Manager LLC; MOM BS Manager LLC; and MOM CA Manager LLC.

5. Respondent Continuum Analytics, Inc. (“Continuum”) is a California corporation with its principal place of business in Newport Beach, California. Continuum’s principal shareholder is respondent Mahender Makhijani. Continuum is party to a May 24, 2021 binding term sheet with 4G Wireless, Inc., an entity owned by Mr. Honarkar, which was the predecessor contract to the operating agreements of the MOM LLCs.

6. Respondent MOM AS Investor Group LLC is a Delaware limited liability company, with its principal place of business in Orange County, California, and is authorized to do business, and is doing business, in California. On information and belief, MOM AS Investor Group LLC is owned and controlled by Continuum and shares office space, employees, officers, and agents with Continuum.

7. Respondent MOM BS Investor Group LLC is a Delaware limited liability company, with its principal place of business in Orange County, California, and is authorized to do business, and is doing business, in California. On information and belief, MOM BS Investor Group LLC is owned and controlled by Continuum and shares office space, employees, officers, and agents with Continuum.

8. Respondent MOM CA Investor Group LLC is a Delaware limited liability company, with its principal place of business in Orange County, California, and is authorized to

inter alia, “seek and obtain confirmation of the Partial Final Award” and “to take all actions necessary to effectuate [such] relief.” A true and correct copy of the June 11, 2025 Order of the Bankruptcy Court is attached hereto as **Exhibit B**.

do business, and is doing business, in California. On information and belief, MOM CA Investor Group LLC is owned and controlled by Continuum and shares office space, employees, officers, and agents with Continuum.

9. Respondent MOM AS Manager LLC is a Delaware limited liability company with its principal place of business in Orange County, California. On information and belief, MOM AS Manager LLC is owned and controlled by Continuum and shares office space, employees, officers, and agents with Continuum.

10. Respondent MOM BS Manager LLC is a Delaware limited liability company with its principal place of business in Orange County, California. On information and belief, MOM BS Manager LLC is owned and controlled by Continuum and shares office space, employees, officers, and agents with Continuum.

11. Respondent MOM CA Manager LLC is a Delaware limited liability company with its principal place of business in Orange County, California. On information and belief, MOM CA Manager LLC is owned and controlled by Continuum and shares office space, employees, officers, and agents with Continuum.

12. Respondent Nano Banc is a California corporation with its principal place of business in Irvine, California.

JURISDICTION AND VENUE

13. Jurisdiction is proper in this Court under California Code of Civil Procedure sections 1286 because the Arbitration took place in Orange and Los Angeles Counties. Moreover, the underlying arbitration agreements between the parties provide for the place of arbitration to be in Irvine, California.

14. Further, respondents MOM AS Investor Group LLC, MOM BS Investor Group LLC, and MOM CA Investor Group LLC, sued petitioner Mr. Honarkar in Orange County Superior Court via action initiated on May 3, 2023 (Case No. 30-2023-01322886-CU-OR-CJC). By its Minute Order of September 25, 2023, the Court in that action ordered that dispute against Mr. Honarkar be arbitrated pursuant to an arbitration provision present in the operating agreements for the “MOM LLCs,” attached hereto as **Exhibits C-E** (the “Operating

Agreements”), at the root of the parties’ dispute. The Court also ordered that issues relating to arbitrability be submitted to and resolved by the arbitrator.

15. Venue is proper in Orange County, California, according to California Code of Civil Procedure sections 1292 and 1292.2, because the Arbitration took place in Orange and Los Angeles Counties, and because the underlying arbitration agreements between the parties were to be performed in Orange County, California. Moreover, Petitioners’ and Respondents’ residences and places of business are all in Orange County, California.

BACKGROUND FACTS

16. As described in the Partial Final Award: “This is a real estate joint venture dispute centered on fraud and breach of contract claims. The joint venture [] comprises a portfolio of commercial properties that were previously owned by [Petitioners] and are now owned by the [MOM LLCs].” **Exhibit A** at 3.

17. The Operating Agreements are substantially similar, and each contains an identical mandatory arbitration clause that applies to claims between the parties other than requests for injunctive relief:

19.10 Arbitration. In the event a Member or Manager breaches the terms of this Agreement, the non-breaching party shall have all rights and remedies available at law (for actual damages) and/or in equity; provided that no party shall be liable for consequential, punitive or special damages. Any dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (including whether the claims asserted are arbitrable), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) or such other rules as the parties may agree upon. Such arbitration shall be conducted by a single independent arbitrator. The parties to the arbitration shall within five (5) Business Days mutually agree on a single independent arbitrator. If they are unable to agree on an independent person within such five (5) Business Day period, the arbitrator shall be appointed by JAMS in accordance with its rules. Any arbitrator shall be either (A) a retired judge or (B) an attorney with at least twenty (20) years of litigation experience. The place of arbitration shall be Irvine, California. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives and judgment may be entered thereon in any court of competent jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator, and may award attorneys’ fees and costs to

the prevailing party. Discovery in accordance with California law shall be permitted. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the parties.

See Exhibits C-E § 19.10 (emphasis added). Respondents MOM AS Investor Group LLC, MOM BS Investor Group LLC, MOM CA Investor Group LLC, MOM AS Manager LLC, MOM BS Manager LLC, and MOM CA Manager LLC are each a party and signatory to one of the Operating Agreements (and respondents Mahender Makhijani and Continuum are third-party beneficiaries of the Operating Agreements).

18. The May 24, 2021 binding term sheet, as to which respondent Continuum Analytics, Inc. is a party and signatory (and respondent Mahender Makhijani is an agent of Continuum), contains an identical arbitration clause. *See Exhibit F* at 10 (Default; Arbitration).

19. Petitioners entered into an arbitration agreement with Nano Banc on October 11, 2023, according to which:

The Parties agree that the Dispute shall be submitted to and finally determined by binding arbitration in accordance with the Comprehensive Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. (“JAMS”), including the Expedited Procedures set forth therein. The Parties agree that they shall attempt to consolidate the arbitration of the Dispute with the Pending Arbitration, in which Arbitrator Justice David Thompson is presiding. In the event that consolidation does not occur, then this agreement is null and void. Any award rendered as to the Dispute shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. Discovery in accordance with California law shall be permitted in the arbitration, so long as consistent with the limitations set forth in JAMS’s Comprehensive Rules and the Expedited Procedures therein.

See Exhibit G § 2 (Agreement to Arbitrate).

20. On April 25, 2023, and pursuant to the arbitration provisions in the Operating Agreements and the Term Sheet, Mr. Honarkar initiated arbitration with JAMS, Case No. 5220003126 against respondents Mahender Makhijani; Continuum Analytics, Inc.; MOM AS Investor Group LLC; MOM BS Investor Group LLC; MOM CA Investor Group LLC; MOM AS Manager LLC; MOM BS Manager LLC; MOM CA Manager LLC. Along with 4G Wireless, Inc., Mr. Honarkar filed a First Amended Statement of Claim in Arbitration, which also asserted

1 claims against respondent Nano Banc, pursuant to the arbitration agreement with Nano Banc, on
2 October 13, 2013.

3 21. On May 3, 2023, respondent MOM CA Investor Group LLC initiated Orange
4 County Superior Court Case No. 30-2023-01322886-CU-OR-CJC against Mr. Honarkar (the
5 “Orange County Lawsuit”). Via an amended complaint filed on June 6, 2023, respondents
6 MOM AS Investor Group LLC and MOM BS Investor Group LLC joined that lawsuit as
7 plaintiffs, asserting all of the same claims as respondent MOM CA Investor Group LLC.

8 22. On August 3, 2023, and in accordance with its Commercial Arbitration Rules,
9 JAMS appointed the Honorable David A. Thompson (Ret.) as arbitrator in the Arbitration. Hon.
10 David Thompson (the “Arbitrator”) served as a California Court of Appeal Justice for nine years
11 and as a Superior Court Judge in Orange County Superior Court for 15 years.

12 23. On September 25, 2023, the Court in the Orange County Lawsuit issued a minute
13 order granting Mr. Honarkar’s Motion To Compel Arbitration And Stay Proceedings, ordering
14 that the parties’ dispute be arbitrated and that issues relating to arbitrability be submitted to and
15 resolved by the arbitrator. A true and correct copy of that order is attached hereto as **Exhibit H**.

16 24. On September 28, 2023, respondents MOM AS Investor Group LLC, MOM BS
17 Investor Group LLC, and MOM CA Investor Group LLC submitted a demand for arbitration
18 with JAMS, Case No. 5200001122, against Mr. Honarkar. This arbitration, JAMS Case No.
19 5200001122, was consolidated with the arbitration initiated by Mr. Honarkar, JAMS Case No.
20 5220003126 (collectively, the “Arbitration”).

21 25. Thereafter, Respondents (other than Nano Banc) filed motions in the consolidated
22 Arbitration disputing arbitrability. On January 3, 2024, following briefing and oral argument of
23 the parties, the Arbitrator issued a ruling denying those motions and ordering that Respondents
24 arbitrate all claims asserted against them.

25 26. The parties conducted discovery, exchanging documents in addition to written
26 interrogatories and requests for admission, and took depositions in the Arbitration.

27 27. The Arbitrator heard the parties’ evidence as to their respective claims at an
28 evidentiary hearing conducted on June 24-28 and July 1-3, 5, 8-12, 2024. After the hearing, the

1 parties confirmed that there was no further evidence for the Arbitrator to consider. The
 2 Arbitrator then received simultaneous closing, opposition, and reply briefing from the parties,
 3 and heard oral closing argument on December 17, 2024.

4 28. On May 23, 2025, the Arbitrator's Partial Final Award was served on the parties.
 5 See **Exhibit A**. As set forth in the Partial Final Award's Summary of Conclusions and Further
 6 Proceedings: "It is intended that this Partial Final Award will be subject to judicial review as to
 7 those issues finally determined herein, so Claimants may return to the Superior Court and seek to
 8 (i) confirm this Partial Final Award, and (ii) perfect their right to the accounting granted herein . .
 9 . ." **Exhibit A** at 45 ¶ 15.

10 29. On May 30, 2025, Respondents submitted to the Arbitrator a "request for
 11 correction." On June 6, 2025, the Arbitrator issued a ruling denying Respondents' request for
 12 correction. Per the Arbitrator's ruling: "The Partial Final Award is now final for all purposes.
 13 (JAMS Rule 24(k).)"

14 30. The Partial Final Award was made in accordance with the terms of conditions of
 15 the written agreement to arbitrate and is in all respects proper and subject to confirmation
 16 because it determined all questions submitted to arbitration that were necessary in order to
 17 determine the controversy. See C.C.P. § 1283.4.

18 31. Petitioners are entitled to an order confirming the Partial Final Award, according
 19 to Code of Civil Procedure section 1285, and to have judgment entered in conformity therewith,
 20 pursuant to Code of Civil Procedure section 1287.4.

21 LEGAL STANDARD

22 32. According to the California Arbitration Act, confirmation of an arbitration award
 23 is mandatory unless a timely petition to correct or vacate the award is made:

24 If a petition or response under this chapter is duly served and filed, the court ***shall***
 25 ***confirm*** the award as made, whether rendered in this state or another state, unless
 26 in accordance with this chapter it corrects the award and confirms it as corrected,
 vacates the award or dismisses the proceedings.

27 C.C.P. § 1286 (emphasis added); see also *Weinberg v. Safeco Ins. Co.*, 114 Cal. App. 4th 1075,
 28 1083-84 (2004) ("A party who fails to timely file a petition to vacate under section [1286.2] may

not thereafter attack that award by other means on grounds which would have supported an order to vacate.”) (quoting *Louise Gardens of Encino Homeowners Ass’n, Inc. v. Truck Ins. Exch.*, 82 Cal. App. 4th 648, 659 (2000)).

33. A party seeking to request that an arbitration award be corrected or vacated must ordinarily serve such a request within 100 days of receiving service of the award. C.C.P. § 1288.2. Where a petition to confirm an award is filed within that 100-day period, a party seeking to vacate or correct the award must instead seek such relief within the 10-day period for responses to the petition. C.C.P. § 1290.6; *DeMello v. Souza*, 36 Cal. App. 3d 79, 83 (1973) (“When the party petitions the court to confirm the award before the expiration of the 100-day period, respondent may seek vacation or correction of the award by way of response only if he serves and files his response within 10 days after the service of the petition.”) (citing C.C.P. § 1290.6).

ARGUMENT

A. This Petition Satisfies The Requirements To Confirm An Arbitration Award.

34. “Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award.” C.C.P. § 1285. Such a petition “shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.” *Id.* Per Code of Civil Procedure section 1285.4, a petition to confirm arbitration shall:

(a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement.

(b) Set forth the names of the arbitrators.

(c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

C.C.P. § 1285.4. Mr. Honarkar and 4G Wireless, Inc.’s Petition satisfies all of these requirements.

35. First, the parties all are subject to written agreements to arbitrate via the Operating Agreements, the Term Sheet, and Petitioners’ arbitration agreement with Nano Banc. *See Exhibits C-G.* The Court overseeing the Orange County Lawsuit ordered the parties in that case

1 “to submit all claims (except for the injunctive relief claims) to arbitration for the arbitrator to
 2 determine which issues must be decided by arbitration, and then for the arbitrator to decide those
 3 issues.” **Exhibit H** (9/25/2023 Minute Order) at 5. The arbitrator also affirmed each of the
 4 parties’ written agreements to arbitrate, and the arbitrability of the parties’ claims, per written
 5 disposition dated January 3, 2024, attached as **Exhibit I**.

6 36. Second, as set forth in this Petition, the Arbitrator—the Hon. David A. Thompson
 7 (Ret.)—conducted an evidentiary hearing on June 24-28 and July 1-3, 5, 8-12, 2024. Thereafter,
 8 the Arbitrator received extensive post-hearing briefs from the parties and heard oral closing
 9 arguments on December 17, 2024.

10 37. Third, a copy of the Arbitrator’s Partial Final Award, which includes the
 11 Arbitrator’s written opinion and which the Arbitrator issued on May 23, 2025 is attached hereto
 12 as **Exhibit A**.

13 **B. The Court Should Confirm The Arbitration Award.**

14 38. In resolving a motion to confirm an arbitration award, “every presumption favors
 15 the arbitrator’s award,” and neither questions of law nor fact are subject to review. *Lehto v.*
 16 *Underground Constr. Co.*, 69 Cal. App. 3d 933, 939-40 (1977); *see also Thibodeau v. Crum*, 4
 17 Cal. App. 4th 749, 759-60 (1992) (“Once a valid award is made by the arbitrator, it is
 18 conclusive on matters of fact and law and all matters in the award are thereafter res judicata.”)
 19 (quoting *Lehto*, 69 Cal. App. 3d at 939). “The merits of the controversy between the parties are
 20 not subject to judicial review,” *O’Malley v. Petroleum Maint. Co.*, 48 Cal. 2d 107, 110-11
 21 (1957), and “courts will not review the validity of the arbitrator’s reasoning” nor may a court
 22 “review the sufficiency of the evidence supporting an arbitrator’s award.” *Moncharsh v. Heily &*
 23 *Blase*, 3 Cal. 4th 1, 11 (1992). In short: “[t]he arbitrator’s decision should be the end, not the
 24 beginning, of the dispute.” *Id.* at 10.

25 39. Because of the strong public policy favoring arbitration as a speedy and relatively
 26 inexpensive method of dispute resolution, judicial review of arbitration awards is restricted to the
 27 grounds for vacation or correction enumerated in Code of Civil Procedure sections 1286.2 and
 28 1286.6. *See Moncharsh*, 3 Cal. 4th at 27-28). Although none of the grounds for vacating the

1 arbitrator's award are remotely present, to the extent Respondents claim otherwise they will bear
 2 the burden of establishing facts to support such alleged grounds. *E.g., Royal Alliance Assocs.,*
 3 *Inc. v. Liebhaber*, 2 Cal. App. 5th 1092, 1106 (2016) ("The party seeking to vacate an arbitration
 4 award bears the burden of establishing that one of the six grounds listed in section 1286.2 applies
 5 and that the party was prejudiced by the arbitrator's error.").

6 40. Respondents already submitted to the Arbitrator a "request for correction," which
 7 the Arbitrator denied. Petitioners anticipate that Respondents will raise some of those same
 8 arguments in this Court, including claims that the Partial Final Award included findings "made
 9 in excess of the Arbitrator's authority, including findings for punitive damages and all findings
 10 made against Mr. Makhijani in his individual capacity." But the Operating Agreement's
 11 prohibition on punitive damages is not enforceable because California law prohibits such
 12 limitation of liability provisions in the case of fraud, as the Arbitrator found to be the case here.
 13 Cal. Civ. Code § 1668; *see also FiTeq Inc. v. Venture Corp.*, 169 F. Supp. 3d 948, 955 (N.D.
 14 Cal. 2016) ("[contractual] releases of future liability for fraud and other intentional wrongs are
 15 invariably invalidated under California law") ("internal quotation marks omitted); *Food Safety*
 16 *Net Servs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App. 4th 1118, 1126 (2012) ("limitation of
 17 liability clauses are ineffective with respect to claims for fraud and misrepresentation"). And
 18 Respondents' contention that Mr. Makhijani should not have been compelled to arbitrate the
 19 claims against him was already the subject of extensive briefing at the outset of the Arbitration
 20 and the Arbitrator correctly rejected it. Continuum was a party to the Term Sheet, which
 21 contains an arbitration clause, and Mr. Makhijani was (and is) an agent of Continuum, thus
 22 bound by the arbitration clause under standard principles of agency. *Nguyen v. Tran*, 157 Cal.
 23 App. 4th 1032, 1036-37 (2007) ("Exceptions in which an arbitration agreement may be enforced
 24 by or against nonsignatories include . . . when a nonsignatory and one of the parties to the
 25 agreement have a preexisting agency relationship that makes it equitable to impose the duty to
 26 arbitrate on either one of them.") (citations omitted).

27 41. Based on arguments made in Arbitration, and the very limited set of potential
 28 grounds upon which a court is permitted to vacate an arbitration award, Petitioners also

anticipate that Respondents will try to argue that the Arbitrator was in some way biased against them. Needless to say, there is no evidence supporting such a claim, and Respondents cannot come remotely close to meeting the applicable legal standard. *See, e.g., Evans v. Centerstone Dev. Co.*, 134 Cal. App. 4th 151, 163 (2005) (“The party claiming bias bears the burden of establishing facts supporting its position. . . .”) (quoting *Reed v. Mut. Serv. Corp.*, 106 Cal. App. 4th 1359, 1370-71 (2003)); *Luster v. Collins*, 15 Cal. App. 4th 1338, 1345 (1993) (“To support a claim of bias, a party must demonstrate the arbitrator had an interest in the subject matter of the arbitration or a preexisting business or social relationship with one of the parties which would color the arbitrator’s judgment.”) (citing *Banwait v. Hernandez*, 205 Cal. App. 3d 823, 826-29 (1988)).

C. The MOM LLCs’ Pending Bankruptcy Has No Bearing On The Arbitrator’s Partial Final Award, Or Its Confirmation By This Court.

42. As described above, *supra* note 1, the MOM LLCs are currently the subject of pending bankruptcy proceedings. The Arbitration did not include any claims against the MOM LLCs (or the entities in which they hold ownership interests), and the current bankruptcy stay has no application to the claims against Respondents—none of whom is a debtor. *See, e.g., In re Chugach Forest Prods., Inc.*, 23 F.3d 241, 246 (9th Cir. 1994) (“As a general rule, ‘[t]he automatic stay of section 362(a) protects only the debtor, property of the debtor or property of the estate. It does not protect non-debtor parties or their property. Thus, section 362(a) does not stay actions against guarantors, sureties, corporate affiliates, or other non-debtor parties liable on the debts of the debtor.’”) (citation omitted).

43. The Arbitration did include derivative claims brought *on behalf of*—not against—the MOM LLCs, which claims will inure to their benefit. Claimants prevailed on those claims in their entirety, and, after the MOM LLCs filed bankruptcy, the Arbitrator stayed the derivative claims on account of that bankruptcy, with the stay to be lifted and a final award issued after the accounting is complete. *See Exhibit A* at 32, 38, 42-46. As explained in the Partial Final Award, the Bankruptcy Court modified its automatic stay so as to allow the Claimants to the Arbitration to “proceed . . . with the accounting granted in the [Partial Interim and now Partial

Final] Arbitration Award in accordance with protocols to be agreed upon by the parties to the Arbitration or otherwise entered by this Court.” *Id.* at 45.

44. To the extent there ever was any question as to whether the MOM LLCs’ pending bankruptcy impeded confirmation of the Partial Final Award, the Bankruptcy Court’s June 11, 2025 Order put that question completely to rest. Per that Order, the Bankruptcy Court expressly permitted Petitioners to, *inter alia*, “seek and obtain confirmation of the Partial Final Award” and “to take all actions necessary to effectuate [such] relief.” See **Exhibit B** (6/11/2025 Order of Bankruptcy Court).

D. The Arbitrator’s Partial Final Award Is Subject To Confirmation By This Court.

45. The Partial Final Award resolved liability as to all claims by all parties, including the cross-claims asserted against Petitioners (which were rejected). The Arbitrator reserved jurisdiction to resolve later only: (1) the conducting of the accounting awarded to Petitioners; (2) Petitioners’ election of remedies; and (3) the post-accounting determination of amounts of restitution, damages, interest, and costs to be awarded to Petitioners. **Exhibit A** at 45. Such a Partial Final Award—subject only to an accounting and election of remedies by the claimants—is expressly contemplated by JAMS Rules (Rule No. 24) and can be confirmed in California Superior Court.

46. The California Court of Appeal’s decision in *Hightower v. Superior Court*, 86 Cal. App. 4th 1415 (2001), is instructive. There, the arbitrator rejected the petitioner’s claims and issued a “Partial Final Award” finding that the respondent did not breach his fiduciary duties and thus had “the right, but not the obligation” to purchase shares under the disputed contract at issue. *Id.* at 1426. The arbitrator further reserved jurisdiction to later resolve a number of issues that could arise in the course of such repurchase, if the respondent elected to repurchase the shares. The trial court initially denied a petition to confirm the award, on the ground that it was not final as to all issues. On appeal, the Court of Appeal reversed, issuing a writ of mandate directing the trial court to confirm the Partial Final Award under the California Arbitration Act, expressly holding that an arbitrator “may resolve certain critical areas of a dispute in a ‘partial

1 final award’ but reserve jurisdiction to later decide, by a ‘*final* award,’ issues which will likely
 2 arise as a result of the implementation of that remedy.” *Id.* at 1419.

3 47. Each of the factors that formed the basis of the decision in *Hightower* is present
 4 here, namely that: (1) the parties selected JAMS’s rules, which expressly provide for partial final
 5 awards; (2) the Partial Final Award resolves all questions of liability on each of the claims
 6 brought by the parties; and (3) the Arbitrator retained jurisdiction to implement the accounting,
 7 which necessarily must follow a decision on Petitioners’ cause of action seeking an accounting,
 8 and which is required to effectuate rescission (if Claimants elect that remedy). *See also, e.g.,*
 9 *Roehl v. Ritchie*, 147 Cal. App. 4th 338, 352 (2007) (affirming second arbitration award in the
 10 same matter after earlier confirmation of a first award); *VVA-Two, LLC v. Impact Dev. Grp.,*
 11 *LLC*, 48 Cal. App. 5th 985, 999-1000 (2020) (“[T]he award provides a complete but potentially
 12 incremental remedy tailored to address a challenging situation.”); *compare with Kaiser Found.*
 13 *Health Plan, Inc. v. Super. Ct.*, 13 Cal. App. 5th 1125, 1129-30 (2017) (“Partial Final Award” did
 14 not qualify as an “Award” under C.C.P. § 1283.4 where it only decided threshold issue of
 15 arbitrability and nothing more, and expressly failed to resolve all liability questions on all causes
 16 of action in the dispute).

17 **E. The Court Should Enter Judgment In Favor Of Petitioners.**

18 48. If the arbitration award is confirmed, “judgment shall be entered in conformity
 19 therewith.” C.C.P. § 1287.4; *see also Ajida Techs., Inc. v. Roos Instruments, Inc.*, 87 Cal. App.
 20 4th 534, 549 (2001) (“a judgment confirming an arbitration award is enforceable in the same
 21 manner as any other judgment in a civil action”). Accordingly, the Court should enter judgment
 22 in favor of Petitioners.

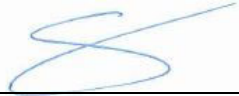
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioners pray for the following relief:

- 25 1. That the Court enter an order confirming the Partial Final Award;
- 26 2. That the Court award Petitioners their costs of suit; and
- 27 3. That the Court enter judgment in favor of Petitioners and against Respondents.

1 DATED: June 18, 2025

HALPERN MAY YBARRA GELBERG LLP
AARON M. MAY
JOSEPH J. YBARRA

4 By: 

AARON M. MAY

Attorneys for Plaintiffs MOHAMMAD
HONARKAR and 4G WIRELESS, INC.

EXHIBIT A

JAMS ARBITRATION
No. 5220003126
(Consolidated with JAMS Case No. 5200001122)

Mohammad Honarkar and 4G Wireless, Inc.,
individually and on behalf of MOM AS Investco LLC,
MOM BS Investco LLC, and MOM CA Investco
LLC,

Claimants and Derivative Claimants,

v.

Mahender Makhijani; Continuum Analytics, Inc.;
MOM AS Investor Group LLC; MOM BS Investor
Group LLC; MOM CA Investor Group LLC; MOM
AS Manager LLC; MOM BS Manager LLC; MOM
CA Manager LLC; and Nano Banc,

Respondents,

and,

MOM AS Investco LLC, MOM BS Investco LLC, and
MOM CA Investco LLC,

Nominal Respondents.

Consolidated case:

MOM AS Investco LLC, MOM BS Investco LLC,
MOM CA Investco LLC, MOM AS Investor Group
LLC, MOM BS Investor Group LLC, and MOM CA
Investor Group LLC,

Claimants,

v.

Mohammad Honarkar,

Respondent.

PARTIAL FINAL AWARD

Counsel:

For Claimant and Cross Respondent Mohammad Honarkar (“Honarkar”); Claimant 4G Wireless, Inc. (individually “4G,” and collectively with Honarkar, the “Claimants”); and Derivative Claimants MOM AS Investco LLC (“MOM AS JV”), MOM BS Investco LLC (“MOM BS JV”), MOM CA Investco LLC (“MOM CA JV”) (collectively, the “MOM JV Entities”):

Aaron May, Esq., Joseph Ybarra, Esq., Abigail E. Marion, Esq., Thomas Rubinsky, Esq., and Halpern, May, Ybarra, Gelberg LLP; and Sam Maralan, Esq., and Maralan Law, P.C.

For the MOM JV Entities:

Anthony Bisconti, Esq., and Bienert Katzman Littrell Williams, LLP.

Counsel for Respondents Mahender Makhijani (“Makhijani”) and Continuum Analytics Inc. (individually “Continuum,” and collectively with Makhijani, the “Makhijani Parties”):

Marc Cohen, Esq., and Cohen Law Group, APC.

For Respondents and Cross Claimants MOM AS Investor Group LLC (“MOM AS Member”), MOM BS Investor Group LLC (“MOM BS Member”), MOM CA Investor Group LLC (“MOM CA Member”) (collectively, the “MOM Members”) and MOM AS Manager LLC (“MOM AS Manager”), MOM BS Manager LLC (“MOM BS Manager”), MOM CA Manager LLC (“MOM CA Manager”) (collectively, the “MOM Managers”):¹

Michael Farrell, Esq., Scott Leipzig, Esq., Tim Hsu, Esq., Stephanie Roberts, Esq., Gabriela Perez, Esq., Leilee Ghassemi, Esq., Shauna Woods, Esq., Suzanne Kenney, Esq., and Allen Matkins Leck Gamble Mallory & Natsis LLP.²

For Respondent Nano Banc (“Nano”):

Ann Marie Mortimer, Esq., Lawrence DeMeo, Esq., Hakop Stepanyan, Esq., and Hunton Andrews Kurth LLP.

Arbitrator: Hon. David A. Thompson (Ret.)

Place of Arbitration: JAMS, Los Angeles, California

Date of Partial Final Award: May 23, 2025

¹ At times, the Arbitrator will refer to the MOM Members and the MOM Managers together as the “MOM Parties;” to the MOM Parties and the Makhijani Parties as the “MOM Respondents;” and to the MOM Respondents and Nano Banc as the “Respondents.”

² Allen Matkins also represented: (i) the MOM JV Entities, at all times prior to April 23, 2025, including during the Hearing and the post-Hearing briefing and argument, and (ii) Makhijani and Continuum, prior to November 9, 2023.

THE UNDERSIGNED ARBITRATOR, having been designated by JAMS in accordance with § 19.10 of the Operating Agreements (the “Operating Agreements”) for the MOM JV Entities, dated as of June 8, 2021, and having examined the claims, defenses, evidence, and arguments of the parties; now finds, concludes, rules, orders, and issues this Partial Final Award:

I. INTRODUCTION AND KEY PROCEDURAL HISTORY

This is a real estate joint venture dispute centered on fraud and breach of contract claims. The joint venture (“JV”) comprises a portfolio of commercial properties that were previously owned by Claimants and are now owned by the MOM JV Entities. The MOM JV Entities are managed by the MOM Managers, and the members of the MOM JV Entities are the MOM Members and Honarkar. Claimants filed the operative First Amended Statement of Claims in Arbitration (“FAC”) on October 13, 2023. Claimants claim they were fraudulently induced by Makhijani, Continuum, and the MOM Parties into signing the Operating Agreements (Exs. 313-315) and other JV related agreements (the “Other JV Related Agreements”),³ and further claim Nano is liable for conspiracy to commit and aiding and abetting the commission of fraudulent inducement by the MOM Respondents.⁴ Claimants also claim the MOM Parties breached the Operating Agreements and a Management Agreement that predated the JV (Ex. 37, the “Management Agreement”). In addition, Claimants claim the MOM Respondents violated California’s forcible entry and detainer laws in connection with an incident at the 4G offices.

Finally, Claimants assert derivative claims on behalf of the MOM JV Entities (as Derivative Claimants) against Makhijani, Continuum, the MOM Parties, and Nano for conversion and violation of Penal Code section 496 (“Section 496”), for unjust enrichment against the MOM Parties, and for breach of contract against Nano based on the loan agreement between the MOM JV Entities and Nano.

Nano filed an Answer to the FAC on November 3, 2023. The MOM Parties and the MOM JV Entities (represented by Allen Matkins) and Makhijani and Continuum (represented by the Cohen Law Group) filed Answers to the FAC on November 21, 2023.

In a separate (now consolidated) demand for arbitration filed with JAMS on September 28, 2023, and amended on June 6, 2024, the MOM JV Entities and the MOM Members alleged (counter) claims against Honarkar for conversion, intentional interference with contractual relations and prospective economic advantage, and declaratory relief in connection with the parties’ rights and obligations under the Operating Agreements and other JV agreements. They also brought claims for trespass related to incidents at two JV properties in Laguna Beach.

³ The Other JV Related Agreements include: the June 8, 2021, Asset Contribution Agreement (Ex. 304, the “ACA”); the June 8, 2021, Release Agreement (Ex. 317, the “Release”); the June 07, 2021, Consulting Agreement (Ex. 232).

⁴ Nano became a party pursuant to the October 11, 2023, Arbitration Agreement between Claimants and Nano.

Motions Contesting Arbitrability and Jurisdiction

On November 29, 2023, the MOM Parties, Makhijani and Continuum filed motions contesting arbitrability and jurisdiction. Both motions were denied in the Arbitrator's "Rulings on Motions Contesting Arbitrability," dated January 3, 2024. Among other things, the Arbitrator rejected: (1) the MOM Parties' arguments that the FAC was not arbitrable, and should be transferred back to state superior court for resolution because (i) Claimants' declaratory relief and accounting claims could not be arbitrated, and (ii) Claimants had waived their right to arbitration; and (2) Makhijani's and Continuum's assertions that (i) the issue of whether Makhijani and Continuum could be compelled to arbitrate under the Operating Agreements had to be determined by the court, not the Arbitrator, since they are not signatories to the Operating Agreements, and (ii) Makhijani and Continuum could not be compelled to arbitrate in any event.

Other Pre-Hearing Proceedings, Orders and Rulings

Preliminary, interim, final status, and discovery conferences, motion hearings, and other pre-hearing proceedings were conducted on the following dates: February 2, March 15, March 20, March 22, May 25, May 29, and June 12, 2024. The Arbitrator issued: Scheduling Order Nos. 1-5, and Consolidated Scheduling Order Nos. 100 and 101; and rulings on discovery disputes, claim amendments, hearing logistics, and motions to continue the arbitration hearing.

The Evidentiary Hearing and the Partial Interim Award

The evidentiary hearing ("Hearing") was conducted on June 24-28 and July 1-12, 2024. The following witnesses testified: Honarkar, Brian Buchanan, Michael Kluchin ("Kluchin"), Makhijani, Kara Cobb, Marc Cohen, Glenn Taxman, Daniel Niazi, Anthony Gressak ("Gressak"), Michael Spindler (Claimant expert), Frederick Gartside, Joseph Pohlot (Respondent expert), Deba Shyam ("Shyam"), Max Prendergast, and Wayne Platt (Respondent expert). The documents and deposition transcripts in the Joint Admitted Exhibit List dated August 22, 2024, were admitted into evidence. The Hearing was reported by Katherine Thomas, CSR 14378.

At the conclusion of the Hearing, the parties confirmed there was no further evidence for the Arbitrator to consider. The parties filed simultaneous closing, opposition and reply briefs on August 23, 2024, September 20, 2024, and October 4, 2024, respectively.

Virtual oral closing argument was conducted on December 17, 2024, the matter was then deemed "closed" by application of JAMS Rule 22(i) and by the agreement of the parties, and a Partial Interim Award (the "Partial Interim Award") was timely rendered on February 21, 2025.⁵

⁵ See 7.12 Tr. at 3940:21 through 3941:5, and the discussion which follows; *see also* JAMS Rule 24(a) and the January 10, 2025, Notice of Award Due Date.

Post-Hearing Proceedings, Orders and Rulings

On February 28, 2025, the MOM JV Entities filed for Chapter 11 bankruptcy. On April 28, 2025, the Bankruptcy Court, modified the automatic stay “to allow the Honarkar Parties to: (i) pursue and obtain an award of attorneys’ fees and costs in the Arbitration; and (ii) proceed in the ... bankruptcy cases ... with the accounting granted in the Arbitration Award”⁶ The Arbitrator conducted Post-Hearing status conferences and motion hearings on April 14, May 2, and May 12, 2025; issued Consolidated Scheduling Order Nos. 102-106; and issued rulings on Claimants’ request to clarify one aspect of the Partial Interim Award, and on Claimants’ motion for attorney fees and costs (§ III.N.5.; and § IV.14. below).

II. FACTS

These factual findings are necessary to this Partial Final Award. They are derived from admissions in the pleadings and the testimony, argument, and evidentiary exhibits presented at the Hearing. All relevant evidence that has a tendency in reason to prove or disprove a fact of consequence to this decision has been considered, even if not specifically mentioned herein. To the extent that these findings differ from any party’s position, that difference is the result of determinations by the Arbitrator as to witness credibility, relevance, burdens of proof, legal principles, and weighing of the evidence, both oral and written.

Honarkar’s Cell Phone Business, Real Estate Business and Financial Distress

Shortly after Honarkar moved to the United States from Iran, in the mid-1980’s, he started a small business selling wireless cell phones. Honarkar built the cell phone business, which ultimately became 4G, into a highly successful enterprise that included 160 stores in five states. He currently owns 100% of 4G, though he sold the cell phone business assets of 4G to Verizon Wireless in January 2016.

With the proceeds from the sale of the cell phone business, Honarkar began amassing a real estate portfolio. Properties were purchased both in his name and through 4G and held by various limited liability companies (“LLCs”). Over time, Honarkar developed the portfolio into an operation worth several hundred million dollars. The properties ranged from large hotels to commercial real estate to individual homes used as luxury vacation rentals, most of which were located in Laguna Beach or Palm Desert and the surrounding areas.

By March 2020, COVID-19 surged and the global pandemic was declared. Over the following year, the pandemic had a devastating effect on the hospitality and commercial industries. Honarkar’s real estate businesses were similarly affected.

⁶ On May 5, 2025, the Bankruptcy Court also dismissed the Chapter 11 bankruptcy filed by the MOM Members.

At that time, Honarkar was also involved in a contentious divorce. In July 2020, his former wife obtained the appointment of a receiver, Blake Alsbrook, to oversee Honarkar's properties. (Ex. 3905.) In addition to the effects of the pandemic, Alsbrook reported the infrastructure, staff, and systems in place were "woefully inadequate" to profitably operate the properties in the portfolio. (Ex. 2008, ¶¶ 9(a), 9(b).) He also reported the accounting and tax practices were inadequate and corporate formalities were generally ignored, pointing out the "brazen" movement of funds after a special report on interference had been submitted to the court. (*Id.*, ¶¶ 9(b), 71.) Most importantly, Alsbrook reported the "cash on hand was woefully insufficient to make the vast loan, payroll, creditor and settlement payments." (*Id.*, ¶ 9(b).) To resolve the dispute with his wife and to remove the receivership, Honarkar entered into a stipulated judgment to pay his former spouse \$17.5 million on or before June 12, 2021. (Ex. 2107.) Alsbrook was discharged as receiver in late December 2020.

Around that time, a loan from LoanCore Capital to Honarkar (the "LoanCore Loan") in the original principal amount of \$195 million dollars was coming due. The LoanCore Loan was secured by, among other things, deeds of trust encumbering the majority of Honarkar's real estate assets, as well as a personal guarantee. In December 2020, Honarkar failed to make a \$136 million balloon payment when due, and the LoanCore Loan went into default.

In January 2021, at the request of LoanCore, a new receiver, Douglas Wilson, was appointed over the Honarkar properties that secured the LoanCore Loan. (Ex. 3716, at 10-11, 13-17.) LoanCore obtained the receiver on the basis that Honarkar had been diverting rents from the properties in which LoanCore asserted it had a security interest. (Ex. 3716, at 8-9, 15.) The receivership was to be in place until Honarkar refinanced and paid off the LoanCore Loan.

A few months after Wilson was appointed as receiver, DIG PFSS LBCP Holding Company LLC ("DIG") purchased the LoanCore Loan. Honarkar and his team were concerned that DIG intended to foreclose on the properties that secured the LoanCore Loan. (Exs. 4085, at 182; 2411 at 4.) These concerns were legitimate. DIG immediately acted and scheduled foreclosure sales to begin on June 15, 2021. (*Id.*)

Honarkar's Search for Funding and Introduction to Makhijani and Continuum

During the first half of 2021, under considerable time pressure as a result of the DIG purchase of the LoanCore Loan, the pending foreclosures, and the payment due to his former wife, Honarkar sought funding from multiple sources, including Nano. As expected, it was challenging for Honarkar to obtain financing, given the extraordinary time pressures, dollar amounts and risks involved, together with the uncertainties created by the pandemic.

Honarkar had previously borrowed money from Nano and had an existing relationship with Gressak, Nano's then-Chief Credit Officer (and later interim CEO). Gressak referred Honarkar to Makhijani at Continuum, an entity that acquires and manages distressed real estate assets for groups of investors. (Ex. 52.)

Both Makhijani and Continuum had established, long-standing, and deeply ingrained affiliations with Nano. Nano was founded by, among others, Continuum's legal owner, Shyam, along with several of Continuum's largest investors (Gerald Marcil, Andrew Stupin, and Bhajneet Singh Malik), all of whom provided millions in seed capital, remain shareholders in Nano, and have borrowed over \$100 million from the bank. (Ex. 1000 at 181:18-190:6.) Gressak, though no longer with Nano, remains a significant shareholder. (7.8 Tr. at 2609:22-25.) Makhijani is one of Nano's largest referral sources and is also involved in the bank's management. (Ex. 1000 at 200:20-203:3.) The relationships between Makhijani, Continuum, Nano, and their employees and investors including Shyam are interwoven and overlapping.

Ultimately, Nano and Continuum became the sole solution for Honarkar's financial difficulties. On May 19, 2021, Nano provided to Honarkar a letter of intent ("LOI") for a \$150 million loan to pay off the LoanCore Loan. (Ex. 106.) This loan was to be made by Nano and "participant banks" and be secured by deeds of trust on a number of Honarkar's properties. Though Gressak was actively signaling otherwise, Daniel F. Patrick, Nano's Person Most Knowledgeable ("PMK") witness testified (via deposition admitted into evidence) Nano was incapable of extending that amount of financing to anyone. (Compare Exs. 139 [Gressak May 21 email to Honarkar: "We are aware of foreclosure sales starting June 15th on the properties and we can close prior to that date"], 211 [Gressak June 3 email to Honarkar *et al.*, seeking update from Honarkar's counsel: "[W]e are ready to fund man!!!], and 171 [email thread with Gressak, Makhijani, Honarkar *et al.* on "imminent" refinance with \$150 million from Nano]; with Exs. 1000 at 40:9-41:6 [Patrick PMK testimony: \$150 million is "well beyond the bank's legal lending limit for a single loan"]; 7.8 Tr. at 2600:15-21 [Gressak testimony – "Q: And Nano Banc never would have approved Mr. Honarkar for a \$150 million loan, correct? A: Correct"].)

During this time, Honarkar was also negotiating the JV terms with Makhijani and Continuum. Most interesting, on May 20, 2021, one day after Nano provided the \$150 million LOI to Honarkar, Nano provided to Shyam an LOI for a \$20 million loan (the "Nano Loan") to the MOM JV Entities, entities that had not yet been formed, and the proceeds of the \$20 million Nano Loan were to be used to help pay off the LoanCore Loan. (Ex. 130.) The \$20 million Nano Loan was to be secured by an assignment of membership interests in 689 South Coast Hwy LLC, Laguna HI LLC, Laguna HW LLC, and The Masters Building LLC, and "abundance of caution" deeds of trusts encumbering properties held by these four subsidiary LLCs, all of which were then wholly owned by Claimants. (*Id.* at 2.) At that time there were no agreements between Honarkar and any of the MOM Parties.

The Term Sheet

On May 24, 2021, just days after Nano issued the \$20 million Nano Loan LOI to Shyam, Honarkar, 4G, and Continuum entered into the Term Sheet for the JV. (Ex. 148, the “Term Sheet”.) It was signed by Honarkar on behalf of 4G and by Makhijani on behalf of Continuum.

The Term Sheet contemplated an initial capital contribution of \$35 million by Continuum, characterized as “cash equity,” in addition to Continuum’s obligation to secure refinancing to pay off the balance of the LoanCore Loan, then estimated at \$140 million. (Ex. 148 at 2.) The initial contribution by Continuum was to be credited to two existing projects in Honarkar’s portfolio, Hotel Laguna, and a property in Los Angeles’ Koreatown, though both Honarkar and Kluchin, Director of Operations at Continuum, testified that half of the initial contribution (\$17.5 million) was first intended to be used to pay off the stipulated judgment in favor of Honarkar’s former wife. (*Id.*; 6.24 Tr. at 108:11-109.4; 6.28 Tr. at 1214:6-15.)

In exchange, Claimants were obligated to contribute their interests in the subsidiary LLCs that held title to some of the properties in their portfolio. (Ex. 148 at 2, Exs. A and C.) The Term sheet was binding on Honarkar but not Continuum. (Ex. 148 at 8-10.) So, Continuum could terminate at any time, but Honarkar could not pursue other refinancing options.

Aside from the Hotel Laguna and Koreatown projects, Honarkar was entitled to sell and/or refinance the other real estate assets covered by the Term Sheet, subject to Continuum’s qualified consent rights. (Ex. 148 at 8 [Managers provision].) Further, assuming Continuum received a 20% preferred return on all of its capital contributions, Honarkar was entitled to the entirety of the sale proceeds of those other assets. (*Id.* at 4-6 [Distributions provision].)

The Draft Operating Agreements

Glenn Taxman, Honarkar’s transactional counsel, offered to provide initial drafts of the Operating Agreements, but Continuum’s lawyers took the lead instead. On May 28, 2021, Kluchin shared draft Operating Agreements, not with Honarkar but with First Choice Bank, one of the banks through which Continuum was seeking financing to pay off the LoanCore Loan. (Ex. 1479 [attachments include MOM Manager Operating Agreements].) Kluchin did not send Honarkar and Taxman draft Operating Agreements until June 2, 2021. (Ex. 191.)

Everyone agrees the JV document negotiation and drafting process was chaotic and frantic. Kluchin pressured Honarkar into signing early, before the documents were finalized. (*E.g.*, Ex. 288 [Kluchin to Honarkar team – “We are in a mad rush to produce documents for the bank. We need signature blocks...tonight asap with the understanding the JV is not final until both attorneys...send final versions of the full agreements”]; Exs. 347, 352.)

There was a constant flurry of emails back and forth between the parties and their respective counsel, in which it was unclear whether comments from Honarkar's side had been acknowledged and/or incorporated in existing drafts or if comments from Honarkar's side had even been solicited. All of this confused the process further and caused additional delay. (Ex. 0217 at 2-3 [Taxman to Kluchin – "Why are you sending us a different JV Agreement now?...We are sticking with the prior document you sent to us for negotiating purposes...My partner is already 80% thru the other draft....[This] makes zero sense and it actually delays the process...I am going to run a redline of what [Kluchin] originally sent against this new document..."]; Ex. 2382 at 3 [Taxman to Continuum "Guys, time to cut to the chase here if we have any chance of getting to final documents. Please include your outside counsel on an email to us so we can deal directly with them. [Kluchin] playing middleman is slowing down the process and getting a redline of Document A vs. Document B is not helping the process"(.)])

Admittedly, the process included "lots of moving targets." (Ex. 217 at 3 [email from Makhijani to Taxman and Honarkar].) Many of the documents were approved piecemeal. The initial drafts of the Operating Agreements had blank or incomplete exhibits. (Compare Exs. 191 at 38-41; 276 at 14-18; 298 at 17-21, with Ex. 315 at 40-46.) Plus, Exhibit C to the draft Operating Agreements was supposed to list Honarkar's "Other Owned LLC's" to be contributed to the JV. (Ex. 315 at 43.) But Exhibit C was not finalized and sent to Honarkar and his team until after 11pm on June 7, 2021, the night before the JV formation and LoanCore refinancing closing date. (Ex. 2554.) To populate Exhibit C, Makhijani used a comprehensive list of entities owned by and affiliated with Honarkar's businesses provided by Dan Niazi, 4G's Chief Operating Officer, earlier that day, on June 7, 2021. (Ex. 1397.) According to Honarkar and Niazi, that list was provided only for the Continuum investor's due diligence purposes, not as a final inventory of contributed entities. (6.24 Tr. at 128:25-131:25; 7.5 Tr. at 2467:17-2471:13.)

The Final Operating Agreements

Because Continuum was unable to secure enough financing to pay off the LoanCore Loan, Makhijani proposed that Continuum reduce its initial contribution to \$30 million, and use it to "close the gap," despite Continuum's \$35 million initial contribution obligation in the Term Sheet. (Exs. 2411, 385; 6.24 Tr. at 139:7-141:6.) Honarkar testified these changes in the initial contribution terms prevented him from paying off his former spouse as agreed, and resulted in his loss of their former residence. (6.24 Tr. at 152:14-153:24.)

Still, the Operating Agreements were signed and the MOM JV Entities were formed on June 8, 2021. (Exs. 313 [MOM AS JV]; 314 [MOM BS JV]; 315 [MOM CA JV].) That same day, the parties also closed escrow on the LoanCore Loan refinancing. (Ex. 308.) The refinancing Escrow Closing Statement showed two separate wire transfers from Continuum to the escrow holder: one in the amount of \$20 million and one in the amount of \$10 million. (*Id.*)

The Operating Agreements are substantially similar and the pertinent provisions include:⁷

(1) The parties to the MOM CA JV Operating Agreement are the MOM CA Manager as the Managing Manager, the MOM CA Member as the MOM Member, and Honarkar as the MO Member and the Administrative Manager.⁸ (Ex. 315 at 6; §§ 9.1, 9.2, 9.3.) Honarkar signed for himself. Shyam signed as the Manager of the MOM CA Manager on behalf of both the MOM CA Manager and the MOM CA Member. (Ex. 315 at 38.)⁹

(2) The MOM CA JV Operating Agreement obligated the MOM CA Member to make a \$30 million “Contribution” to be used “for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B...” (Ex. 315 at § 6.1(c) [“Initial Contributions”].) Exhibit B in turn stated, “Fund shortfalls in the refinance of debt completed on or about the date hereof.” (*Id.* at Ex. B [Disbursement of Contribution for Hotel Laguna Project].) “Contribution” was defined as “money or property, or a promissory note or other binding obligation to contribute money or property” that a “Member contributes ... as capital.” (*Id.* at § 1.19.) But loans by the MOM CA Member “shall not be considered Contributions for purposes of this Agreement.” (*Id.* at § 6.5.)

(3) The Operating Agreements required Honarkar to contribute certain LLCs he and 4G owned or controlled, defined as either “Subsidiaries/Other Owned LLCs” or “Projects.” (Ex. 315 at §§ 1.40, 1.48, 1.45, 6.1(a), Ex. C.) For the MOM CA JV, the only identified “Project” was the Hotel Laguna Project. (*Id.* at § 1.45.) Each of the other listed entities was a “Subsidiary/Other Owned LLC.” (*Id.* at Exs. C, D.) Makhijani and Continuum through the MOM Member had the discretion to make a capital contribution to a “Subsidiary/Other Owned LLC” property and convert it to a “Project” under the Operating Agreement. (*Id.* at § 6.1.)

(4) The Managing Member was not entitled to sell the assets of or ownership interests in the “Subsidiary/Other Owned LLCs” absent Honarkar’s prior written consent, unless Honarkar was in default, as defined. (Ex. 315 at §§ 9.3(b), 1.36.)

(5) Self-dealing transactions were prohibited without the written consent of both the Managing Manager and the Administrative Manager. (Ex. 315 at § 9.15.)

⁷ The Arbitrator will use the MOM CA JV Operating Agreement as the reference agreement. (Ex. 315.) The material terms of the MOM AS JV and MOM BS JV Operating Agreements are substantially similar.

⁸ On July 14, 2022, the parties executed a Letter Agreement (the “Letter Agreement”) amending the Operating Agreements to clarify that 4G was the MO Member of the MOM JV Entities, not Honarkar personally. (Ex. 583 at § 3 [“It was intended for 4G and not [Honarkar] to be the MO Member of the Companies. Accordingly, the Salient Documents shall be deemed amended so that the MO Member is 4G without any further action by the parties”].)

⁹ Similarly, Banayotis Haddad, a Continuum employee, signed the MOM AS JV Operating Agreement as the Manager of the MOM AS Manager on behalf of both the MOM AS Manager and the MOM AS Member. (Ex. 313 at 39.) And Jason Miller signed the MOM BS JV Operating Agreement as the Manager of the MOM BS Manager on behalf of the MOM BS Manager and the MOM BS Member. (Ex. 314 at 38.)

(6) The Managing Manager was required to keep “full and accurate books and records” for the MOM JV Entities, reflecting “all of the income, expenses and transactions.” (Ex. 315 at § 12.1.) The Managing Manager was also required to provide monthly and annual financial reports, including balance sheets, profit and loss statements, and tax returns. (*Id.* at § 12.2.)

That same day, Honarkar and the MOM Managers also executed the ACA, restructuring and contributing Honarkar’s and 4G’s membership interests in the Other Owned LLCs to the MOM JV Entities. (Ex. 304 at § 2.) The ACA specified certain entities (the “Held-Back LLCs”) were not subject to restructuring or contribution by Honarkar. (*Id.* at Ex. E.) But according to Honarkar, the Operating Agreements mistakenly list multiple properties as Other Owned LLCs.¹⁰ (*E.g.*, Exs. 304, 315 at 43 [listing 4G itself and Modan LLC, which is owned by Niazi].¹¹)

Once the Operating Agreements were executed, Continuum assumed control of the MOM JV Entities’ bank accounts, as well as the bank accounts of the Other Owned LLCs. Honarkar continued the day-to-day business operations of the Other Owned LLCs.

Continuum’s Alleged Wrongdoing in Operating the JV

Less than one month after the MOM JV Entities were formed, on or around July 1, 2021, Continuum caused Tesoro Redlands DE LLC (“Tesoro Redlands”), an Other Owned LLC,¹² to obtain a \$1 million loan (the “Tesoro Loan”) from Nano. (Exs. 403, 409, 411.) That same day, one of the MOM investors, Enrico Arvielo, was repaid his \$3 million investment in one of the MOM Members. (Ex. 405.) The Tesoro Loan was secured by a deed of trust encumbering real property owned by Tesoro Redlands, which was not recorded until March 2022. (*Id.*) When Honarkar’s staff received a monthly billing statement for the Tesoro Loan on September 23, 2021, an employee of Nano indicated it was “a billing error and not applicable to Tesoro.” (Ex. 2723.) Honarkar was not involved in or aware of the Tesoro Loan. (Ex. 488 [Tesoro Loan not included in list of JV loans sent to Honarkar in Dec. 2021]; 6.27 Tr. at 960:14-961:7.)

¹⁰ Notably, in September 2022 Kluchin sent a list of the “Contributed Entities” to an outside accounting firm to prepare the MOM JV Entities’ 2021 tax returns, but he did not include 4G, Modan LLC, BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, Terra Laguna Beach Inc., Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing82 LLC, or Brookline Aliso Viejo LLC. (Ex. 1354; 7.3 Tr. at 1915:7-1919:6.)

¹¹ 6.24 Tr. at 130:10-17; 7.5 Tr. at 2469:16-2470:1; Ex. 622 [Kluchin email to Nano – “Modan LLC account has nothing to do with Continuum or 4G. This account belongs only to Dan Niazi”].

¹² Tesoro Redlands is owned by Tesoro Redlands LLC, an Other Owned LLC/Subsidiary of the MOM JV Entities. (Ex. 279 at 2; Ex. 315 at 43.)

In early 2022, Honarkar proposed a sale of Tesoro Redlands, intending to use the proceeds to pay off debts owed to Makhijani/Continuum and other obligations. (Exs. 527, 533.) Makhijani refused to consent to the sale and instead refinanced the Tesoro Loan with Preferred Bank. (Exs. 530, 531, 533.) Though Honarkar ultimately consented to the Preferred Bank refinancing on February 25, 2022, conditioned upon his ability to sell the property after the refinance, Makhijani and Shyam (on behalf of the MOM CA Manager and MOM CA Member) set up the refinance and signed the relevant documents on February 22, 2022, prior to Honarkar's consent. (Exs. 529, 531, 533, 535.) Honarkar testified he was not informed where the refinance proceeds went and did not receive documentation relating to the refinance until over six months later. (Ex. 602 [email from Taxman on September 27, 2022 – "Mo has zero idea as to the amount of the refinance proceeds, the terms of the refinance loan and the use of the proceeds"].)

The evidence shows that when the Tesoro Redlands refinance with Preferred Bank closed on February 24, 2022, only some of the \$39 million in proceeds were used to pay off existing debt. (Ex. 530.) Approximately \$8.8 million was listed as a cash-out to the borrower, and \$8.8 million was transferred directly into the Continuum bank account from the Tesoro Redlands bank account on March 1, 2022. (Ex. 541.) In addition, \$2.8 million was held back by escrow and four months later transferred from the Tesoro Redlands bank account to the Continuum bank account. (Ex. 2894; 7.2 Tr. at 1528:5-1531:19.) It is unclear why these funds were transferred to Continuum or for what purpose they were ultimately used.

On April 10, 2022, the MOM Respondents sold a tenant-in-common (TIC) interest in Hotel Laguna, LLC for \$1 million to Jaachak LLC ("Jaachak"), an entity owned and controlled by Continuum executive Jaspreet Singh Sethi. (Exs. 546, 549, 817; 6.27 Tr. at 983:19-990:17.) The TIC sale was consummated without using an escrow. Marc Cohen's client trust account was used instead because the trust company would not wire the sale proceeds to Continuum, which was not a party to the transaction. (Ex. 555 at 3-4; Ex. 558.) Upon receipt, Cohen sent the proceeds to Continuum. (Ex. 558; 7.5 Tr. at 2273:3-2280:14.) Both Honarkar and Niazi testified they were unaware of this transaction and did not receive any proceeds from it. In fact, the proceeds of the sale went directly to the MOM Members. (7.2 Tr. at 1766:6-1767:20 [Makhijani testimony that \$1 million in TIC proceeds became Jaachak's capital contribution to a MOM Member].)

According to Honarkar and his attorney, Taxman, lack of transparency was a common theme in dealing with the MOM Respondents. Even when Honarkar and his team requested information, it seemed the complete financial picture was rarely provided. Taxman testified "[e]very time we met, we asked for information; we asked for financials. It was promised; it was never given. It was – you felt like Charlie Brown trying to kick the ball and Lucy pulling it up." (Tr. 7.5 at 2334:4-19.)

Also, Kluchin directed Nano to establish bank accounts for the LLCs contributed to the MOM JV Entities and to restrict access to Honarkar and his team. On October 29, 2021, Kluchin directed Nano to “set up a new The Masters Building, LLC [account]. Signers are [Shyam] and me. No one from 4G should be on this account. This is very important. [Honarkar], Chi Lu [4G’s Controller] – no one. Only [Shyam] and I.... Again no one from 4G should see or be on this account.” (Ex. 473; Ex. 590 [September 2022 email from Kluchin to Nano – “Note DO NOT COPY CHI or anyone from 4g or laguna beach company on this email thread”].)

Honarkar’s Alleged Discovery of the Nano Loan

The Nano Loan closed and funded on June 7, 2021, one day prior to the effective date of the Operating Agreements and thus one day prior to the formation of the MOM JV Entities, and on that date all of the JV properties and subsidiary LLCs were still wholly owned by Claimants. The \$20 million Nano Loan proceeds were deposited in a Continuum bank account and then transferred to escrow that same day. (Ex. 240 [Memorandum to Nano Loan Committee - “proceeds will need to be funded into a related DDA account (not owned by the Borrower) held at the Banc, Continuum Analytics...Nano Banc CCO, ... Gressak, has spoken with the Borrower and has approved the funding of the account”]; Ex. 308 [June 8, 2021 escrow statement with two separate Continuum payments in the amount of \$10 million and \$20 million].)

In early 2023, Honarkar began exploring options to exit the JV. In seeking alternative financing, on February 9, 2023, Honarkar discovered a deed of trust on one of the MOM JV Entities’ properties, dated June 7, 2021, and securing the \$20 million Nano Loan. (Ex. 656.) According to Honarkar, once he received the deed of trust, he ran title searches on the other properties in the MOM JV Entities. He then discovered the \$30 million initial contribution the MOM Members were obligated to make under the Operating Agreements had been funded in part by the \$20 million Nano Loan obtained in the name of the MOM JV Entities themselves; and further, that the Nano Loan was secured by assignments of the MOM JV Entities membership interests in the four subsidiary LLCs,¹³ and by deeds of trust encumbering properties owned by these subsidiary LLCs.¹⁴ (Ex. 239 at 78-82, 88-127; Exs. 234, 235, 236.)

On February 20, 2023, Honarkar sent a letter to Makhijani and Continuum, raising his concerns about several recorded instruments discovered as a result of the title searches, including deeds of trust relating to the Nano Loan, the Tesoro Loan, and loans from the Cantor Group V, and memoranda related to TIC transactions. (Ex. 659.) According to Honarkar, he received no response or further information pertaining to the issues raised in this letter.

¹³ These are 689 South Coast Hwy LLC, Laguna HI LLC, Laguna HW LLC, and The Masters Building LLC.

¹⁴ In these respects, the structure of the Nano Loan was similar to the structure of the loans from the other three lenders who participated in the LoanCore refinance (First Choice, Preferred, and Lone Oak).

On March 22, 2023, Honarkar's then-counsel (Latham & Watkins LLP) sent a formal books and records demand for each of the MOM JV Entities, seeking basic financial and transactional documents pursuant to the Operating Agreements. (Exs. 661-663.) On April 3, 2023, Respondents indicated they would provide documentation related to the \$20 million Nano Loan only if Honarkar provided "a letter withdrawing the inspection demands." (Ex. 5480.) Honarkar refused. And, on April 27, 2023, Honarkar filed a Petition to Compel Books and Records in Los Angeles Superior Court, which Respondents opposed. (Ex. 1377.) Ultimately, on November 9, 2023, Judge James C. Chalfant granted Honarkar's Petition. (*Id.*)

Honarkar's Demand for Arbitration

On April 25, 2023, Honarkar filed his original Demand and Statement of Claim in this arbitration, seeking the rescission of the Operating Agreements or, in the alternative, the appointment of a receiver over the MOM JV Entities, along with compensatory and punitive damages, a declaratory judgment regarding the Other Owned LLCs, and an injunction reinstating Honarkar as the Administrative Manager to protect his ownership interests.

The MOM Respondents' Alleged Retaliation Against Honarkar

Almost immediately following Honarkar's demand for books and records, on March 29, 2023, Makhijani, Continuum, and the MOM Parties utilized their power as Managing Managers and terminated Honarkar as the Administrative Manager of the MOM JV Entities. (Exs. 669-671, 3018.) The letters terminating Honarkar were drafted and sent by Marc Cohen, Esq., current counsel for Makhijani and Continuum in this arbitration. (*Id.*)

Two days later, a group of armed individuals working on behalf of Continuum and Makhijani entered and took control of numerous JV properties, including the Hotel Laguna, a Holiday Inn Hotel in Laguna Beach, and several other vacation rentals. (Exs. 681, 1196, 1198.)

In early May 2023, Honarkar returned to the Hotel Laguna, and there was a confrontation between Makhijani, Kluchin, and the MOM Respondents' agents. (Ex. 1165 [video of portion of incident, Makhijani stating "I'll put 32 fucking guards here"]; Ex. 1160 [video of portion of incident].) Each side blames the other, but the only person arrested that day was Banayotis Haddad, a Continuum employee and the Manager of MOM AS Manager, who was charged with assault. (Ex. 1305; 6.24 Tr. at 202:3-21; 7.2 Tr. at 1800:4-9.)

Both Honarkar and Kluchin also testified that, during the night of June 30, 2023 and the early morning of July 1, 2023, a group of armed individuals and other agents working on behalf of Continuum and Makhijani entered and took physical control of Terra (a restaurant located at the Laguna Festival of the Arts and operated by Honarkar for years).

On the afternoon of July 24, 2023, while Honarkar and the MOM Respondents were appearing before Orange County Superior Court Judge David J. Hesseltine arguing motions for injunctive relief, Kluchin, Haddad, and Jason Miller, along with more than a dozen men dressed in black broke into the 4G corporate headquarters, where both 4G and Honarkar maintained offices, while Honarkar's team was working. (Ex. 773 [police report].) A glass door located on the side of the building was shattered with a hammer to gain entry and the double doors at the front entrance were forced open. (*Id.* at 4; Ex. 1212.) Kluchin admitted he and his team broke into the offices. Video of the incident appears to show the MOM Respondents' agents removing documents, banker's boxes of hardcopy files labelled "LEGAL," computer equipment, and other objects from the office, including employees' personal effects. (Ex. 1158.)

On July 29, 2023, the MOM Respondents served eviction notices on Honarkar and both of his daughters at their residences, which were JV properties under the Operating Agreements. (Ex. 772 at 4-8.) In addition, Respondents initiated multiple eviction proceedings against tenants leasing other JV properties. According to Kluchin, these eviction notices and proceedings were instituted against those tenants for not paying rent directly to the MOM Respondents.

Also, during this time, the MOM Respondents hired mobile billboards to drive around Laguna Beach, displaying pictures of Honarkar with disparaging messages. One of the billboards included photos of police officer Jessie Schmidt (one of the officers present at the scene of the 4G offices break-in) and Shohreh Dupuis (city manager for the City of Laguna Beach), along with Honarkar's photo and the word "CORRUPTION??" in large bold capital letters. (Ex. 11506.27 Tr. [Kluchin testimony – "Our PR consultant worked on this [billboard] and suggested it, and we approved it because we believe it to be true"].) According to the MOM Respondents' testimony, they included Schmidt and Dupuis on the billboard because they felt Dupuis was "allow[ing] Mo [Honarkar] to get away with a lot [of] things that he probably shouldn't have" (Kluchin, 6.27 Tr. at 1049:6-9) and the police were "not protecting our rights to manage the property" (Makhijani, 7.2 Tr. at 1811:2-21).

Additional facts are set out in the analysis and discussion that follows.

III. ANALYSIS

The fraud and other non-contractual claims are governed by California law. The claims for breach of the Operating Agreements are governed by Delaware law. (*e.g.*, Ex. 315 at § 19.1.) The claim for breach of the Management Agreement is governed by California law. (Ex. 37 at § 13.4.) The parties bear the burden of proof on their respective claims and defenses by a preponderance of the evidence, except for the punitive damages claim, which requires clear and convincing evidence. (Civ. Code § 3294.) The JAMS Comprehensive Arbitration Rules apply.

A. Claimants' Direct Fraudulent Inducement Claim Against Makhijani, Continuum and the MOM Members (FAC at 22-23)

Claimants allege they were fraudulently induced by Makhijani, Continuum and the MOM Members into signing the Operating Agreements by the MOM Respondents' promise to make a \$30 million initial contribution. They assert the MOM Respondents had no intent to perform the promise when they made it, and it was not performed.

The MOM Respondents argue the promise was performed because the Operating Agreements allowed them to use the \$20 million Nano Loan to fund part of the \$30 million initial contribution obligation.¹⁵ They also insist Honarkar was informed about the Nano Loan and about commitments the MOM Members made to pay off the Nano Loan.

"Promissory fraud [aka fraudulent inducement] is a subspecies of fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973.)¹⁶ "[P]romissory fraud requires proof of (1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5) nonperformance by the party making the promise; and (6) resulting damage to the promisee." (*Gruber v. Gruber* (2020) 48 Cal. App. 5th 529, 540.)

1. Initial Contribution Promise

It is undisputed the MOM Members promised to make the \$30 million initial contribution to the MOM JV Entities. (Ex. 315, § 6.1 [MOM CA Operating Agreement]; Ex. 148 at 2 [Term Sheet].) The required *form* of the initial contribution is the crux of this dispute. The Arbitrator's analysis will begin with the plain, unambiguous language of the Operating Agreements.

Recall the term "Contribution" is defined generally in the Operating Agreements as "any money or property, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted by law, which a Member contributes to the Company as capital in that Member's capacity as a Member pursuant to this Agreement." (Ex. 315, § 1.19.) That defined term is used in connection with both Initial Contributions and Additional Contributions (compare Ex. 315, §§ 6.1 and 6.2) and throughout the Operating Agreements.

¹⁵ Continuum also deposited \$10 million in escrow but \$3.9 million of that was immediately refunded. (Ex. 308.)

¹⁶ For simplicity internal citations and quotation marks have been omitted from case quotations throughout.

The MOM CA JV Operating Agreement specifically states: “6.1 Initial Contributions. ... [¶] (c) Concurrently with execution hereof, by all of the Members, the MOM [CA] Member shall make a Contribution of \$30 million to the Company for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B attached hereto.” (Ex. 315, § 6.1(c).) Exhibit B, titled “Disbursement of Contribution for Hotel Laguna Project,” states it shall be used to: “Fund shortfalls in the refinance of debt completed on or about the date hereof.” (Ex. 315 at Ex. B.)

Reading these sections together reveals the term “Contribution,” defined generally in Section 1.19, is also subject to the specific requirements of Section 6.1. (*Kirkwood Knoll Maint. Corp. v. Warren* (Del. Com. Pls. Apr. 21, 2016) C.A. No. CPU4-14-003607, 2017 WL 8999315 at *5.) Thus, the MOM Member’s \$30 million *initial* Contribution had to be made June 8, 2021 (upon execution) in a form that could be disbursed to fund shortfalls in the LoanCore Loan refinance that same day. There is no other way to give meaning to both sections as required.

And the Nano Loan transaction itself did not satisfy the initial contribution obligation.

As a threshold matter, it appears the Nano Loan transaction was unauthorized and the Nano Loan documents are therefore invalid. This is true because on the day the Nano Loan closed and funded, June 7, 2021: (a) the putative Nano Loan borrowers – the MOM JV Entities – did not yet exist; (b) the Term Sheet was still in effect; (c) the JV properties and the membership interests in the subsidiary LLCs that owned them still belonged to Claimants; and (d) neither the MOM Managers, nor any other MOM Respondents, including Continuum, had any authority to encumber those properties or to assign those membership interests.

Even if the Nano Loan transaction was authorized and the Nano Loan documents are valid, the Nano Loan itself was not a “Contribution” by the “MOM CA Member” (MOM CA Investor Group LLC) to the “Company” (MOM CA Investco LLC) “as capital in that Member’s capacity as a Member pursuant to this [Operating] Agreement.” (Ex. 315, §§ 1.19, 6.1.) In fact, the MOM CA Member was not even a party to the Nano Loan transaction. Besides, nothing in either the Term Sheet or the Operating Agreements authorized the MOM Members to make the initial contribution in the form of a loan from Nano to the MOM JV Entities secured by their own assets. In short, Makhijani and Continuum used Claimants’ assets to secure the Nano Loan, and used the Nano Loan proceeds to acquire an interest in and gain control of those same assets.

Perhaps recognizing the Nano Loan transaction itself did not satisfy the initial contribution obligation, the MOM Respondents argue it was satisfied because they made a binding oral promise the MOM Members (not the MOM JV Entities) would pay the Nano Loan; and that the oral promise was memorialized in a “Contribution Agreement” (Ex. 2433.) The substance of the promise was the MOM Members would “step in and pay” the Nano Loan upon “the earlier of the Maturity Date or any date on which [Nano] demands” payment. (*Id.* at 1.)

If the oral promise was made and if the Contribution Agreement is genuine, neither satisfied the initial contribution obligation, because neither obligated the MOM Members to make any payment on June 8, 2021. And any payment made or to be made after that date could not be used to fund shortfalls in the refinance of the LoanCore debt on that date.¹⁷ What's more, the MOM JV Entities still owed Nano \$20 million and the Nano Loan was still secured by the Nano Loan trust deeds and assignments of subsidiary LLC membership interests. So, the MOM JV entities were still at risk of losing their assets if the MOM Members failed to pay.

In any event, there is substantial reason to doubt the oral promise was made and the Contribution Agreement is genuine.

The MOM Respondents maintain the oral promise to pay the Nano Loan was made at in-person meetings with Honarkar before the JV was formed. Specifically, they note: Makhijani testified he informed Honarkar of this commitment (7.2 Tr. at 1897:3-1899:12; 7.3 Tr. 2018:24-2021:22); Kluchin testified it was explained to Honarkar during a meeting at the Corona del Mar restaurant (the "CdM Meeting") that flexibility was needed and that it would be the MOM Members' "binding obligation and promise to pay the loan" (6.28 Tr. at 1205:18 – 1507:7); Gressak testified "part of those discussions [at the CdM Meeting] was talking about how the MOM investors – with this [Nano] loan, and it would pay for the loan" (7.8 Tr. at 2548:13-16); Prendergast, a Nano employee, testified Honarkar was informed at the CdM Meeting the contribution would be made either in cash or through a loan (7.12 Tr. at 3714:14 – 3715:24.1); Prendergast testified about another meeting at the Montage (the "Montage Meeting"), where Honarkar was informed of the Nano Loan and that it would be used to refinance the LoanCore obligation (7.12 Tr. at 3716:16 – 3719:17); and finally, Kluchin and Gressak both testified there was also a meeting at Honarkar's house on June 6, 2021 where the matter was discussed. (7.3 Tr. at 2018:24-2021:22; 6.27 Tr. at 1057:12-1059:4; 7.8 at 2550:18-2552:21.)

But the testimony about these meetings and the oral promise was not credible. Regarding the CDM Meeting, the witnesses contradicted each other in parts. For example, Makhijani, Kluchin, and Gressak insisted Makhijani drew a diagram of the Nano Loan on a napkin and described it to Honarkar. But Prendergast remembered only that the diagram related to dilution of the MOM Members' capital percentages, an issue unrelated to the oral promise or the initial contribution. (7.12 Tr. at 3805:4-3808:12.) As for the Montage Meeting, no witness other than Prendergast even mentioned it. Plus, as the Arbitrator observed several times during the Hearing, based on basic witness credibility considerations, Kluchin, Makhijani, and Gressak were just not credible. (CACI 107 [Witness Credibility]; 7.1 Tr. at 1572:15-19 [re Kluchin]; 7.8 Tr. at 2506:3-2507:22 [re Kluchin and Makhijani]; 7.8 Tr. at 2773:8-13 [re Gressak].)

¹⁷ For these same reasons, the Arbitrator rejects the MOM Respondents' claim additional funds they "infused" into the JV after June 8, 2021, satisfied the initial contribution obligation. Besides, there is insufficient evidence in the record establishing the form or amount of these infusions, by whom they were made, or where funds came from.

These credibility findings about the oral promise testimony are buttressed by the Respondents' pre-hearing verified discovery responses and deposition testimony. The initial interrogatory responses of Makhijani, Continuum, and Nano made only general statements that Honarkar was aware of the Nano Loan "through conversations with Responding Parties and Nano Banc." (Ex. 950 at 004-005; Exs. 937 at 007, 949 at 007.) They made no mention of any specific conversations where the Nano Loan was disclosed to Honarkar. Later, Nano's PMK deposition witness testified he was not aware of any written or oral communications with Honarkar about the Nano Loan. (Ex. 1000 at 93:21-94:11.) Still later, Makhijani made no mention of the CdM Meeting in his PMK deposition for Continuum. (Ex. 1009 at 39:25-40:10.) Then, less than a week before the Hearing, Nano's second supplemental interrogatory responses mentioned the CdM Meeting and the napkin diagram for the first time. (Ex. 1527.)

These credibility findings are also supported by the fact that there is no evidence of any written communications to Honarkar or his team at any time discussing the oral promise, nor are there any internal written communications between Honarkar and his team about the oral promise. Finally, Honarkar, Niazi, and Taxman all testified they were not aware of the Nano Loan until 2023. (6.24 Tr. at 169:22-178:14, 247:23-248:4 (Honarkar); 7.5 Tr. at 2301:4-2302:1 (Taxman), 2481:24-2483:14 (Niazi); 7.8 Tr. at 2526:5-2528:12 (Niazi); Exs. 656, 664, 659-63.)

In total, the weight of the evidence supports finding the oral promise was not made.

Turning to the Contribution Agreement, Kluchin testified he drafted it in "the morning of June 7, 2021." (6.28 Tr. at 1208:14-21, 1208:14-1209:7; 7.1 Tr. at 1544:13-1547:21.) He also testified it "was printed out, so it was signed in the office," "on June 7th" and was "signed in person and then scanned" the same day. (7.1 Tr. at 1544:13-16, 1548:18-1550:25.) Makhijani testified it was signed "mid-morning time on June 7" and that it was signed either using "a pen or a stamp." (7.2 Tr. at 1699:22-1701:25; 7.1 Tr. at 1548:22-1551:9.) But their testimony about the existence, creation, and execution of the Contribution Agreement is not credible.

There is no contemporaneous evidence the Contribution Agreement existed as of June 7, 2021. There are no written communications (emails, texts, or memoranda) about it. (7.1 Tr. at 1544:13-16, 1554:15-1557:7.) The MOM Respondents admit they never shared it with Honarkar or Nano. (6.28 Tr. at 1208:14-1210:15; 7.1 Tr. at 1544:13-1554:22; 6.24 Tr. at 254:23-255:22.) And they did not assert it existed until July 2023, months after the litigation began.

At the Hearing, when Claimants proffered a handwriting expert to testify the signatures on the Contribution Agreement were placed by electronic means, not by pen or stamp (7.7.24 Joint Letter), the MOM Respondents stipulated, contrary to Kluchin and Makhijani's testimony about it being printed, signed, and scanned on June 7, 2021, "the signatures on the Contribution Agreement were placed onto the document by electronic means." (7.12.24 Stipulation.)

The text of the Contribution Agreement also suggests it could not have existed and been signed in the mid-morning of June 7, as Kluchin and Makhijani testified, because Paragraph 2 refers to the final Operating Agreement's definition of Contribution in "Section 1.19." But on the morning of June 7, the draft Operating Agreements had the definition of "Contribution" in section 1.20—not section 1.19. (Ex. 1505 at 001, 023 [draft circulated at 12:58 p.m. on 6.7.21]; 7.10 Tr. at 3261:13-3263:5 [Gartside testified Exhibit 1505 was then-current draft].) Moreover, the definition of Contribution was not moved to section 1.19, until subsequent drafts exchanged later in the evening of June 7. (Exs. 282, 315 at 009, 313 at 009, 314 at 009.) The MOM Respondents' explanation for all of this is based on speculation, not evidence.

Even if the Contribution Agreement was authentic, it was invalid. Claimants argue it violated the Affiliate Transaction restrictions under the Operating Agreements. (Ex. 315 at 027.) Perhaps. The Mom Respondents contend the Affiliate Transaction restrictions do not apply because the June 7 Contribution Agreement predates the June 8 Operating Agreements. But again, on June 7: (a) the MOM JV Entities – who are putative parties to and beneficiaries of the Contribution Agreement - did not exist; (b) the Term Sheet was still in effect; and (c) the Contribution Agreement promise was not "cash equity" as required by the Term Sheet.

All told, the Contribution Agreement did not satisfy the initial contribution obligation.

To the extent the MOM Respondents downplay the materiality of the initial contribution to Honarkar and his decision to enter into the JV, their position is untenable. At the outset, it was intended to immediately pay off the \$17.5 million debt to Honarkar's ex-wife and then fund the Hotel Laguna Project. When Continuum was unable to secure enough financing to pay off LoanCore, the initial contribution was also to be used to "close the gap" in the refinance. As the MOM Respondents recognized: "The cash needs of the contributed businesses were staggering at the outset of the joint venture, particularly given the financial troubles faced by Honarkar through his divorce, the subsequent foreclosure action brought by DIG, and the multiple receivers imposed over Honarkar's assets." (MOM Respondents' Opposition brief at 36.)

For these reasons, Claimants proved the first element of their fraud claim.

2. Intent Not to Perform

Claimants argue the MOM Respondents never intended to make the initial contribution from their own pockets, but instead planned to saddle the MOM JV Entities with debt in order to fund the initial contribution obligation. Again, "[a] promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Engalla, supra*, 15 Cal. 4th at 973.) And parol evidence is admissible to establish fraud. (Code Civ. Proc. ("CCP") § 1856(g).)

The evidence surrounding the JV negotiations is particularly instructive on this issue. While negotiating the Term Sheet, the drafts proposed by Continuum defined the form of the initial contribution as “debt with equity warrants and/or equity,” whereas Honarkar’s team repeatedly struck any reference to debt and inserted the term “cash.” (Exs. 77 at 3; 84 at 13; 91 at 13; 92 at 17.) Obviously, Honarkar had no intention of allowing the MOM Respondents to saddle the JV Entities with debt to help fund the initial contribution. Eventually, the parties settled on the term “cash equity,” suggesting the MOM Respondents intended to mollify Honarkar by including the word “cash” but intending to use the Nano Loan proceeds anyway.¹⁸

That the Nano Loan closed and the proceeds were taken by Continuum the day before the Operating Agreements were finalized and executed, also suggests the MOM Respondents fully understood their promise to provide the initial contribution was false when made. Even more telling, on May 20, 2021, four days before the Term Sheet was signed and two weeks before the Operating Agreements were signed, Shyam signed the Nano Loan LOI, with the then-theoretical MOM JV Entities as the borrowers and Claimants’ assets as the collateral. (Ex. 130.) According to Kluchin, this loan idea was always Continuum’s plan. (6.27 Tr. at 850:17-852.11.)

These facts prove the MOM Respondents had no intention of providing the initial capital contribution without borrowing \$20 million of it from Nano using Claimants’ assets.

3. Intent to Deceive and Induce Reliance

Claimants argue the MOM Respondents’ intent to deceive Honarkar as to the form of the contribution is evidenced by their active concealment of the Nano Loan. “A fraudulent state of mind includes not only knowledge of falsity of the misrepresentation but also an intent to induce reliance on it.” (*Engalla, supra*, 15 Cal. 4th at 976.)

When the Nano Loan funded on June 7, 2021, Continuum requested that the proceeds be sent directly to a Continuum bank account at Nano “until the escrow company indicates that they will be ready to receive funds.” (Exs. 237, 240.) Because it was unusual to transfer the loan proceeds to any entity other than the borrower, Nano employee Brian Buchanan drafted a memorandum requesting permission from the Nano Loan Committee, which stated Gressak had “spoken with the Borrower and [] approved the funding of the account.” (Ex. 240.) And when the escrow closed on June 8, 2021, the escrow closing statement showed two transfers from Continuum – one for \$10 million and one for \$20 million. (Ex. 308.)

¹⁸ The MOM Respondents fail to explain how “cash equity” differs from “cash” or how a debt could be considered a “contribution.” (See, 6.26 Tr. at 806:5-7 [Kluchin cash equity “wouldn’t be a loan that has to convert to equity”].) And in the financial and real estate industries, the term “cash equity” is commonly used to describe the portion of an investment that can be easily converted into cash. See, <https://www.investopedia.com/terms/c/cash-equity.asp>.

The MOM Respondents offer two explanations for these unusual transfers. First, they argue there were concerns the escrow would be delayed if the money came from the MOM JV Entities as borrowers on the Nano Loan, because the MOM JV Entities were not parties to the LoanCore payoff in the escrow holder's files (a problem created by the MOM Respondents in the first instance). Second, they posit the Nano Loan proceeds were initially transferred to Continuum because they were being submitted as the MOM Members' contribution and, as such, should be received through the MOM Members' agent, Continuum.

But these explanations are not consistent with the reason provided to Nano at the time the Nano Loan funded – that the escrow holder was not ready to receive the funds. (Ex. 240.) Nor are they consistent with Kluchin's testimony that the funds were transferred to a Continuum bank account because the MOM JV Entities did not have their own bank accounts set up. (6.27 Tr. at 868:15-871:4.) Regardless of the actual reason for Continuum's receipt of the Nano Loan proceeds, the escrow statement offered no further explanation. It certainly did not disclose that the \$20 million deposit was from the proceeds of the Nano Loan to the MOM JV Entities. And there is no evidence that Respondents conveyed any of these reasons to Honarkar or his team.

Aside from Nano, three other lenders participated in the LoanCore refinance – First Choice Bank, Lone Oak, and Preferred Bank. (Exs. 220-222.) On June 4, 2021, just days before the close of escrow, Kluchin sent copies of the loan documents for each of those three lenders to Honarkar and Taxman. (*Id.*) He did not send over copies of the loan documents for the Nano Loan, despite admitting he had them available. (6.27 Tr. at 886:5-889:12.) Kluchin also sent an email chain on June 6, 2021 to Honarkar and the escrow company, indicating there were only three lenders involved in the refinance. (Ex. 229 at 2.) Neither the body of the email nor the attachment mentions the Nano Loan. (Ex. 229.) And, when Honarkar requested a list of all outstanding loans on the MOM JV Entities' assets in December 2021, the MOM Respondents sent a list from which the Nano Loan was conspicuously absent.¹⁹ (Ex. 716 at 3, ¶ 8; 22-24.)

Nano did not record the Nano Loan deeds of trust encumbering the MOM JV Entities' properties until March 2022. (Exs. 234, 235, 236.) The recording was initiated by Marc Cohen, acting as counsel for Nano, on January 18, 2022 (Ex. 515), the same day Nano received an Order to Cease and Desist from the Federal Deposit Insurance Corporation.²⁰ (Ex. 514.) Thus, the weight of the evidence suggests the MOM Respondents were hiding and intentionally omitting information about the Nano Loan in their communications with Honarkar.

¹⁹ This list also did not include the \$1 million Tesoro Loan from Nano to Tesoro Redlands in July 2021.

²⁰ The order required Nano to engage an independent third party to review extensions of credit to insiders, remediate extensions made “on preferential terms or presenting more than the normal risk of repayment or other unfavorable features,” and submit new procedures to “strengthen the Bank’s internal controls related to financial transactions between the Bank and senior executives, directors, and/or any entities which they control.” (Ex. 514, ¶¶ 5-8.)

Still, the MOM Respondents insist Honarkar and his team were aware of the Nano Loan based on a flurry of due diligence emails from Nano during the JV negotiations, as well as oral communications with Honarkar. As to the Nano emails, context matters. During the JV negotiations, on May 19, 2021, Nano provided Honarkar with the LOI for the \$150 million loan from Nano and other “participant banks.” (Ex. 106.) The next day, on May 20, Nano provided Shyam with the \$20 million Nano Loan LOI. (Ex. 130.) Remarkably, both LOI’s list the same Honarkar and 4G properties and subsidiary LLCs as collateral. (Exs. 106 at 1-2; 130 at 2.)

It is not surprising then that Honarkar and his team were receiving emails from Nano seeking due diligence on these properties. (Exs. 115 [May 19 email from Buchanan re underwriting]; 4017 [May 20 emails from Nano employee re certificates of insurance]; 4018-4020 [May 20 response emails from Honarkar’s team attaching requested documents]; 5517 [May 21 email, 4G employee requesting insurance certificates – “[w]e still have the current lender, that has not changed, the bank we are refinancing the loan portfolio with is Nano Banc (who might be syndicating the loan with other lenders). They need the current certificates no matter the lender”]; 5518; 2296.) But none of these emails referenced the Nano Loan or clarified that Nano was underwriting the Nano Loan.²¹ It is reasonable to believe Honarkar and his team assumed Nano was seeking documents for underwriting the \$150 million loan or another outstanding Honarkar loan previously obtained from Nano (Ex. 123.) More importantly, Honarkar’s reaction to discovering one of the recorded Nano Loan trust deeds in 2023 is consistent with his claimed lack of knowledge of the Nano Loan before then. (Exs. 656, 659.)

As for oral communications, again, no credible evidence was presented that the Nano Loan was disclosed to Honarkar during the CdM Meeting, the Montage Meeting, or the June 6 meeting at Honarkar’s house. Rather, the weight of the evidence proves otherwise.

Respondents point to a perceived discrepancy in Honarkar’s testimony, suggesting he was aware \$143 million in secured loans refinanced the LoanCore Loan. (6.25 Tr. at 351:9-14; Ex. 2637 at 2; Ex. 2582 (“144M payout of DiG [for LoanCore Loan refinance] with \$143M of Loan”); Ex. 3934.) Respondents argue this proves Honarkar was aware of the Nano Loan, because \$143 million was the total amount of loans including the \$20 million Nano Loan. This argument is not persuasive. Again, the evidence shows Honarkar was not aware the \$20 million Nano Loan had been obtained, much less that it had been used to fund the MOM Members’ initial Contribution. Plus, Honarkar’s testimony is consistent with Nano and the other participating banks performing under the \$150 million Nano LOI.

²¹ Though Respondents rely heavily on Buchanan’s testimony that Honarkar was fully informed of the Nano Loan, the Arbitrator points out Buchanan was in fact unaware of the \$150 million Nano LOI, despite his signature being on the document. (Ex. 106; 6.26 Tr. at 566:13-567:25.) There were also other LOIs from Nano to Honarkar of which Buchanan was unaware. (6.26 Tr. at 563:11-566:12; 569:22-571:7, 575:19-577:11, 584:20-585:13; 6.28 Tr. at 1118:17-1119:5.) It is likely Buchanan and Honarkar were both focusing on different Nano loans when discussing due diligence, as it seems neither knew the Nano Loan existed.

Moreover, Honarkar had several other Nano loans, in addition to the LoanCore refinance loans, which could explain his conclusion there was a total of \$143 million in loans. (Exs. 29 [Nano credit memo showing prior debts], 5501 [demonstrative]; 6.25 Tr. at 358:7-361:11.)

The MOM Respondents were aware of Honarkar's position that the initial contribution should not be provided in the form of a debt. As explained above, the Nano Loan transaction itself did not satisfy the initial contribution obligation. Yet, the MOM Respondents obtained the Nano Loan, muddled the waters, omitted basic information from their communications with Honarkar that would have informed him of the Nano Loan and, given the timing, conflated due diligence on the \$20 million Nano Loan with the \$150 million Nano LOI and other Nano loans.

If, as the MOM Respondents insist, they informed Honarkar of the Nano Loan and the MOM Members' promise to repay it, they provided no explanation for omitting the form of the initial contribution in their written communications with Honarkar. The evidence supports a finding the MOM Respondents intended to deceive Honarkar with respect to the Nano Loan.

4. Actual and Reasonable Reliance

Claimants must prove both actual and justifiable reliance or reasonable reliance. (*Beckwith v. Dahl* (2012) 205 Cal. App. 4th 1039, 1062-67.) "Actual reliance occurs when a misrepresentation is an immediate cause of a plaintiff's conduct, which alters his legal relations, and when, absent such representation, he would not, in all reasonable probability, have entered into the contract or other transaction." (*Engalla, supra*, 15 Cal. 4th at 976.) "It is not necessary that a plaintiff's reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor in influencing his conduct. It is enough that the representation has played a substantial part, and so has been a substantial factor in influencing his decision." (*Id.* at 976-77; *Whiteley v. Philip Morris Inc.* (2004) 117 Cal. App. 4th 635, 678 (same).) "Moreover, a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material. A misrepresentation is judged to be material if a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." (*Engalla, supra*, 15 Cal. 4th at 977.)

Unquestionably, the \$30 million initial contribution was material to Honarkar and his decision to enter into the JV, given his immediate needs for funds. And the evidence is certain Honarkar would not have agreed the initial contribution could be in the form of debt secured by the JV properties. (Exs. 77 at 3; 84 at 13; 91 at 13; 92 at 17; 6.24 Tr. at 150:24-151:7 ["That defeats the purpose. You're not putting money, you know; how could you be a partner?"]). The exclusivity provision in the Term Sheet also limited Honarkar's ability to pursue other options for financing prior to establishing the JV. (Ex. 148 at 8-9.)

So, the evidence shows the representations the MOM Respondents made about their initial contribution substantially influenced Honarkar's decision to enter into the JV and sign the Operating Agreements. (*Hoffman v. 162 N. Wolfe LLC* (2014) 228 Cal. App. 4th 1178, 1193-94 ["Reliance can be proved in a fraudulent omission case by establishing that had the omitted information been disclosed, the plaintiff would have been aware of it and behaved differently"].)

Honarkar must also show his "actual reliance on the representation was justifiable, so that the cause of the damage was the defendant's wrong and not the plaintiff's fault." (*Beckwith*, 205 Cal. App. 4th at 1066.) Justifiable reliance accounts for the particular "circumstances" of the plaintiff. (*Whiteley, supra*, 117 Cal. App. 4th at 684 [weighing, *inter alia*, plaintiff's "lack of sophistication" and "the evidence that she was addicted to cigarettes" in determining whether her reliance on statements about effects of cigarette use was reasonable or justified].)

The MOM Respondents argue Honarkar could not have justifiably relied on their representations because he failed to read the final Operating Agreements before execution. However, whether a plaintiff "read the entire [contract] is not dispositive" of reliance where there is "ample evidence of fraud." (*Orozco v. WPV San Jose, LLC* (2019) 36 Cal. App. 5th 375, 392.) Given the chaos surrounding the negotiation and due diligence processes and the frantic push to get the documents finalized, Honarkar was not provided "reasonable opportunity to know of the character or essential terms of the proposed contract[s]." (*Rosenthal v. Great W. Fin. Sec. Corp.* (1996) 14 Cal. 4th 394, 423; 6.25 Tr. at 336:14-25 ["every five minutes, there was a new version. As soon as you get one, then it kicks in another version"].) He relied on his counsel to assist him with the documents. (6.24 Tr. at 132:1-133:2; 6.25 Tr. at 337:1-19, 322:5-25.) And again, Kluchin pressured Honarkar to sign early, before the Operating Agreements were finalized. (Ex. 288 ["We are in a mad rush to produce documents for the bank. We need signature blocks...tonight asap"]; Exs. 347, 352.)

Based on the financial wherewithal and resources available to the MOM Respondents, specifically Makhijani and Continuum, it was reasonable for Honarkar to assume Continuum's investors could and would follow through on their promises to fund the initial contribution. Honarkar was introduced to Makhijani by Gressak at Nano, a bank with which Honarkar already had an existing relationship and a "friend" in Gressak he trusted. (6.24 Tr. at 100:12-102:15; 6.25 Tr. at 501:2-24.) It is also important that many of the Continuum investors were also Nano shareholders and they had access to significant capital. (Ex. 1000 at 181:18-190:12.)

And finally, given the MOM Respondents' intentional concealment of the Nano Loan, there was little Honarkar could have done to discover the initial contribution obligation was going to be made by encumbering the MOM JV Entities assets with debt. (*Whiteley, supra*, 117 Cal. App. 4th at 684 ["Negligence on the part of the plaintiff in failing to discover the falsity of a statement is no defense when the misrepresentation was intentional rather than negligent"].)

Based on the evidence in the record, the Arbitrator finds Claimants actually and justifiably relied on the MOM Respondents' representations.

5. Nonperformance

As discussed (§ III.A.1. above), the MOM Respondents failed to provide the \$30 million capital contribution as required. In addition, the MOM Respondents claimed the monthly payments on the Nano Loan as expenses of MOM JV Entities on at least two occasions (Exs. 574, 604; Exs. 2909, 5500 [Chi Lu, 4G's Controller, questioning payments to Nano]; 6.27 Tr. at 903:18-20, 904:1-4; 7.1 Tr. 1491:7-1492:3.) The MOM Respondents contend these payment entries were made in error and subsequently reversed. (Exs. 2909, 3625.) The Arbitrator rejects these contentions as not supported by the evidence. The MOM Respondents also insist the MOM Members alone have made all the payments on the Nano Loan. (Ex. 5530 at 2; Exs. 3410, 1042.) But the evidence supporting this position is of limited value since, as of July 2022, the MOM Respondents had recorded the Nano Loan on the JV's books and records as a long-term liability of the MOM JV Entities, and have provided no books and records since. (Ex. 507.) The fact remains - the MOM Respondents did not perform the promised capital contribution.

6. Resulting Damage and Alternative Remedies

"To recover for fraud, a plaintiff must prove loss proximately caused by the defendant's tortious conduct." (*Fladeboe v. Am. Isuzu Motors Inc.* (2007) 150 Cal. App. 4th 42, 65.) The MOM Respondents contend Claimants have suffered no cognizable damages, as no MOM JV Entity funds were used to pay the Nano Loan. But again, the evidence shows: (1) the MOM Respondents' misrepresentations in connection with their initial contribution played a substantial part in inducing Honarkar to enter into the JV and (2) the MOM Respondents then encumbered Claimants' properties with the \$20 million Nano Loan, along with hundreds of millions of dollars of additional encumbrances over the course of the JV. (Ex. 967.) These findings alone satisfy Claimants' initial burden to prove the fact that they were damaged by the MOM Respondents' conduct. (See also Exs. 1006 and 1509 [Spindler Reports].) Claimants are not required to prove the specific amount of their damages to perfect this claim, particularly since it would be impossible to quantify them without an accounting of the MOM JV Entities' finances.

For these reasons, the Arbitrator finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after the accounting is completed (§ III.K. below); or (b) rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet. (*Chapman v. Skype Inc.* (2013) 220 Cal. App. 4th 217, 234 ["A party alleging that she was fraudulently induced to enter into a contract may either rescind the contract, offer to restore any benefits received, and seek restitution or retain the benefits of the contract and seek damages for fraud"]); Civ. Code § 1692.)

B. Claimants’ Direct Breach of Contract Claims Against the MOM Members and the MOM Managers (FAC at 24-25)

Claimants allege the MOM Parties breached the Operating Agreements and the Management Agreement. (Exs. 313-315, 37.) Each will be discussed in turn.

1. Applicable Law and Elements of Contract Claims

Again, Delaware law applies to the claims for breach of the Operating Agreements (Exs. 313-315, § 19.1.), and California law applies to the claim for breach of the Management Agreement. (Ex. 37, § 13.4.) The elements of a breach of contract claim under Delaware law are substantially similar to those under California law. (Compare *Humanigen, Inc. v. Savant Neglected Diseases, LLC* (Del. Super. Ct. 2020) 238 A.3d 194, 202 with *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal. App. 4th 221, 228.)

2. Breach of Operating Agreements – Failure to Provide Initial Contribution

Claimants assert the MOM Parties breached the Operating Agreements by failing to provide the initial contribution. (Ex. 315, § 6.1.) The Arbitrator agrees for the reasons discussed at length in connection with the fraudulent inducement claim above (§ III.A.1.), and therefore finds Claimants proved this breach of contract claim.²² The Arbitrator further finds this breach was material and it resulted in a failure of consideration. (*Level 4 Yoga, LLC v. CorePower Yoga, LLC*, C.A. No. 2020-0249-JRS, 2022 WL 601862, at *27 (Del. Ch. Mar. 1, 2022) [under Delaware law, “a breach is material if it goes to the root or essence of the agreement between the parties, or touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract”]; *Alchemy LTD LLC v. Fanchise League Co.*, C.A. No. 2021-0476-LWW, 2023 WL 4670954, at *5 (Del. Ch. July 20, 2023) [“Failure of consideration occurs when the bargained-for consideration is not rendered by one of the parties”].)

Hence, as a separate and sufficient basis apart from fraud, the Arbitrator finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after the accounting is completed; or (b) rescission of the Operating Agreements and the Other JV Related Agreements. (*United Engineers & Constructors, Inc. v. Babcock & Wilcox Co.*, C.A. No. 12540, 1993 WL 50309, at *3 (Del. Ch. Feb. 11, 1993) [“The courts of this State, of course, can grant rescission for a number of reasons, e.g., ... failure of consideration”].)

²² The MOM Respondents’ arguments to the contrary based upon the Release Agreement fail because: (i) by its own terms it does not apply to “claims for breach of any operating agreement...” (Ex. 317 at § 1(a)); and (ii) “[a] release obtained through fraud is invalid.” (*Butler Am., LLC v. Aviation Assurance Co.* (2020) 55 Cal. App. 5th 136, 144.)

3. Breach of Operating Agreements – Unauthorized TIC Sale in Property Owned by Laguna HI, LLC

Claimants assert the MOM Parties breached the Operating Agreements by causing Subsidiaries/Other Owned LLCs to engage in transactions, including the sale of TIC interests, without Honarkar's knowledge or consent. (Exs. 313-315, § 9.3(b) [“Managing Member shall not be entitled to sell the ownership interests in an Other Owned LLC or the asset owned by an Other Owned LLC without the prior written consent of MH...”].) Again, the Arbitrator agrees.

In December 2022, the MOM Managers sold for \$4.1 million a TIC interest in property owned by Laguna HI, LLC, a Subsidiary/Other Owned LLC owned by the MOM JV Entities. (Exs. 315 at 43; 632, 634, 645, 647.) Honarkar was not informed or aware of the transaction. (6.24 Tr. at 180:11-22, 254:12-19; 7.8 Tr. at 2539:20-2540:9.)

The MOM Parties do not dispute the application of Section 9.3 or claim Honarkar was aware of this TIC sale. Instead, they argue Laguna HI, LLC became a “Project” through the First Amendment to the Operating Agreements (the “First Amendment”) on June 30, 2021, such that Honarkar's consent was unnecessary to sell the TIC interest. (Ex. 689 at 72, § 1(a).) Not so.

The Operating Agreements required the MOM Members to provide notice, make a Contribution, and agree on a development budget, in order to convert a Subsidiary/Other Owned LLC from a “Potential Project” to a “Project.” (Ex. 315, § 6.1(d).) Moreover, while the First Amendment allowed the MOM Members to designate Potential Projects as Projects without further action by the MOM Managers or Members, *i.e.*, without Honarkar's knowledge or consent, it did not change or remove the notice and contribution requirements of section 6.1(d). (Ex. 689 at 72, § 1(a); Ex. 591 [Sep. 2022 Taxman email, noting there have been no notices or contributions to convert assets to Projects under amended agreements].)

In this way, the Operating Agreements still obligated the MOM Members to seek Honarkar's consent to recharacterize the asset. (Ex. 315, § 6.1(d).) Interpreting the interplay between the Operating Agreements and the First Amendment in any other way would negate the negotiated balance of power between the parties and lead to an absurd result, allowing the MOM Members to designate all properties as Projects as soon as the First Amendment was signed.

Further, there is no evidence, other than Makhijani's uncorroborated, self-serving testimony, that the proceeds from the sale of this TIC interest in the MOM JV Entities' assets were transferred to the MOM JV Entities or distributed to the MOM Members and MO Members as required by the waterfall provisions in the Operating Agreements. (Exs. 313-315, § 8.) Accordingly, the Arbitrator finds the MOM Parties breached the Operating Agreements by selling the TIC interest and that breach resulted in monetary damages to Claimants.

4. Breach of Operating Agreements – Unauthorized Insider/Self-Interested “Affiliate” Transactions With Cantor

Claimants assert the MOM Parties breached the Operating Agreements by entering into “contribution agreements” with the Cantor Group and its related entities (“Cantor”), all of which are affiliates of Shyam. Claimants contend the MOM JV Entities’ assets are heavily encumbered with debt obligations, in part because of loans from Cantor, and they therefore have limited ability to obtain additional financing or liquidity.

The Operating Agreements plainly prohibit, without Honarkar’s prior written approval, “Affiliate” transactions by the MOM Parties; that is, transactions between the MOM JV Entities and the MOM Managers or the MOM Members and entities controlled by or under common control of the Managing Managers or MOM Members. (Exs. 313-315, §§ 9.15, 1.3, 1.17, 1.20.) Cantor is surely an “Affiliate” of the MOM Managers or MOM Members. Cantor consists solely of Shyam; it has no employees and shares the Continuum offices. (7.12 Tr. at 3642:25-3643:8.) Shyam is the founder, CEO, and owner of Continuum and the Managing Member of MOM CA Manager (as well as part of the investor group as a MOM Member). (7.12 Tr. at 3640:17-3641:8.) Kluchin also admitted Cantor was Continuum’s “affiliate” and testified he had explained that to Honarkar. (6.27 Tr. at 1086:4-19; 7.1 Tr. at 1567:24-1570:3.)

The evidence shows the MOM Parties caused the MOM JV Entities and some of the subsidiary LLCs to enter into “contribution agreements” regarding loans from Cantor Group IV LLC and Cantor Group V LLC, both Cantor affiliates. (Ex. 967 at 16-17; 6.27 Tr. at 1009:18-1010:7 [Kluchin testified all Cantor loans have an associated contribution agreement].) Shyam signed these contribution agreements as both the “borrower” and “lender.” (6.27 Tr. at 1002:4-1005:18.) They permit the conversion of the loans made by Cantor into equity in the MOM JV Entities at the option of the MOM Members, if the MOM JV Entities that borrowed the money perform well. (Ex. 469, § 4 [contribution provision].) But if the MOM JV Entities do not perform well, then the MOM Parties can maintain the transaction as a loan, and require the MOM JV Entities to repay Cantor in full, with interest.²³ However, there is no evidence the MOM Respondents ever received written consent from Honarkar, or even informed him of the existence of these loans from the Cantor affiliated entities. (6.27 Tr. at 1008:2-1009:3 [Kluchin – “Q:...[Y]ou did not seek written consent from Mr. Honarkar for the contribution agreements associated with those loans before they were entered, correct? A: Not that I recall”].)

For these reasons, the Arbitrator finds the MOM Parties breached the Operating Agreements by entering into unauthorized Affiliate transactions with Cantor; that breach resulted in monetary damages to Claimants, the amount of which will be determined after the accounting discussed below is completed; and the contribution agreements are likely invalid.

²³ The Arbitrator notes this is a peculiar “heads I win, tails you lose” structure.

5. Breach of Operating Agreements – Failure to Keep and Provide Books and Records for the MOM JV Entities

Claimants assert the MOM Managers breached the Operating Agreements by failing to keep and provide books and records as required by section 12.1 which states: “Books of Account. The Managing Manager shall, at the [MOM JV Entities’] sole cost and expense, keep separate, full and accurate books and records of the [MOM JV Entities] wherein shall be recorded and reflected all of the Contributions and all of the income, expenses and transactions of the [MOM JV Entities] and a list of the names and addresses of the Members.... The Administrative Manager [Honarkar] or a Member [including the MO Member] shall have the right at any time to inspect the [MOM JV Entities] books and records..” (Exs. 313-315, § 12.1.) Claimants contend they have been damaged as a result of these breaches, because they were forced to spend time and resources on needless litigation attempting to obtain these records.

This claim has merit. Both Honarkar and Niazi testified they repeatedly sought financial information from the MOM Respondents and never received it. (6.24 Tr. at 157:22-162:14; 7.8 Tr. at 2525:1-2526:4; Ex. 5480 [MOM Respondents willing to provide financial documents only if Honarkar submits “letter withdrawing inspection demands”].) The MOM Parties admitted they only kept records for the MOM JV Entities for certain periods of time, despite evidence that transactions occurred outside of these time periods. (Exs. 1385 at 3; 967 [loan on 11.15.23].) Certainly, it is unclear where and how records of transactions between the MOM JV Entities and MOM Members were maintained, if at all, particularly since Kluchin testified he had “no information” on why QuickBooks data was not maintained for the MOM JV Entities during certain time periods. (6.27 Tr. at 975:21-981:5.) Finally, the spreadsheet submitted by the MOM Respondents carries minimal weight on this record. (Ex. 3625 [fails to track income into the JV or funds transferred out to Continuum, Makhijani, or other investors].)

For these reasons, though the resulting damages may be nominal, the Arbitrator finds the MOM Managers breached the Operating Agreements by failing to keep and provide books and records as required. (*In re P3 Health Grp. Holdings, LLC* (Del. Ch. Oct. 31, 2022) Consol. C.A. No. 2021-0518-JTL, 2022 WL 16548567, at *9 [“A court also can vindicate a breach of contract through an award of nominal damages”].)

6. Breach of Management Agreement – Failure to Pay Management Fee

Claimants assert the MOM Parties breached the separate Management Agreement between Honarkar and 4G, under which Honarkar was supposed to be paid monthly management fees for management services provided to Hotel Laguna, the Holiday Inn Laguna Beach, and several Laguna Beach vacation rental properties. (Ex. 37.) Claimants insist the Management Agreement remains valid because it predates the Operating Agreements.

The Management Agreement claim was not specifically alleged in the FAC and the evidence offered to support it was nominal at best. There is simply not enough in the record to determine the parties' rights, duties, and obligations at issue. Consequently, the Arbitrator finds Claimants have failed to prove the MOM Parties breached the Management Agreement.

C. Claimants' Direct Forcible Entry and Forcible Detainer Claims Against Makhijani, Continuum, and the MOM Parties (FAC at 31-33)

Claimants assert the MOM Respondents violated California's forcible entry and forcible detainer laws by breaking into and seizing the 4G offices. To establish this claim, "the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer." (CCP § 1172.) The law explicitly prohibits entry "into any real property" "[b]y breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror." (CCP § 1159.) Similarly, the law prohibits "[b]y force, or by menaces and threats of violence, unlawfully hold[ing] or keep[ing] the possession of any real property, whether the same was acquired peaceably or otherwise." (CCP § 1160.)

On July 24, 2023, while Honarkar and Respondents were in court on this matter, Kluchin, Haddad, and Miller, along with a number of other individuals, broke into the 4G offices at 775 Laguna Canyon Road as 4G employees were working. (Ex. 773.) A glass door was shattered with a hammer and the doors at the front entrance were forced open. (*Id.* at 4.) Property was removed from the 4G offices.

While the MOM Respondents do not dispute these facts, they contend no forcible entry or detainer occurred, because they were joint owners of 4G. But the evidence shows 4G was not a Contributed Entity. (Exs. 583, 1354; 7.3 Tr. at 1915:7-1919:6.) Regardless, the MOM Respondents' actions bear all the hallmarks of improper self-help under California law.

A party's "title or right of possession is no defense;" possession is irrelevant to the determination of forcible entry. (*Daluiso v. Boone* (1969) 71 Cal. 2d 484, 486.) An unlawful detainer action is the only legal way to obtain possession of real property. (*Glass v. Najafi* (2000) 78 Cal. App. 4th 45, 48-49 [forcible detainer and entry statutes "reflect a policy, with deep roots in English law, barring the use of forceful self-help to enforce a right to possession of real property and requiring instead the use of judicial process to gain possession"]; *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal. App. 4th 1004, 1038 [landlords may enforce rights "only by judicial process, not by self-help"]; *Jordan v. Talbot* (1961) 55 Cal. 2d 597, 608 [forcible detainer found where forcible entry was followed by "removal of plaintiff's furniture and [defendant's] admonishment to 'Get the hell out of here.'"]; CCP § 1160.)

Accordingly, the Arbitrator finds the MOM Respondents violated both the forcible entry and forcible detainer statutes. Claimants are thus entitled to the restitution of the 4G offices and any property removed, plus incidental damages. (*Allen v. McMillion* (1978) 82 Cal.App.3d 211, 219 [“The plaintiff’s interest in peaceable even if wrongful possession is secured against forcible intrusion by conferring on him the right to restitution of the premises, the primary remedy, and incidentally awarding damages proximately caused by the forcible entry”].)

D. Claimants’ Derivative Conversion Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 28-29)

Claimants assert the MOM Respondents are liable to the MOM JV Entities for conversion of the MOM JV Entities’ assets (*e.g.*, loan and sale proceeds) in six separate instances. Specifically, Claimants claim conversion of (1) \$20 million in Nano Loan proceeds, (2) \$1 million in Tesoro Loan proceeds, (3) \$5.1 million in proceeds from the sale of TIC interests, (4) \$11.6 million in Tesoro Redlands Preferred Bank loan proceeds, (5) excessive distributions the MOM Parties made to themselves, and (6) deeds of trust on properties at issue in the potential \$175 million loan from Coastline Loans, LLC (“Coastline Loan”) in June 2021. These derivative claims are stayed as a result of the MOM JV Entities’ bankruptcy. Consequently, the analysis and disposition of these claims set forth in § III.D. of the Partial Interim Award has been omitted from this Partial Final Award. However, these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

E. Claimants’ Derivative Penal Code Section 496 Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 30-31)

Claimants argue the acts of conversion also violated Section 496. This derivative claim is stayed as a result of the MOM JV Entities’ pending bankruptcy. Therefore, the analysis and disposition of this claim set forth in § III.E. of the Partial Interim Award has been omitted from this Partial Final Award. But this claim will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

F. Claimants’ Derivative Unjust Enrichment Claim Against Makhijani, Continuum, and the MOM Parties (FAC at 29-30)

Claimants assert an unjust enrichment claim, arguing the MOM Respondents have looted the MOM JV Entities, using them as personal slush funds and enriching themselves. This derivative claim is stayed as a result of the MOM JV Entities’ bankruptcy. Accordingly, the analysis and disposition of this claim set forth in § III.F. of the Partial Interim Award has been omitted from this Partial Final Award. Still, this claim will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

G. Personal Liability of Makhijani

Claimants argue Makhijani is personally liable for fraudulent inducement and forcible entry and detainer because an agent is always liable for his own torts; and he is an alter ego of Continuum and the MOM Parties. The MOM Respondents concede Makhijani is their agent, and is liable for his own torts, but argue Claimants failed to prove fraudulent inducement by Makhijani (apart from the other MOM Respondents) and failed to prove he is the alter ego of Continuum or the MOM Parties.²⁴

The Arbitrator finds Claimants have proven Makhijani was personally involved in the fraudulent inducement and other non-contract claims discussed above. He directed and participated in the negotiation of the Term Sheet (7.2 at 1873:14-17), the Operating Agreements and the Other JV Related Agreements. (Exs. 2307, 2382, 319.) He admitted he “was personally involved” with the Term Sheet and other JV agreement negotiations. (Ex. 758 ¶ 5.) He even admitted he was “personally involved” in obtaining the Nano Loan. (Ex. 758 ¶¶ 10-11.) Finally, other MOM Respondent agents testified Makhijani controls and manages the MOM JV Entities’ daily operations. (6.27 Tr. at 978:14-21.) Therefore, Makhijani is personally liable for the fraudulent inducement and other non-contract claims based on his own actions.²⁵

The Arbitrator finds Claimants have not proven Makhijani is the alter ego of Continuum or the MOM Parties. Alter ego is “an extreme remedy, sparingly used.” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal. App. 4th 523, 539.) It requires proof of two conditions: “First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.” (*Hasso v. Hapke* (2014) 227 Cal. App. 4th 107, 155.)

The evidence shows Shyam, not Makhijani, is the owner of Continuum. (7.2 Tr. at 1650:5-14 [in the hierarchy of Continuum, Makhijani works under and reports to Shyam]; 7.11 Tr. at 3561:7-12, 3562:18-21, 3564:9-3565:5; *Hasso*, 227 Cal. App. 4th at 155.) And there would be no inequitable result if the acts in question were treated as those of Continuum or the MOM Entities, rather than as Makhijani’s acts. (*Ibid.*) That is, there is no evidence that either Continuum or the MOM Parties are “judgment proof,” such that they could not pay for any damages awarded to Claimants. (*Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 528 [adding alter ego manager and sister company to a judgment to avoid prejudice, when judgment debtors’ actions caused assets to disappear].) Therefore, Makhijani is not personally liable for the fraudulent inducement and other non-contract claims based on the alter ego theory.

²⁴ The MOM Respondents make no such argument relative to the other personal liability claims.

²⁵ The Arbitrator notes no claims for conspiracy or aiding and abetting were alleged against Makhijani (unlike Nano) in the FAC and none were argued in the closing briefs. So, the Arbitrator expresses no opinion on those theories.

H. Claimants' Conspiracy and Aiding/Abetting Fraudulent Inducement Claims Against Nano (FAC at 33-37)

Claimants argue Nano is liable for the fraudulent inducement/promissory fraud discussed above (§ III.A.), because Nano conspired with and aided and abetted the MOM Respondents.

Conspiracy is “a form of vicarious liability by which one defendant can be held liable for the acts of another,” where all have “agreed to a common design to commit a wrong” that damages a plaintiff. (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal. App. 5th 630, 652.) Each member of a conspiracy must have “acted in concert” and come to “a mutual understanding to accomplish a common and unlawful plan,” wherein one or more of them “committed an overt act to further” the plan. *Id.* The elements of the claim are: “(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.” (*AREI II Cases* (2013) 216 Cal. App. 4th 1004, 1022.) Participation, cooperation, or unity of action in a conspiracy is typically proven by circumstantial evidence, including, “the nature of the act done, the relation of the parties, [and] the interests of the alleged conspirators.” (*Rickley v. Goodfriend* (2013) 212 Cal. App. 4th 1136, 1166.)

Liability for aiding and abetting an intentional tort may be imposed if the person “(a) knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person’s own conduct, separately considered, constitutes a breach of duty to the third person.” (*IIG Wireless*, 22 Cal. App. 4th at 653-654.) “[I]t necessarily requires a defendant to reach a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act.” (*Id.* at 654.) However, a person may be liable even in the absence of any independent duty to the plaintiff. (*Nasrawi v. Buck Consultants LLC* (2014) 231 Cal. App. 4th 328, 345.)

The evidence shows Nano gave substantial assistance to, and acted in concert with, the MOM Respondents in fraudulently inducing Claimants to enter into the JV.²⁶ Gressak’s actions in particular indicate Nano and the MOM Respondents reached a “mutual understanding to accomplish a common and unlawful plan,” required for conspiracy.²⁷ Nano knew of the MOM Respondents’ fraud, as required for aiding and abetting. (*IIG Wireless*, 13 Cal. 5th at 654.)

²⁶ A bank is not immune simply by virtue of its role as a bank – liability can be found where, for example, a bank “allow[s] a person to deposit a check, payable to someone else, into a personal account, under circumstances that should have alerted the bank to the possibility of fraud.” (*Casey v. U.S. Bank Nat’l Ass’n* (2005) 127 Cal. App. 4th 1138, 1151, n.3.) The Arbitrator notes these circumstances are comparable to Nano’s diversion of the Nano Loan proceeds from the MOM JV Entities directly into a Continuum bank account.

²⁷ The Arbitrator finds Gressak’s self-serving contrary testimony carried little weight, as it was not credible or consistent with the documentary evidence. Regardless, his testimony as to Nano’s obligations and responsibilities did not materially move the needle in either direction. The documents told the story.

As to Nano's knowledge of and active participation in the fraud, Nano had an existing relationship with Honarkar, having issued him multiple loans prior to the JV negotiations, and Nano was aware Honarkar and 4G were the owners of the properties used to secure the Nano Loan. (Exs. 123; 130; 215 at 3-7, 16, 18-21.) Honarkar testified he sought out Gressak's advice because he believed he and Gressak were friends, and he trusted Gressak when Gressak introduced him to Makhijani for purposes of discussing a potential JV with Makhijani's investors. (Ex. 52; 6.24 Tr. at 100:12-102:15; 6.25 Tr. at 501:2-24.) Again, the ties and cross-connections between Nano, Continuum, and Makhijani run deep. (Ex. 1000 at 102:12-103:14, 181:18-190:6, 200:20-201:3; 6.26 Tr. at 587:24-588:22, 797:12-799:16.)

Against that background, Nano issued the \$150 million LOI to Honarkar on May 19, 2021, for a loan to refinance (with other lenders) the LoanCore debt. (Ex. 106.) The \$150 million Nano loan was to be secured by the same properties used to secure the \$20 million Nano Loan. (Exs. 106, 130.) Though Nano now claims it did not have the capacity to make a \$150 million loan, Gressak actively perpetuated the pretense in the days ahead of the "closing." (Exs. 139, 211, 171; Ex. 1000 at 40:9-41:6; 6.26 Tr. at 606:20-607:16 [Buchanan – funding would have been "near impossible"].) Gressak was aware the MOM Respondents had misrepresented only three lenders would be involved in the LoanCore refinance (First Choice, Preferred, and Lone Oak). (Exs. 187, 229.) In fact, Nano used the \$150 million LOI to gather information about Honarkar's properties, failing to differentiate between the \$150 million Nano LOI and the \$20 million Nano Loan in their due diligence communications. (Exs. 4017-4020, 123.)

Simultaneously, Nano was working with Continuum/Makhijani/Shyam on the \$20 million Nano Loan to the MOM JV Entities. On May 20, 2021, prior to the execution of the Term Sheet on May 24, 2021 (Ex. 148), Nano issued the Nano Loan LOI to Shyam, which contemplated securing the Nano Loan with properties Nano knew were owned by Claimants. (Exs. 130, 215.) Nano did not include Honarkar on any correspondence about the \$20 million Nano Loan nor did it seek his consent to encumber the properties it knew belonged to him and 4G. Though Nano points to the Term Sheet as providing it authority to issue the Nano Loan to the MOM JV Entities, the Term Sheet does not mention the MOM JV Entities by name nor did they even exist before the Operating Agreements were signed on June 8, 2021.²⁸

Nano knew the MOM Respondents intended to use the Nano Loan proceeds as their initial contribution to the JV because Makhijani told Gressak so before the Nano Loan LOI was even issued to Shyam. (7.8 Tr. at 2729:17-2730:6; 2549:5-2550:2.) But Nano never revealed the MOM Respondents' intent as to the initial contribution in any written communications or documents that might have alerted Honarkar. (*Id.* at 2730:7-2731:13, 2734:6-2739:19.)

²⁸ While Nano says its actions were similar to the other banks involved in the LoanCore refinance, it is important to note the other banks are on different footing as to their connections with Continuum and Makhijani. Also, Honarkar was aware of and consented to the other bank loans and related encumbrances on his properties. (Exs. 220-222.)

Internal records state Nano made the Nano Loan to “strengthen[] the Banc’s position of the history and relationship with sponsors of the joint-venture [*i.e.*, Continuum and Makhijani].” (Ex. 215 at 4.) Gressak was “strongly advocating for this loan to get made” and “overrode opposition to it” from other bank officers, including Buchanan and the chief lending officer, who were concerned the loan was not secured and would be scrutinized by regulators. (6.26 Tr. at 573:15-577:11, 586:2-24, 588:15-589:23.)

Buchanan drafted the June 7, 2021 memo to the Nano Loan Committee to memorialize the unusual request for the loan proceeds to be transferred to an entity other than the borrower, placing the onus on Gressak. (Ex. 240; 6.26 Tr. at 593:8-597:3 [Buchanan was concerned about “direction that [Nano] had received, as well as the optics with this particular loan”]; Ex. 1000 [Nano PMK – “Q: Was the loan committee consulted about the change in disbursement? A: I don’t think so”].)

But the June 7, 2021 internal memo falsely stated the loan proceeds had to be placed in Continuum’s account because the MOM JV Entities had indicated the refinancing escrow was not open and could not receive transfers. (Ex. 240.) Both Makhijani and Shyam testified they never told Nano the refinancing escrow was not yet open. (7.3 Tr. at 2159:20-2164:11; 7.12 Tr. at 3685:10-3686:10.) And Nano obviously knew the refinancing escrow was open on June 7 – it wired \$20 million from Continuum’s bank account to the refinancing escrow less than an hour after first depositing the funds in Continuum’s account. (Exs. 270, 272, 278 at 2.)

Nano closed and funded the \$20 million Nano Loan on June 7, 2021, before the MOM JV Entities’ Operating Agreements were finalized and executed, meaning the MOM JV Entities did not exist on the date the Nano Loan was made to them. (Ex. 4104 at 4-5.) Nano also issued the Nano Loan based only on the signatures of Continuum employees, not Honarkar. (Ex. 239.)

Nano also placed the \$20 million Nano Loan proceeds into a bank account belonging to Continuum, knowing Continuum was not the borrower and the assets used to secure the loan belonged to Honarkar and 4G. (Ex. 240 [“Gressak has spoken with the Borrower and has approved the funding of the account”].) Nano routed this money to the Continuum bank account at Shyam’s request, based on documents signed by Shyam, without verifying Shyam’s authority to effectuate the transfer to his own corporate account on behalf of the MOM JV Entities. (Exs. 237, 270; 7.12 Tr. at 3794:20-3799:6 [Prendergast – “[Gressak] just told me that, yes, Deba Shyam, by reviewing the term sheet, he has the authority...I just took [Gressak’s] word for it...”].) Shyam is not mentioned in the Term Sheet, the only JV document in existence at the time of the Nano Loan funding. (Ex. 148.) Nano also violated its own policy by failing to get a request in writing from all three of the MOM JV Entities as borrowers to reroute the funds from the approved use, since Shyam was the Manager of only the MOM CA Manager, not the MOM AS Manager or the MOM BS Manager. (Ex. 1000 at 139:10-15 [Nano PMK testimony].)

Nano then took security interests under the deeds of trust securing the Nano Loan, knowing they were Claimants' properties, and did so without Honarkar's consent. Nano only publicly recorded these deeds of trust after receiving a Cease and Desist Order from the Federal Reserve. (Exs. 234-236, 239 at 88-127, 515 at 6-47, 514 at 2; Ex. 4127 [Gressak – "these are nothing but AOC [abundance of caution] liens" and "I don't need to be on this anymore"].)

Finally, Nano collected fees and interest on the Nano Loan, despite knowing of the MOM Respondents' fraud. (Exs. 1087, 215, 389.) And after this action was filed, Nano obtained an indemnity from the MOM Respondents for Claimants' claims that, *inter alia*, the Nano Loan was obtained without "the necessary consent from Mohammad Honarkar." (Ex. 869, ¶ 19.)

Even after the JV was formed, Nano continued to assist the MOM Respondents by concealing material information from Honarkar. Nano issued the \$1 million Tesoro Loan without Honarkar's knowledge. Then, in response to a 4G employee's question concerning receipt of a related monthly billing statement, Nano indicated it was "a billing error and not applicable to Tesoro." (Ex. 2723.) Nano also complied with Kluchin's instructions to conceal information from Honarkar and his team. (Ex. 473 [Kluchin - "No one from 4G should be on this account. This is very important...Only Deba and I"]; Ex. 590 [Kluchin – "DO NOT COPY CHI or anyone from 4g or laguna beach company on this email thread"].) Similarly, after the parties' dispute erupted in February 2023, Nano assisted the MOM Respondents by restricting Honarkar's access to all JV bank accounts, including those for 4G. (Ex. 677.)

Nano cites California's economic loss rule and argues Claimants' fraudulent inducement claim is barred. However, the California Supreme Court recently clarified, "[t]he doctrine only applies to bar tort recovery for negligently inflicted economic losses unaccompanied by physical or property damage under the limits recognized in *Sheen*." (*Rattagan v. Uber Techs., Inc.* (2024) 17 Cal. 5th 1, 38; citing *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal. 5th 905, 922.) The economic loss rule does not apply to the intentional fraudulent inducement at issue here.

In summary, the record is replete with evidence Nano acted in concert with, and was aware of, the MOM Respondents' fraudulent inducement. The Arbitrator therefore finds Nano jointly and severally liable with the MOM Respondents for conspiracy to commit and aiding and abetting the commission of the fraudulent inducement. As a consequence, the Arbitrator again finds Claimants are entitled to the alternative remedies of: (a) damages, the specific amount of which will be determined after an accounting is completed; or (b) rescission of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet.²⁹ (*Chapman*, 220 Cal. App. 4th at 234; Civ. Code § 1692.)

²⁹ This finding may also constitute a basis for the MOM JV Entities to set aside the Nano Loan documents (including the loan agreement, the deeds of trust, and the subsidiary LLC membership interest assignments), in addition to their invalidity for lack of authority as discussed in § III.A.1. above.

I. Claimants’ Derivative Conversion and Penal Code Section 496 Claims Against Nano (FAC at 28-29, 30-31)

Claimants argue Nano is separately liable to the MOM JV Entities for conversion of the \$20 million Nano Loan and the \$1 million Tesoro Loan proceeds, which belonged, respectively, to the MOM JV Entities and Tesoro Redlands as the borrowers (Exs. 239, 411). Claimants also argue Nano violated Section 496 because it concealed and withheld, and aided the MOM Respondents in concealing and withholding, the Nano and Tesoro Loan proceeds. These derivative claims are stayed as a result of the MOM JV Entities’ bankruptcy. As a result, the analysis and disposition of these claims set forth in § III.I. of the Partial Interim Award has been omitted from this Partial Final Award. Nevertheless, these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

J. Claimants’ Derivative Breach of Contract Claim Against Nano (FAC at 37)

Claimants assert as an “alternative” that Nano breached the Nano Loan agreement by converting the Nano Loan proceeds and transferring them to Continuum, rather than to the MOM JV Entities. This derivative claim is stayed as a result of the MOM JV Entities’ bankruptcy. So, the analysis and disposition of this claim set forth in § III.J. of the Partial Interim Award has been omitted from this Partial Final Award. But this claim will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

K. Claimants’ Accounting Claim Against the MOM Parties (FAC at 26)

Claimants seek an accounting of the MOM JV Entities’ books and records by an independent third party, from the creation of the JV to the present. “An action for an accounting has two elements: (1) ‘that a relationship exists between the plaintiff and defendant that requires an accounting’ and (2) ‘that some balance is due the plaintiff that can only be ascertained by an accounting.’” (*Sass v. Cohen* (2020) 10 Cal. 5th 861, 869.)

Both prongs are satisfied here. First, the parties are in a business relationship with each other, as members and managers of the MOM JV Entities, responsible for owning and operating real estate assets worth hundreds of millions of dollars. Second, a balance is owed to Claimants that can only be ascertained by an accounting. The Operating Agreements required the MOM Parties to create and maintain adequate books and records for the MOM JV Entities, to provide regular financial reporting to Claimants, and to allow inspection of the complete books and records upon request; but they have failed to fulfill these obligations. (§ III.A.5. above; Ex. 313, 314, 315 §§ 12.1, 12.2; Ex. 1377, 6.24 Tr. at 250:1-254:1; Ex. 659; 7.8 Tr. at 2533:16-2539:19.) As a result, none of the damages experts could make an accurate determination of the JV’s income, expenses, assets, or liabilities. (7.9 Tr. at 3008:6-3012:7, 3023:1-7.)

An accounting is particularly warranted here because, absent one, Claimants have no way to determine the full scope of the MOM Respondents' misconduct and the resulting damages. The MOM Parties remain in full control of the MOM JV Entities, and have excluded Claimants since Spring 2023. (Ex. 677; 7.12 Tr. 3850:12-3851:5; 6.25 Tr. at 459:20-23.) Claimants thus have no way of knowing what the MOM Respondents have done in almost two years.³⁰

The MOM Respondents' arguments against an accounting are meritless. They claim neither Claimants nor the MOM JV Entities are owed any money, because: (a) there is no validity to any of Claimants' claims; and (b) the undisputed evidence shows that, in addition to the initial \$30 million capital contribution, the MOM Members advanced \$89.5 million to the JV, \$49.5 million of which remains outstanding. The Arbitrator rejects these arguments.

The Arbitrator has found the majority of Claimants' claims are valid. Arbitrator also finds there is no reliable evidence establishing the fact or amount of the claimed "advances."³¹ More broadly, due to Respondents' active concealment, Claimants have been unable to verify the accuracy and completeness of the few financial records the MOM Respondents have provided. The accounting is also needed to verify the amount of the MOM Respondents' claimed offsets.

Claimants have proven they are entitled to an accounting.

L. Claimants' Declaratory Relief Claim Against the MOM Parties (FAC at 27)

The parties have disputes as to their respective rights, duties, powers, and obligations under the Operating Agreements, and these disputes are generally amenable to declaratory relief. (CCP § 1060.) The Arbitrator finds Claimants are entitled to the declaratory relief they seek on the following specific issues and for the following reasons:

(1) The MOM Respondents fraudulently induced Claimants into entering into the Operating Agreements.

(2) On July 24, 2023, the MOM Respondents committed forcible entry and detainer at the 4G corporate offices. As a result, Claimants are entitled to immediate possession of the 4G offices. The MOM Respondents should be ordered to return all information and things removed from the 4G offices and to compensate Claimants for the value of any items lost or destroyed.

³⁰ The MOM Respondents admitted their discovery responses were incomplete as to what loans they obtained related to JV properties, and that they routinely did not inform Honarkar about large financial decisions because they "didn't think it was necessary." (6.27 Tr. at 1008:2-17, 1012:14-16, 1071:19-1073:10; see also Exs. 967, 3623.)

³¹ The MOM Respondents and Nano also euphemistically refer to these "advances" as "infusions," a term seemingly calculated to obfuscate whether they were Contributions or loans to the MOM JV Entities.

(3) Palm Desert Collective Resorts LLC, 424 Marguerite Ave. LLC, and 8871 Research Dr. LLC are “Held-Back LLCs” under the ACA and the Operating Agreements and thus, were never contributed to the MOM JV Entities. (Ex. 304 and Ex. E attached thereto; Exs. 313-315.)

(4) Although the following entities appear on Exhibit C of the Operating Agreements and ACA, they are not now and never have been owned by the MOM JV Entities: 4G (Ex. 583 [Letter Agreement – 4G is the MO Member]), Modan LLC (majority owned by Niazi), BMV Apartments LLC, 7 Star Trade-In LLC, Marquis Marine LLC, Poppy and Seed LLC, The Fullest LLC, Pizza 90 Inc., Laguna Beach Company Inc., MJA Restaurants Inc., MS Nosh LLC, 331 N. Coast LLC, 331 North Coast Hwy. LLC, 2711 E. Coast Hwy. LLC, 113 Canyon Acres LLC, Terra Laguna Beach Inc., Seven Degrees Laguna Inc., Rancho San Joaquin Golf Course LLC, 14 West Coast LLC, Cliff Drive NB Properties LLC, Blue Lagoon Resort LLC, Buena Vida RSM LLC, Pershing 82 LLC, and Brookline Aliso Viejo LLC. (Ex. 1354; 7.3 Tr. at 1915:7-1919:6.)

(5) The sole “Projects” as defined in the Operating Agreements and ACA are Hotel Laguna LLC and Newport Crossing (Aryabhata LLC). (Ex. 315, § 1.45; Ex. 689, § 1(a).)

As to issues (1) and (2), the Arbitrator has found in favor of Claimants on the fraudulent inducement, forcible entry, and forcible detainer claims. The Arbitrator has considered and rejected all of the MOM Respondents’ factual and legal arguments against these claims.

As to issue (3), the MOM Respondents make no reasoned argument to support their bare assertion that these “Held-Back LLCs” were intentionally contributed pursuant to the ACA.

As to issue (4), the parties make a host of legal and factual arguments, principally focused on 4G and Modan, and the proper interpretation of the Operating Agreements and the ACA. However, the applicable law and the weight of the evidence, including the admissible parol evidence,³² shows: 4G and Modan were not intended to be “Other Owned LLCs” under the Operating Agreements (Exs. 313-315, § 1.40 and Ex. C), nor were they intended to be “Contributed Assets” or “MOM CA LLCs” under the ACA (Ex. 304, §§ 1.40, 2(a) and Ex. C). The Letter Agreement (Ex. 583, ¶ 3) further supports these conclusions. And, at least as to 4G (a corporation, not an LLC), the opposite conclusions would mean 4G is both a Member and an asset of the MOM JV Entities. This interpretation would be absurd.

As to issue (5), the MOM Respondents make no argument in their briefs to support their claim it “fails for the reasons set forth above, section [*].” (Brackets and content in original.)

³² See *Nw. Nat’l Ins. Co. v. Esmark, Inc.* (Del 1996) 672 A.2d 41, 43 [courts may consider extrinsic evidence where there is an ambiguity in the contract] and *Peden v. Gray* (Del. 2005) 886 A.2d 1278, 2005 WL 2622746, at *2 [“parol evidence is admissible to resolve a contractual term that is ambiguous”]; see also *Rosenfeld v. Abraham Joshua Heschel Day Sch., Inc.* (2014) 226 Cal. App. 4th 886, 897 (same).

M. MOM Members' (Counter) Claims Against Honarkar

The MOM Members claim Honarkar is liable for trespass, conversion, violation of Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory and injunctive relief.³³ All of these claims depend on the existence and enforceability of the Operating Agreements and the Other JV related Agreements. But the Arbitrator has found Claimants may rescind these agreements for fraud in the inducement and failure of consideration. In any event, the MOM Parties' prior material breach of the Operating Agreements discharged Honarkar from any further duty to perform thereunder. (*Level 4 Yoga, supra*, at *27 ["Delaware law firmly supports the principle that a party to a contract is excused from performance if the other party is in material breach of his contractual obligations"]; see also Honarkar Response to MOM Respondents' Demand, at 4-5, Twelfth Affirmative Defense.) It follows the MOM Parties' claims against Honarkar must fail.

N. Remedies

1. Rescission With Restitution and Consequential Damages

Claimants are entitled to rescind the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, all on account of Respondents' fraud in the inducement. Claimants are also entitled to rescind the Operating Agreements and the Other JV Related Agreements, for the failure of consideration due to the failure to provide the initial contribution. (§§ III.A.6., III.B.2., III.G., and III.H. above.)

In cases like this, "When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both." (Cal. Civ. Code § 1691; *Santa Clara Waste Water Co. v. Allied World National Assurance Co.* (2017) 18 Cal. App. 5th 881, 888.)

"Rescission extinguishes the contract, terminates further liability, and restores the parties to their former positions by requiring them to return whatever consideration they have received. Thus, the relief given in rescission cases—restitution and in some cases consequential damages—puts the rescinding party in the status quo ante, returning him to his economic position before he entered the contract." (*Sharabianlou v. Karp* (2010) 181 Cal. App. 4th 1133, 1145.)

³³ These claims (except the Section 496 claim) were asserted in the demand filed by the MOM Respondents and the MOM JV Entities in the MOM Arbitration on September 27, 2023, together with Attachment 1 and the exhibits thereto, including the First Amended Complaint originally filed in OCSC Case No. 30-2023-01322886. To the extent the MOM JV Entities assert these same claims, they are stayed as a result of their bankruptcy. But these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.)

Where rescission is warranted, “[t]he aggrieved party shall be awarded complete relief, including restitution of benefits, if any, conferred by him as a result of the transaction and any consequential damages to which he is entitled.” (Civ. Code § 1692; *Wong v. Stoler* (2015) 237 Cal. App. 4th 1375, 1387–88, 1389–90.) Although in general each party must return the consideration they received, if “defendant has been guilty of fraudulent acts or conduct which have induced the agreement between him and the plaintiff,” courts “are not so much concerned with decreeing that defendant receive back the identical property with which he parted in the transaction, as they are in declaring that his nefarious practices shall result in no damage to the plaintiff.” (*Wong, supra*, 237 Cal. App. 4th at 1389.) And the defrauding party has the burden to prove any offsets to which they claim they are entitled. (*McCoy v. West* (1977) 70 Cal. App. 3d 295, 302-303; *Gentry v. Kelley Kar Co.* (1961) 193 Cal. App. 2d 324, 337; *Grill v. Hunt* (1992) 6 Cal. App. 4th 73, 79 [“The implicit rationale of these cases is that risk of any difficulty in proof should not inure to the benefit of the party responsible for the failure of the contract”].)

All told, if Claimants elect rescission, they will be entitled to restitution and consequential damages in amounts to be determined following the accounting, and Respondents will have the burden of proving their right to any offsets.

2. Damages Without Rescission

In the alternative, if Claimants elect to affirm and retain the benefits of the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, then they will be entitled to recover damages for fraud in the inducement and breach of the Operating Agreements. (§§ III.A. and III.B. above.) While the fact of these damages is certain, and some amounts are known, the total amount will be determined following the accounting.

3. Derivative Damages

Claimants contend they are entitled to recover damages from Respondents, for the derivative conversion, Section 496, and unjust enrichment claims asserted on behalf of the MOM JV Entities (§§ III.D., III.E., III.F. and III.I. above), with or without rescission. Spindler calculated Respondents’ actions caused at least \$45,011,937 and at most \$169,845,578 in damages to the MOM JV Entities themselves. (Exs. 1006, 1509; 7.9 Tr. at 3081:17-3082:1.)

These derivative damages claims are stayed as a result of the MOM JV Entities’ bankruptcy. The analysis and disposition of these derivative damages claims set forth in § III.N.3. of the Partial Interim Award has therefore been omitted from this Partial Final Award. But these claims will be analyzed and disposed of in the Final Award to be issued in this arbitration. (§ IV.17. below.) At that time, the accounting will be completed and the Arbitrator will have determined the amount of these damages to be awarded (including any trebling).

4. Punitive Damages

To recover punitive damages Claimants must prove, by clear and convincing evidence, that Respondents have “been guilty of oppression, fraud, or malice....” (Civ. Code § 3294.) Claimants argue they have proven oppression, fraud, and malice. The MOM Respondents argue they have not proven oppression, fraud, or malice. The Arbitrator has found Claimants have proven, by clear and convincing evidence, that Respondents committed fraud in the inducement. (§ III.A. above.) On this basis alone, Claimants are entitled to punitive damages. (Civ. Code § 3294(c)(3).) The Arbitrator further finds, based upon the totality of the evidence, Claimants have proven, by clear and convincing evidence, that Respondents have been guilty of oppression and malice as those terms are defined in Civil Code section 3294(c)(1) and (c)(2). However, until the accounting is complete, the full nature and extent of Respondents’ wrongdoing, the damages Claimants have suffered as a result, and the other factors the Arbitrator will need to consider when awarding punitive damages cannot be determined. (See generally, 6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1727- 1785.) Therefore, the Arbitrator will determine the amount of punitive damages to be awarded after the accounting is complete.

5. Attorney Fees and Costs

As the prevailing parties, Claimants are awarded a total of \$9,197,426.31 in attorney fees and costs. The MOM Parties and the Makhijani Parties are jointly and severally liable for the entire \$9,197,426.31 total. But of the \$9,197,426.31 total, Nano is jointly and severally liable (with the other Respondents) for only \$5,229,185.14. (See Arbitrator’s Ruling on Motion for Attorney Fees and Costs dated and filed concurrently herewith; § IV.14. below; FAC at 38.)

6. Interest

Claimants claims for pre and post-judgment interest will be resolved in the Final Award after the accounting is completed and the amount of damages to be awarded is determined.

7. Receiver

Claimants request the appointment of a receiver on the grounds the MOM Respondents have had complete control of the JV since they excluded Honarkar in 2023. (FAC at 38; Ex. 677; 6.25 Tr. at 459:20-23.) They argue a receiver is necessary to place the JV in “safe hands” and to prevent the MOM Respondents from further dissipating the JV’s assets before the accounting is completed and this arbitration is concluded. Claimants’ request for a receiver is stayed as a result of the MOM JV Entities’ bankruptcy. The analysis and disposition of this request set forth in § III.N.5. of the Partial Interim Award has been omitted from this Partial Final Award but will be included in the Final Award in this arbitration. (§ IV.17. below.)

IV. SUMMARY OF CONCLUSIONS AND FURTHER PROCEEDINGS

1. Claimants have proven their fraudulent inducement claim against Makhijani, Continuum and the MOM Members; and Claimants are therefore entitled to elect the alternative remedies of either compensatory damages, or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.A., III.G., and III.N.1. above; ¶ 13 below; FAC at 22-23.)
2. Claimants have proven their breach of contract (Operating Agreement) claims against the MOM Parties; and Claimants are therefore entitled to the alternative remedies of compensatory damages or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.B. and III.N.2. above; ¶ 13 below; FAC at 24-25.)
3. Claimants have not proven their breach of contract (Management Agreement) claim against the MOM Parties. (§ III.B.6. above; not pleaded in FAC.)
4. Claimants have proven their forcible entry and forcible detainer claims against Makhijani, Continuum and the MOM Parties; and Claimants are therefore entitled to restitution of the subject premises (775 Laguna Canyon Road) and incidental damages in amounts to be determined. (§§ III.C. and III.G. above; ¶ 13 below; FAC at 31-33.)
5. Claimants derivative conversion claims against Makhijani, Continuum, the MOM Parties, and Nano (Partial Interim Award §§ III.D., III.G. and III.I.; ¶ 13 below; FAC at 28-29) are stayed as a result of the MOM JV Entities' bankruptcy, but they will be analyzed and disposed of in the Final Award. (¶ 17 below.)
6. Claimants derivative Section 496 claims against Makhijani, Continuum, the MOM Parties, and Nano (Partial Interim Award §§ III.E., III.G., and III.I.; ¶ 13 below; FAC at 30-31) are stayed as a result of the MOM JV Entities' bankruptcy, but they will be analyzed and disposed of in the Final Award. (¶ 17 below.)
7. Claimants derivative unjust enrichment claims against Makhijani, Continuum, and the MOM Parties (Partial Interim Award §§ III.F. and III.G.; ¶ 13 below; FAC at 29-30) are stayed as a result of the MOM JV Entities' bankruptcy, but they will be analyzed and disposed of in the Final Award. (¶ 17 below.)
8. Claimants have proven their conspiracy to commit and aiding and abetting fraudulent inducement claims against Nano; and Claimants are therefore entitled to the alternative remedies of compensatory damages, or rescission with restitution and consequential damages, all in amounts to be determined. (§§ III.A. and III.H. above; ¶ 13 below; FAC at 33-37.)

9. Claimants derivative breach of contract claim against Nano (Partial Interim Award § III.J.; FAC at 37) is stayed as a result of the MOM JV Entities' bankruptcy, but it will be analyzed and disposed of in the Final Award. (§ 17 below.)
10. Claimants have proven their accounting claim against the MOM Parties; Claimants are therefore entitled to the accounting requested; and the accounting shall be the subject of further proceedings in this arbitration. (§ III.K. above; ¶¶'s 15 and 17 below; FAC at 26.) The further proceedings shall abide by the Bankruptcy Court order which modified the automatic stay and allowed Claimants to: "(ii) proceed in the above-captioned bankruptcy cases with the accounting granted in the [Partial Interim and now Partial Final] Arbitration Award in accordance with protocols to be agreed upon by the parties to the Arbitration or otherwise entered by this Court."
11. Claimants have proven their declaratory relief claim against the MOM Parties; and Claimants are therefore entitled to the declaratory relief requested. (§ III.L. above; FAC at 27.)
12. The MOM Members have not proven their (counter) claims against Honarkar (trespass, conversion, Section 496, intentional interference with contractual relations and prospective economic advantage, declaratory or injunctive relief). (§ III.M. above.) To the extent the MOM JV Entities also assert these claims, they are stayed as a result of their bankruptcy, but they will be analyzed and disposed of in the Final Award. (§ 17 below.)
13. All amounts of restitution, consequential damages, compensatory damages, incidental damages, punitive damages and interest (if any) to be awarded to Claimants shall be determined in further proceedings in this arbitration. (¶¶'s 1, 2, and 4-8 above; and ¶¶'s 15 and 17 below.)
14. Claimants are awarded a total of \$9,197,426.31 in attorney fees and costs. The MOM Parties and the Makhijani Parties are jointly and severally liable for the entire \$9,197,426.31 total; but of the \$9,197,426.31 total, Nano is jointly and severally liable (with the other Respondents) for only \$5,229,185.14. (§ III.N.5. above; JAMS Rule 24(f) and (g); FAC at 38.)
15. This Partial Final Award resolves all claims submitted to arbitration, with the exception of the issues (the "Remaining Issues") to be resolved in further proceedings in this arbitration including: (i) the claims stayed as a result of the MOM JV Entities' bankruptcy; (ii) the accounting; and (iii) the determination of the amounts of restitution, damages, interest, attorney fees and costs to be awarded. The Arbitrator reserves jurisdiction to determine all aspects of the Remaining Issues, together with such additional issues as may arise between the parties. It is intended this Partial Final Award will be subject to judicial review as to those issues finally determined herein, so Claimants may return to the Superior Court and seek to (i) confirm this Partial Final Award, and (ii) perfect their right to the accounting granted herein (§ III.K. above). (See JAMS Rules 24 and 25; *Hightower v. Superior Court* (2001) 86 Cal.App.4th 1415, 1437.)

16. This Partial Final Award shall be considered final, for purposes of a judicial proceeding to enforce, modify or vacate, this Partial Final Award pursuant to JAMS Rule 25, fourteen (14) calendar days after service if no request for a correction is made, or as of the effective date of service of a corrected Partial Final Award. (JAMS Rule 24(i) and (j).)

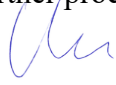
17. After the Remaining Issues are determined; and after all further proceedings in this arbitration are concluded; the Arbitrator will issue a Final Award which will resolve all claims submitted to arbitration and will include a supplemental award for attorney fees and costs incurred through entry of the Final Award in this arbitration. (See JAMS Rules 24 and 25; ¶ 14 above; *Hightower, supra*, 86 Cal.App.4th at 1437-1441 [Arbitrator has authority to issue partial award and reserve jurisdiction to issue a final award on the remaining issues].)

18. Consolidated Scheduling Order No. 100 as amended by Scheduling Order Nos. 101-106 shall remain in full force and effect and shall govern all further proceedings in this arbitration.

19. The virtual interim status conference previously scheduled for at 8:30 a.m. on June 12, 2025 is continued to 8:30 a.m. on July 17, 2025. A further interim status conference or a final status conference will be scheduled at that time.

20. Nothing contained in this Partial Final Award is intended to constitute or to require any act contrary to the automatic stay issued pursuant to 11 U.S.C. § 362(a) in the MOM JV Entities' Bankruptcy. If the Bankruptcy Court determines there is a conflict between anything contained in this Partial Final Award and the automatic stay, the latter shall prevail; but the provision of this Partial Final Award so affected shall: (i) be curtailed and limited only to the extent necessary to bring it into conformity with the requirements of 11 U.S.C. § 362(a); and (ii) automatically become one of the Remaining Issues to be resolved in further proceedings in this arbitration.

DATED: May 23, 2025



Hon. David A. Thompson (Ret.)

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MOM CA Investco LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10321 (BLS)

(Jointly Administered)

Re: Docket No. 175

**ORDER GRANTING MOTION OF MOHAMMAD HONARKAR AND 4G WIRELESS,
INC. FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)**

Upon the motion (the “**Motion**”)² of Mohammad Honarkar and 4G Wireless, Inc. (collectively, the “**Honarkar Parties**”) for entry of an order granting the Honarkar Parties relief from the automatic stay pursuant to 11 U.S.C. § 362(d), if the stay applies, to permit the Honarkar Parties to proceed with the Arbitration to a confirmed Partial Final Award and a confirmed Final Award, elect their remedies, and defend against any related appeals, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: MOM CA Investco LLC [6263], MOM AS Investco LLC [6049], MOM BS Investco LLC [6180], Retreat at Laguna Villas, LLC [2046], Sunset Cove Villas, LLC [9178], Duplex at Sleepy Hollow, LLC [9237], Cliff Drive Properties DE, LLC [0893], 694 NCH Apartments, LLC [0318], Heisler Laguna, LLC [4709], Laguna Festival Center, LLC [4073], 891 Laguna Canyon Road, LLC [0647], 777 AT Laguna, LLC [8715], Laguna Art District Complex, LLC [8316], Tesoro Redlands DE, LLC [2764], Aryabhata Group LLC [7332], Hotel Laguna, LLC [9580], 4110 West 3rd Street DE, LLC [8641], 314 S. Harvard DE, LLC [2057], Laguna HI, LLC [6408], Laguna HW, LLC [9470], The Masters Building, LLC [6134], 837 Park Avenue, LLC [3229], and Terra Laguna Beach, Inc. [2344] (interim). The Debtors’ headquarters are located at 520 Newport Center Drive, Suite 480, Newport Beach, CA 92660

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court finding that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein and all of the objections thereto at a hearing before this Court held on April 22, 2025 at 10:30 a.m. (ET) (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the record of the Hearing and all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The automatic stay imposed by section 362(a) of the Bankruptcy Code, if and to the extent applicable, is hereby modified and lifted to permit the Honarkar Parties to proceed with the Arbitration as to all claims therein, seek and obtain confirmation of the Partial Final Award³ and, once issued, the Final Award, and defend any related appeals; *provided, however*, that the stay shall not be lifted by this Order, and the Honarkar Parties must return to this Court to seek a further order, to permit the Honarkar Parties to effectuate rescission in connection with the Partial Final Award or Final Award.
3. The Honarkar Parties and the Debtors are authorized to take all actions necessary to effectuate the relief granted in paragraph 2 of this Order.
4. The terms of this Order are effective and enforceable immediately upon its entry and the 14-day stay imposed pursuant to Bankruptcy Rule 4001(a) is hereby waived.

³ For the avoidance of doubt, the term Partial Final Award as used herein shall mean the *Partial Final Award* issued by the Arbitrator in the Arbitration on May 23, 2025 and as declared final for all purposes pursuant to the *Ruling on Request for Correction* issued by the Arbitrator in the Arbitration on June 6, 2025.

5. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: June 11th, 2025
Wilmington, Delaware


BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

THE INTERESTS ACQUIRED PURSUANT TO THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS THEY HAVE BEEN REGISTERED UNDER SAID ACT OR UNLESS REGISTRATION UNDER SAID ACT IS NOT REQUIRED. THERE ARE SUBSTANTIAL RESTRICTIONS ON TRANSFER CONTAINED IN THIS AGREEMENT.

OPERATING AGREEMENT
OF
MOM AS INVESTCO LLC

**OPERATING AGREEMENT
OF
MOM AS INVESTCO LLC
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**OPERATING AGREEMENT
OF MOM AS INVESTCO LLC**

THIS OPERATING AGREEMENT OF MOM AS INVESTCO LLC (this "Agreement") is made and entered into as of June 8, 2021, (the "Effective Date"), by and between MOM AS Manager LLC, a Delaware limited liability company ("MM"), as the Managing Manager of the Company, MOM AS Investor Group LLC, a Delaware limited liability company (the "MOM Member"), as a Member, Mohammad Honarkar, as a member (the "MO Member"), and Mohammad Honarkar ("MH"), as the Administrative Manager, with reference to the following facts:

A. On May 21, 2021 (the "Formation Date"), the Certificate of Formation for MOM AS Investco LLC (the "Company") was filed with the Delaware Secretary of State.

B. The Members intend for the Company to engage in the Business described herein.

C. Prior to the Effective Date, Continuum Analytics, a California corporation and an affiliate of MM, and 4G Wireless, Inc., a California corporation and an affiliate of MH documented their preliminary understanding regarding the material terms of the Business and this Agreement in a Term Sheet, dated May 24, 2021, (the "Term Sheet") and they now desire to cause the parties to enter into this Agreement to supersede any previous discussions or documentation regarding the Business and the Company, including without limitation the Term Sheet.

D. The Members now desire to adopt and approve this Agreement as the limited liability company agreement for the Company under the Act.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, as of the Effective Date, the Members hereby incorporate the foregoing recitals into, and make them a part of, this Agreement and agree as follows:

1. DEFINITIONS. When used in this Agreement, the following terms shall have the meanings set forth below:

1.1 Act. "Act" means the Delaware Limited Liability Company Act.

1.2 Administrative Manager. "Administrative Manager" has the meaning set forth in Section 9.1(a).

1.3 Affiliates. "Affiliates" of a Person means Persons Controlled by, Controlling or under common Control with such Person, or the family members of a Person.

1.4 Agreement. "Agreement" has the meaning set forth in the first paragraph of this Agreement.

1.5 Approved Budget. "Approved Budget" has the meaning set forth in Section 9.12 of this Agreement.

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1.6 Book Value. "Book Value" means for any asset the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Book Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as reasonably determined by the Tax Person.

(b) The Book Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Tax Person, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis capital contribution if the Tax Person reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company if the Tax Person reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g).

(c) The Book Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as reasonably determined by the Tax Person.

(d) The Book Values of Company assets shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Book Values shall not be adjusted pursuant to this subsection to the extent the Tax Person determines that an adjustment pursuant to subsection (b) of this Section is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection.

(e) If the Book Value of an asset has been determined or adjusted pursuant to subsections (a), (b) or (d) of this Section, such Book Value shall thereafter be adjusted by the Book Depreciation (hereafter defined) taken into account with respect to such asset for purposes of computing Profits and Losses. "Book Depreciation" for any asset means for any fiscal year or other period an amount that bears the same ratio to the Book Value of that asset at the beginning of such fiscal year or other period as the federal income tax depreciation, amortization or other cost recovery deduction allowable for that asset for such year or other period bears to the adjusted tax basis of that asset at the beginning of such year or other period. If the federal income tax depreciation, amortization or other cost recovery deduction allowable for any asset for such year or other period is zero, then Book Depreciation for that asset shall be determined with reference to such beginning Book Value using any reasonable method selected by the Tax Person.

1.7 Business Day. "Business Day" means any day other than Saturday, Sunday or any legal holiday observed in the State of California.

1.8 Business Plan. "Business Plan" has the meaning set forth in Section 9.10(a) of this Agreement.

1.9 Capital Account. "Capital Account" means an account established for each Member and determined in accordance with Section 1.704-1(b) of the Regulations. The Capital Accounts shall be adjusted in order to reflect allocations of depreciation, amortization, and gain and loss as computed for book purposes. Upon the Transfer of any Member's interest in the Company carried out in accordance with the terms of this Agreement, the Capital Account of the transferor Member shall carry over to the transferee Member.

1.10 Capital Percentage. "Capital Percentage" shall mean the percentages for the Members set forth on Exhibit A attached hereto.

1.11 Capital Transaction. "Capital Transaction" means a sale, refinance, exchange, transfer, assignment or other disposition of all or any portion of the assets of the Company or a Subsidiary.

1.12 Cash From Capital Transactions. "Cash From Capital Transactions" means the net proceeds received by the Company from a Capital Transaction that, in the sole discretion of the Managing Manager, are available for distribution to the Members after any loans made by a Member to the Company have been repaid, any expenses of the Company (including fees hereunder) have been paid, and a provision has been made for Cash Reserves. Cash From Capital Transactions shall be measured separately for Projects, as a group, and the Other Owned LLCs, as a group, such that only the expenses, loans or Cash Reserves for the Projects shall be paid or reserved from proceeds of a Capital Transaction for a Project and only the expenses, loans or Cash Reserves for the Other Owned LLCs shall be paid or reserved from proceeds of a Capital Transaction for an Other Owned LLC.

1.13 Cash From Operations. "Cash From Operations" means, for any period, such portion of the cash in the Company's bank accounts that, in the sole discretion of the Managing Manager, is available for distribution to the Members after any loans made by a Member to the Company have been repaid, any expenses of the Company (including fees hereunder) have been paid, and a provision has been made for Cash Reserves. Cash From Operations shall be measured separately for Projects, as a group, and the Other Owned LLCs, as a group, such that only the expenses, loans or Cash Reserves for the Projects shall be paid or reserved from cash for the Projects and only the expenses, loans or Cash Reserves for the Other Owned LLCs shall be paid or reserved from cash for an Other Owned LLC. Cash From Operations shall not include the proceeds of Contributions or Cash From Capital Transactions.

1.14 Cash Reserves. "Cash Reserves" means such amounts as may be estimated by the Managing Manager for payment of costs, expenses and liabilities incident to the business of the Company and for which the cash to make such payments will not, in the reasonable discretion of the Managing Manager, be expected to be available to the Company at or about the time such payments are required to be made, and which therefore, in the reasonable discretion of the Managing Manager, require that cash be set aside periodically to make such payments.

1.15 Certificate of Formation. "Certificate of Formation" means the written instrument filed with the Delaware Secretary of State for the purpose of forming the Company.

1.16 Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.17 Company. "Company" shall have the meaning set forth in Recital A.

1.18 Company Minimum Gain. "Company Minimum Gain" means "partnership minimum gain," as defined in the Regulations promulgated under Section 704(b) of the Code.

1.19 Contribution. "Contribution" means any money or property, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted by law, which a Member contributes to the Company as capital in that Member's capacity as a Member pursuant to this Agreement.

1.20 Control. "Control", "Controlled", and "Controlling" mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.21 Development Budget. "Development Budget" has the meaning set forth in Section 9.10(e) of this Agreement.

1.22 Effective Date. "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

1.23 First Choice LLC. "First Choice LLC" means the limited liability company set forth on Exhibit C attached hereto.

1.24 Fiscal Year. "Fiscal Year" means the calendar year.

1.25 Formation Date. "Formation Date" has the meaning set forth in the recitals to this Agreement.

1.26 GAAP. "GAAP" means United States generally accepted accounting principles.

1.27 Hotel Laguna Project. "Hotel Laguna Project" means Hotel Laguna, LLC **(and Beach Club)**, Cliff Village, LLC and all real property owned by either of such limited liability companies (including the real property located at 421 S Coast Hwy and 425 S Coast Highway, Laguna Beach, CA).

1.28 Managers. "Managers" has the meaning set forth in Section 9.1(a).

1.29 Managing Manager. "Managing Manager" has the meaning set forth in Section 9.1(a).

1.30 Mandatory Additional Contributions. "Mandatory Additional Contributions" has the meaning set forth in Section 6.2(a).

1.31 Member or Members. "Member" or "Members" shall mean those Persons entering into this Agreement as a Member, as set forth in the first paragraph of this Agreement, and shall also include any other Person admitted to the Company as a Member in accordance with this Agreement, or a Person who has been admitted as a Member pursuant to applicable law.

1.32 Member Nonrecourse Debt. "Member Nonrecourse Debt" has the meaning ascribed to the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

1.33 Member Nonrecourse Debt Minimum Gain. "Member Nonrecourse Debt Minimum Gain" means an amount, with respect each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability (as defined in Regulations Section 1.704-2(b)(3)), determined in accordance with Regulations Section 1.704-2(i)(3).

1.34 Member Nonrecourse Deductions. "Member Nonrecourse Deductions" means the Company deductions that are characterized as "partner nonrecourse deductions" pursuant to the Regulations promulgated under Section 704(b) of the Code.

1.35 Membership Interest. "Membership Interest" means the interest of a Member in the Company.

1.36 MH Default. "MH Default" means (a) a breach by MH or 4G Wireless, Inc., a California corporation ("4G"), of any of his or its representations, covenants or obligations under the Contribution Agreement, of even date herewith, among MH, 4G, the Company and the other parties named therein, including a failure to contribute the membership interests in a Held-back LLC (as defined in such Contribution Agreement) at the time required thereunder, or (b) a breach of any obligation of MH or the MO Member hereunder with respect to the Other Owned LLCs, (c) a receiver is appointed for any of the membership interests held by the MO Member or (d) a receiver is appointed for any of the Subsidiaries or assets contributed to the Company by the MO Member due to facts or circumstances related to the MO Member or any of its Affiliates; or (e) if MH fails to use best efforts to have his wife execute a stipulation on or after the date hereof which provides 90 days for MH to make the \$20 million payment to her and a family court appoints a receiver for any of the membership interests held by the MO Member or any of the Subsidiaries or assets contributed to the Company by the MO Member; provided, however the matters in clauses (c) and (d) shall not be a MH Default if the receiver is appointed by family court and MH uses best efforts to have such receiver removed.

1.37 MM Consent. "MM Consent" means the written consent of the Managing Manager in its sole discretion.

1.38 MOM CA Operating Agreement. "MOM CA Operating Agreement" means Operating Agreement for MOM CA Investco LLC, of even date herewith.

1.39 New Audit Procedures. "New Audit Procedures" has the meaning set forth in 9.6.

1.40 Nonrecourse Deductions. "Nonrecourse Deductions" mean the Company deductions that are characterized as "nonrecourse deductions" pursuant to the Regulations promulgated under Section 704(b) of the Code.

1.41 Other Owned LLCs. "Other Owned LLCs" means the Subsidiaries, excluding any Subsidiary which becomes a Project pursuant to Section 9.10(h).

1.42 Participation Percentage. "Participation Percentage" means the percentages for the Members set forth on Exhibit A attached hereto.

1.43 Person. "Person" means an individual, partnership, limited partnership, corporation, trust, estate, association, limited liability company or other entity, whether foreign or domestic.

1.44 Priority Return. "Priority Return" means, for the MOM Member, a cumulative return on the aggregate Unreturned Contributions of the MOM Member at a rate of 20% per annum (compounded); provided, however, with respect to the Hotel Laguna Project, "Priority Return" means a cumulative return on the Unreturned Contributions of the MOM Member made for Hotel Laguna Project at a rate of 20% per annum (compounded).

1.45 Profits and Losses. "Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

(b) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

(c) Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(1)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;

(d) In the event the Book Value of any Company asset is adjusted pursuant to Section 1.6(b), Section 1.6(d) or Section 1.6(e), the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(e) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704(b)(2)(iv)(m)(4), to be taken into account in determining the Capital Account as a result of a distribution other than in liquidation of a Membership Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(g) Any items which are specially allocated pursuant to Sections 7.2, 7.3, 7.6 and 7.7 hereof shall not be taken into account in computing Profits or Losses.

1.46 Project. "Project" means any Subsidiary which becomes a Project under Section 6.1(d) or 9.10(h).

1.47 Regulations. "Regulations" means the Income Tax Regulations promulgated under the Code, including Temporary and Proposed Regulations, as such Regulations may be amended from time to time, including corresponding provisions of succeeding Regulations.

1.48 Securities Act. "Securities Act" means the Securities Act of 1933, as amended.

1.49 Subsidiaries. "Subsidiaries" means the limited liability companies described on Exhibit B.

1.50 Tax Person. "Tax Person" means the Person designated as the "Tax Person" under Section 9.6.

1.51 Term Sheet. "Term Sheet" has the meaning set forth in the recitals to this Agreement.

1.52 Transfer. "Transfer" means any encumbrance, gift, assignment, pledge, hypothecation, sale or other transfer of all or any portion of a Membership Interest.

1.53 Unreturned Contributions. "Unreturned Contributions" means, for the MOM Member the excess (if any) of (a) the aggregate Contributions made by such Member under the MOM CA Operating Agreement, the operating agreement for the First Choice LLC or hereunder (excluding Contributions made under Section 6.6 hereof or under Section 6.6 of the MOM CA Operating Agreement or the operating agreement for the First Choice LLC), over (b) the aggregate distributions to such Member pursuant to Sections 8.1(a)(ii), 8.1(b)(ii), 8.2(a)(ii) and 8.2(b)(ii) hereof and any distributions to the MOM Member under the MOM CA Operating Agreement or from the First Choice LLC (other than a distribution to pay the Priority Return or the priority return under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC or a distribution made to return any capital contribution made by the MOM Member to the First Choice LLC or under the MOM CA Operating Agreement); provided,

however, with respect to the Hotel Laguna Project, "Unreturned Contributions" means the excess of (i) the Contributions of the MOM Member made for Hotel Laguna Project under the MOM CA Operating Agreement over (ii) the aggregate distributions to such Member pursuant to Sections 8.1(a)(ii) and 8.2(a)(ii) of the MOM CA Operating Agreement from cash attributable to the Hotel Laguna Project.

2. FORMATION OF LIMITED LIABILITY COMPANY. The Company has been formed by the filing of the Certificate of Formation with the Delaware Secretary of State pursuant to the provisions of the Act. To the extent anything contained in this Agreement modifies, supplements or otherwise affects any such right, liability or obligation arising under the Act, this Agreement shall supersede the Act to the extent not mandated thereby.

3. NAME AND PLACE OF BUSINESS.

3.1 Name. The name of the Company shall be MOM AS Investco LLC.

3.2 Office; Agent for Service of Process. The name and address of the agent for service of process are as set forth in the Certificate of Formation. The Managing Manager may change the registered office and the registered agent of the Company as the Managing Manager may deem appropriate. The Company shall maintain a principal place of business and office(s) at such place or places as the Managing Manager may from time to time designate.

4. PURPOSE. The purpose of the Company is to engage in (a) any activities with respect to the Subsidiaries (or the assets owned by the Subsidiaries) or the Projects and (b) any and all other activities permitted under the Act and approved by the Managers.

5. TERM OF COMPANY; RECORDINGS.

5.1 Term. The Company commenced as of the Formation Date and shall continue until dissolved, unless sooner terminated as herein provided or by operation of law.

5.2 Qualification. The Company shall file any documents with any other appropriate governmental agencies as may be required by applicable law. The Company shall qualify to do business in any other jurisdiction as may be required under the laws of such jurisdiction.

6. CONTRIBUTIONS AND LOANS.

6.1 Initial Contributions.

(a) The MO Member hereby is admitted as a Member with the rights in favor of the MO Member set forth herein and the Participation Percentages and Capital Percentages the MO Member set forth herein in exchange for the Contribution by the MO Member of the membership interests in the Subsidiaries and the Projects.

(b) The MOM Member hereby is admitted as a Member with a Membership Interest with the rights in favor of MOM Member set forth herein and the Participation Percentages and Capital Percentages for the MOM Member set forth herein.

(c) The MO Member shall be responsible for making Contributions to pay for any expense or liability of an Other Owned LLC to the extent such Other Owned LLC has insufficient cash to pay such expense or liability.

(d) MH shall provide to the MOM Member all information regarding Museum (Heisler Laguna, LLC) reasonably available to MH. Within 30 days after the MOM Member receives all due diligence materials which the MOM Member desires to review with respect to such project, the MOM Member shall provide written notice to MH as to whether the MOM Member desires to make a Contribution with respect to such project and to cause it to be a Project. If the MOM Member agrees to make a Contribution with respect to such Project, then the MOM Member shall make such Contribution in accordance with a timeline and budget established by MH and the MOM Member.

(e) Except as set forth in this Section 6 or Section 9.10, the Members shall not be required to make any additional Contributions or loans to the Company.

6.2 Additional Contributions.

(a) With respect to Project which has been built or, for a Project to be developed, at any time after the completion of construction and opening of such Project to the public, if the MOM Member in its good faith business judgment determines that additional Contributions are required to: (i) implement the provisions of the Business Plan for such Project; and/or (ii) meet contractual obligations or liabilities of such Project, then the MOM Member may provide written notice to all Members calling for additional Contributions (the "Mandatory Additional Contributions"), which notice shall set forth the date on which such Contributions are due (which shall not be less than five Business Days after the date of such notice). Each Member shall make a Contribution equal to 50% of the aggregate Mandatory Additional Contributions being called.

(b) If a Member makes a Mandatory Additional Contribution and the other Member fails to do so (the "Failing Member"), then the funding Member may elect to either: (i) not fund its share; or (ii) cover the Failing Member's share which shall be treated as a loan which is recourse to the Failing Member and is payable from, but not limited to, any distributions from the Company to the Failing Member. Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at any time by the Failing Member. If there is a failing Member, the Company may admit a new Member for purposes of having the Contribution funded by the new Member, so long as the Participation Percentages and Capital Percentages with respect to the Projects provided to the new Member are consistent with the adjustment mechanism set forth on Exhibit A.

(c) If all Members agree to make additional Contributions, then the Members shall make such additional Contributions at the times and in the amounts agreed upon by all of the Members.

(d) If the MO Member fails to make the Contributions required under Section 6.1(c), the MOM Member may elect to fund the shortfall to the Company which shall be treated as a recourse loan to the MO Member that is payable from, but not limited to, any

distributions from the Company to the MO Member (and a subsequent Contribution of the proceeds of such loan to the Company by the MO Member). Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at any time by the MO Member. In lieu of providing the foregoing loan, the MOM Member may cause the Company to admit a new Member for purposes of having the Contribution funded, so long as the Participation Percentages and Capital Percentages with respect to the Other Owned LLCs provided to the new Member are consistent with the adjustment mechanism set forth on Exhibit A.

6.3 Interest on Contributions. No interest shall be paid by the Company on any Contribution made by any Member to the Company.

6.4 Return of Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to withdraw or reduce (or receive a return of) such Member's Contribution, except as a result of dissolution. No Member shall have the right to demand or receive property other than cash in return for such Member's Contributions.

6.5 Loans By a Member. Loans by a Member to the Company shall not be considered Contributions for purposes of this Agreement, increase such Member's Capital Account or entitle such Member to any greater share of the Profits, Losses or distributions of the Company than such Member is otherwise entitled to under this Agreement. No loan shall be made by a Member to the Company unless approved by the Managing Manager.

6.6 Tax Withholding. If the Company is required to withhold or otherwise pay taxes with respect to the Profits, distributions or Membership Interests of a Member, the Managing Manager may require an additional Contribution (without adjustment to Membership Interests or interests in the distributions or allocations associated with such Member's Membership Interests) of such Member in the amount of the required tax and/or the Company may withhold such taxes from any distribution to such Member.

6.7 Additional Membership Interests. The MOM Member, in its sole and absolute discretion, is hereby authorized to cause the Company from time to time to issue Membership Interests in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers, and duties, including rights, powers, and duties senior to then existing Membership Interests, all as shall be determined by the MOM Member in its sole and absolute discretion subject to applicable law, including without limitation, (i) the allocations of items of Company income, gain, loss, deduction, and credit to such class or series of Membership Interests; (ii) the right of each such class or series of Membership Interests to share in Company distributions; and (iii) the rights of each such class or series of Membership Interests upon dissolution and liquidation of the Company; provided, however, the MOM Member shall not be entitled to cause the Company to issue additional Membership Interests which dilute existing Membership Interests disproportionately. In the event that the Company issues additional Membership Interests pursuant to this Section 6.7, the Managing Manager shall be entitled to amend this Agreement as it determines is necessary to reflect the issuance of such additional Membership Interests.

7. ALLOCATIONS.

7.1 Allocation of Profits and Losses. After giving effect to the special allocations set forth in Sections 7.2, 7.3, 7.6 and 7.7, Profits and Losses in respect of each Fiscal Year of the Company (and, in each case, each item of income, gain, loss, deduction and tax preference, required to be taken into account by the Members separately under Section 702(a) of the Code, which are included in the computation of such Profits and Losses for such year) shall be allocated to the Members in a manner such that the Capital Account of each Member is, as nearly as possible, equal (proportionately) to the excess of:

(a) the distributions that would be made to that Member pursuant to Section 8.2 if:

(i) the Company were dissolved, its affairs wound up and its assets sold for an amount of cash equal to their Book Values;

(ii) all liabilities of the Company were satisfied (limited with respect to each non-recourse liability to the Book Value of the assets securing such liability); and

(iii) the assets of the Company were distributed to the Members in accordance with Section 8.2 immediately after making such allocation; over

(b) the sum of (i) the Member's respective share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and (ii) the amount, if any, that such Member is obligated (or deemed obligated) to contribute, in its capacity as a Member, to the Company, computed immediately prior to the hypothetical sale of assets described in Section 7.1(a).

7.2 Allocation of Nonrecourse Deductions. Nonrecourse Deductions for each Fiscal Year shall be allocated among the Members as determined by the Managing Manager in a manner consistent with the Code and Regulations.

7.3 Member Nonrecourse Deductions. Member Nonrecourse Deductions for each Fiscal Year shall be allocated as required by the Regulations promulgated under Section 704(b) of the Code.

7.4 704(c) Agreement. The Members agree that items attributable to contributed property shall be allocated as required by Section 704(c) of the Code.

7.5 Allocation of Tax Credits. Except as may otherwise be required by law, any tax credits to which the Company may be entitled shall be allocated among the Members as determined by the Managing Manager in a manner consistent with the Code and Regulations.

7.6 Qualified Income Offset. Except as provided in Section 7.7 of this Agreement, if any Member unexpectedly receives an adjustment, allocation or distribution described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any deficit in said Member's Capital

Account as quickly as possible. For purposes of this Section 7.6, the Member's Capital Account, as of the end of the relevant Fiscal Year, shall take into account the adjustments described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6), any amount of any deficit Capital Account balance which the Member is obligated to restore, and any amount of any deficit Capital Account balance which the Member is deemed obligated to restore pursuant to the Regulations promulgated under Section 704(b) of the Code.

7.7 Minimum Gain Chargeback. Prior to any allocation hereunder, if there is a net decrease in the Company Minimum Gain during a Company taxable year, each Member shall be allocated items of income and gain in accordance with the Regulations promulgated under Section 704(b) of the Code and its requirements for a "minimum gain chargeback." If there is a net decrease in minimum gain attributable to debt associated with Member Nonrecourse Deductions, income and gain shall be allocated to the Members in accordance with the Regulations.

7.8 Allocations of Tax Items. For federal income tax purposes, every item of income, gain, loss and deduction shall be allocated among the Members in accordance with the foregoing allocations. Whenever items of income or loss of the Company allocable hereunder consist of items of different character for tax purposes (i.e., ordinary income, long-term capital gain, depreciation recapture, interest expense, etc.) the items of income or loss of the Company allocable to each Member shall include, to the extent possible, its pro rata share of each such item; provided, however, in making allocations of depreciation recapture under Section 1245 or Section 1250 of the Code, or unrecaptured Section 1250 gain under Section 1(h) of the Code, principles consistent with those of Regulations Section 1.1245-1(e) shall be followed such that amounts treated as ordinary income shall be allocated first to the Member that was allocated the related ordinary deduction.

7.9 No Deficit Restoration Obligation. At no time during the term of the Company or upon dissolution and liquidation thereof shall a Member with a negative balance in its Capital Account have any obligation to the Company or the other Members to restore such negative balance, except as may be required by law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

8. DISTRIBUTIONS.

8.1 Distribution of Cash From Operations.

(a) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Operations for Projects shall be distributed as follows:

(i) First, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(b)(i), 8.2(a)(i) and 8.2(b)(i) and any distributions under the MOM CA Operating Agreement or from the First Choice LLC to pay the Priority Return for Contributions made hereunder for the Projects in an aggregate amount equal to such Member's Priority Return for Contributions made hereunder for the Projects calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, to the MOM Member, until the Unreturned Contribution balance of the MOM Member for Contributions made hereunder for the Projects is reduced to zero;

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Participation Percentages of the Members for Projects; provided, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iii) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the operating agreement for the First Choice LLC or under the MOM CA Operating Agreement and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the operating agreement for the First Choice LLC or under the MOM CA Operating Agreement and such reduction shall be distributed to the MOM Member.

(b) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Operations for Other Owned LLCs shall be distributed as follows:

(i) First, if there has been a MH Default or the third annual anniversary of the Effective Date has occurred, to the MOM Member, until the MOM Member has received cumulative distributions under this clause (i) and Sections 8.1(a)(i), 8.2(a)(i) and 8.2(b)(i) and any distributions under the MOM CA Operating Agreement or from the First Choice LLC to pay the Priority Return in an aggregate amount equal to such Member's Priority Return calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, if there has been a MH Default or the third annual anniversary of the Effective Date has occurred, to the MOM Member, until the Unreturned Contribution balance of the MOM Member is reduced to zero;

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Participation Percentages of the Members for Other Owned LLCs.

8.2 Distributions of Cash From Capital Transactions.

(a) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Capital Transactions for Projects shall be distributed/paid as follows:

(i) First, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(a)(i), 8.1(b)(i) and 8.2(b)(i) and any distributions under the MOM CA Operating Agreement or from the First Choice LLC to pay the Priority Return for Contributions made hereunder for the Projects in an aggregate amount equal to such Member's Priority Return for Contributions made hereunder for the Projects calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, to the MOM Member, until the Unreturned Contribution balance for Contributions made under this Agreement by the MOM Member for the Projects is reduced to zero;

(iii) Next, if distributions from Other Owned LLCs were used to

reduce the Unreturned Contribution balance for Contributions made under this Agreement for the Projects by the MOM Member to zero, then to the MO Member in an amount equal to such distributions from the Other Owned LLCs; provided, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iii) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and such reduction shall be distributed to the MOM Member;

(iv) Next, until the MO Member has received cumulative distributions pursuant this clause (iv) equal to \$35,000,000, the balance shall be divided among the Members pro-rata based on the Capital Percentages of the Members, with the amount payable to the MOM Member being a fee to the MOM Member for services to the Company in connection with the Capital Transaction and the amount payable to the MO Member being a distribution; provided, however, 50% of the distributions made under Section 8.2(a)(i) to the MOM Member shall be deducted from the fee payable under this clause (iv) and added to the distributions to the MO Member and provided further, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iv) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and such reduction shall be distributed to the MOM Member; and

(v) Finally, the balance shall be distributed to the Members pro-rata based on the Capital Percentages of the Members for Projects; provided, however, if the entire 50% of the distributions made under Section 8.2(a)(i) to the MOM Member is not deducted from the fee payable under Section 8.2(a)(iv), then the portion not deducted shall be deducted from the distributions to the MOM Member under this clause (v) and added to the distributions to the MO Member and provided further, however, if an MH Default has occurred, a distribution to the MO Member under this clause (v) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and such reduction shall be distributed to the MOM Member.

(b) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Capital Transactions for Other Owned LLCs shall be distributed/paid as follows:

(i) First, if there has been a MH Default or the fifth annual anniversary of the Effective Date has occurred, to the MOM Member, until the MOM Member

has received cumulative distributions pursuant to this clause (i) and Sections 8.1(a)(i), 8.1(b)(i) and 8.2(a)(i) and any distributions from a First Choice LLC in an aggregate amount equal to such Member's Priority Return calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, if there has been a MH Default or the fifth annual anniversary of the Effective Date has occurred, to the MOM Member, until the Unreturned Contribution balance of the MOM Member is reduced to zero; and

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Capital Percentages of the Members for Other Owned LLCs.

8.3 Offset. If any amounts are owed to the Managing Manager or the MOM Member by the MO Member hereunder, the MO Member hereby authorizes the Managing Manager to pay such amounts from any distributions to be made to the MO Member hereunder. Such payment shall be deemed a distribution to the MO Member and then a payment by the MO Member to the Managing Manager or the MOM Member.

8.4 To Whom Distributions Are Made. Unless named in this Agreement or unless admitted as a Member as provided in this Agreement, no Person shall be considered a Member in the Company. Any distribution by the Company to the Person shown on the Company records as a Member, or to such Member's legal representatives, or to a named assignee of the right to receive distributions, shall acquit the Company and the Members of all liability to any other Person who may be interested in such distribution by reason of an assignment by a Member or for any other reason.

9. MANAGEMENT.

9.1 Managers.

(a) Generally. The Company shall be managed by a Person or Persons acting as a "manager" as that term is defined under the Act (each "Manager"). The Managers may be, but shall not be required to be, a Member. One Manager is designated as the managing Manager (the "Managing Manager"). There may be another Manager designated as the administrative Manager (the "Administrative Manager") and the other Manager is designated as the managing Manager (the "Managing Manager"). The initial Managing Manager shall be MM, which shall hold the office of Managing Manager for an indefinite term unless and until MM resigns (in which event the MOM Member shall designate a replacement Managing Manager). The initial Administrative Manager shall be MH, which shall hold the office of Administrative Manager for an indefinite term unless and until MH resigns or is replaced or removed by the Managing Manager. To the fullest extent permitted by law, the Members acknowledge and agree that no Member of the Company nor a Manager owes any fiduciary or other duties to the other Members, to the Managers or to the Company and all such duties are hereby waived by the Members, the Managers and the Company. Unless another standard is specifically provided in this Agreement, each party to this Agreement shall act reasonably with respect to the other parties in carrying out its responsibilities and exercising its rights set forth in this Agreement.

(b) Resignation. A Manager may resign from its position as Manager at any time upon giving notice to the other Manager without liability resulting solely from such

resignation to the Company or any of its Members. Resignation shall not affect in any manner membership interest in the Company held by a Manager as a Member. Such resignation shall become effective as set forth in such notice. The Managing Manager shall have the sole authority to designate a replacement for a Manager which resigns (including a replacement for itself upon a resignation by it)

(c) Removal. The Managing Manager shall not be subject to removal for any reason. The Managing Manager shall be entitled to remove the Administrative Manager at any time; upon such removal the Managing Manager shall have the sole discretion as to whether to appoint a substitute Administrative Manager.

9.2 Authority Delegated to Administrative Manager. The Administrative Manager shall only have the duties regarding day to day operations designated in writing to it by the Managing Manager.

9.3 General Powers of the Managing Manager.

(a) Other than duties delegated to the Administrative Manager pursuant to Section 9.2 and as set forth in Section 9.3(b), the Company's business shall be managed by the Managing Manager and the Managing Manager shall be entitled to take all action on behalf of the Company. The Managing Manager shall be responsible for the management of the Company's business and shall have all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith. Without limiting the generality of the foregoing, the Managing Manager shall have the sole power and authority (a) to take all action on behalf of the Company as the member of each Subsidiary, including, without limitation, the power to determine whether to sell, exchange or dispose of any ownership interests in, or property held by, any Subsidiary, (b) to retain legal counsel or accountants (including tax accountants), and (c) to manage all disbursements under any loan made to any Subsidiary or with respect to any Project.

(b) With respect to the Other Owned LLCs and the assets owned by the Other Owned LLCs, the Managing Manager shall not be entitled to sell the ownership interests in an Other Owned LLC or the assets owned by an Other Owned LLC without the prior written consent of MH, except no consent is required if an MH Default has occurred or if the fifth anniversary of the Effective Date has occurred.

9.4 Other Payments. Other than the rights to distributions and the reimbursement of certain expenses as provided in this Agreement, no Member nor any of its Affiliates shall receive any compensation or other payment from the Company.

9.5 Members.

(a) Member Meetings. The Managing Manager may hold meetings of the Members at such place as the Managing Manager may determine or may at any time call for a vote without a meeting of the Members on matters on which they are entitled to vote as specifically provided in this Agreement. Written notice of a meeting or vote shall be given to the Members not less than ten (10) Business Days before the date of the meeting or vote. Each notice of meeting or vote, if any, shall contain a detailed statement of any resolution to be

adopted by the Members and any proposed amendment to the Agreement. A Member shall be entitled to vote at a meeting in person or by written proxy delivered to the Managing Manager prior to the meeting. Nothing in this Section 9.5 shall be deemed to give any Member the right to vote on any matters other than those specifically set forth in the other provisions of this Agreement.

(b) Action by Written Consent. The Managing Manager may allow the Members to take action without any meeting of the Members by written consent setting forth the action to be approved. The approval or consent of the Members required pursuant to this Agreement shall mean Member Consent unless specifically provided otherwise in this Agreement.

(c) No Authority of Members to Act on Behalf of the Company. Unless authorized to do so by the Managing Manager in writing, no Member, agent, or employee of the Company shall have any power or authority to act on behalf of the Company, to bind the Company in any way, to execute any instrument on behalf of the Company or to render the Company liable in any way. Except as expressly set forth in this Agreement, no Member (other than a Member acting in the capacity of a Manager, having been delegated certain duties and responsibilities by the Managing Manager or as set forth herein, and only to the extent of such duties and responsibilities) shall have a right to participate in the control, operation, management or direction of the Company.

9.6 Tax Person. The Members acknowledge the recent passage of the Bi-Partisan Budget Act of 2015, H.R. 1314, which contains, among other things, revisions to the audit procedures for Persons treated as partnerships for U.S. federal income tax purposes (the "New Audit Procedures"). The New Audit Procedures generally are effective for federal tax returns filed for partnership tax years commencing after December 31, 2017. The Managing Manager shall serve as the "partnership representative" as that term is defined in Section 6223 of the Code (as in effect under the New Audit Procedures) (the "Tax Person"). If the Managing Manager is subsequently unable or unwilling to serve as the Tax Person, then another Person designated by the Managing Manager (and consented to by such Person) shall serve as the Tax Person. The Tax Person shall have all powers necessary and appropriate in connection with such role, including without limitation representing the Company in any tax audit, proceeding or dispute with the Internal Revenue Service or state or local tax authority, consenting to extending the statute of limitations for assessing tax against a Member and/or the Company attributable to a Company item, negotiating and entering into a settlement agreement, contesting any proposed adjustment of a Company item, the payment of any tax liability imposed by the New Audit Procedures or the allocation of such liability pursuant to the New Audit Procedures and any and all elections in connection therewith. Each Member shall be charged and shall indemnify the Company for the portion of any imputed underpayment paid by the Company attributable to such Member as determined by the Tax Person. This indemnity shall survive each Member's withdrawal as a Member of the Company, the sale of any Company assets and the dissolution of the Company. The Tax Person may make all tax elections and execute all waivers and consents for tax purposes on behalf of the Company

9.7 Execution of Documents. Each check, contract, deed, lease, promissory note, deed of trust, escrow instruction, bond, release or any other documents of any nature

whatsoever, in any way pertaining to the Company or on behalf of the Company, shall be signed by the Managing Manager or the Person or Persons designated from time to time by the Managing Manager. Each check, contract, deed, lease, promissory note, deed of trust, escrow instruction, bond, release or any other documents of any nature whatsoever, in any way pertaining to a Subsidiary or on behalf of a Subsidiary, shall be signed by the Person or Persons designated from time to time by the Managing Manager.

9.8 Liability/Indemnification.

(a) For purposes of this Agreement, "Indemnified Persons" means the Members, a Manager and each of their respective permitted successors, officers, directors, managers, members, partners, employees, agents and affiliates.

(b) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Company or to the Members for any acts performed within the scope of the authority conferred on such Indemnified Person by this Agreement, except for such Indemnified Person's intentional fraud, willful misconduct, bad faith, or a material breach of this Agreement.

(c) The Company shall indemnify and hold harmless the Indemnified Persons from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, brought against, or threatened against, such Indemnified Person by reason of any act performed or omitted to be performed by such Member or Manager (or other Indemnified Person in his or her capacity with respect to the Member or Manager or the Company) in connection with the business of, or on behalf of, the Company or by reason of the fact such Indemnified Person was a Member, Manager (or other Indemnified Person in his or her capacity with respect to the Member or Manager or the Company), except for such Indemnified Person's intentional fraud, willful misconduct, bad faith, or a material breach of this Agreement. Such indemnification shall be provided regardless of whether the Member or Manager continues to act as Member or Manager (or the other Indemnified Person continues to act in his or her capacity with respect to the Member or Manager or the Company) at the time any such liability or expense is paid or incurred.

(d) Expenses incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding subject to indemnification pursuant to this Section 9.8, shall from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking in a form satisfactory to the Company by or on behalf of the Indemnified Person to repay such amount if it shall be determined that such Person is not entitled to be indemnified under this Section 9.8.

(e) The indemnification provided by this Section 9.8 shall be in addition to any other rights to which the Indemnified Person may be entitled under any agreement, vote of the Members, as a matter of law or equity or otherwise and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnified Person.

(f) The Company may purchase and maintain insurance, at the Company's expense, on behalf of the Indemnified Persons as the Managing Manager shall determine (but only as approved in an Approved Budget) against any liability that may be asserted against, or any expense that may be incurred by, such Persons in connection with the activities of the Company and/or the acts or omissions of such Persons regardless of whether the Company would have the power to indemnify such Persons against such liability under the provisions of this Agreement.

(g) Any indemnification under this Section 9.8 shall be satisfied solely out of the assets of the Company. No Member shall be subject to personal liability or required to provide any funds, or to cause any funds to be provided, to Company to satisfy any indemnification obligation of the Company under this Section 9.8.

(h) Except as set forth in the Act, no Member shall be liable under a judgment, decree or order of a court, or in any other manner, for the debts, liabilities, or obligations of the Company; provided, however, nothing contained in this Section 9.8 shall limit the obligation of a Member to make Contributions required under this Agreement.

(i) Notwithstanding anything to the contrary in this Section 9.8, if any Manager or Member or its Affiliate enters into a separate agreement to provide services to the Company, then the rights (including rights to indemnification), liabilities and obligations of such Manager or Member or its Affiliate, in its capacity as service provider under such agreement, shall be governed by the terms and provisions of such service agreement, and the terms and provisions hereof shall not apply nor shall the Company be obligated to indemnify such Manager, Member or its Affiliate against any claims arising in connection with such agreements, unless and to the extent required by the terms of provisions thereof.

9.9 Other Business Ventures.

(a) MH shall not, directly or indirectly, engage in or possess any interest in other business ventures of any nature and description, independently or with others, that adversely affect the real estate projects owned by any Subsidiary or the Company.

(b) MM may engage in or possess an interest in other business ventures of every nature and description, independently or with others, and neither the Company, nor the other Members shall have, and each of them hereby expressly waives, relinquishes and renounces, any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Moreover, MM shall not be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and MM shall have the right to take for its own account, for the account of other business entities of which it is an owner, or to recommend to others any such particular investment opportunity.

9.10 Projects.

(a) The Administrative Manager shall prepare an initial business plan for each Project, including, without limitation, detailed timelines, budgets, pro-formas, execution strategies and proposed vendors. The Managing Manager, in its sole discretion, may

amend/reject any business plan proposed by the Administrative Manager for each Project. A business plan for a Project approved by the Managing Manager is referred to herein as the "Business Plan" for such Project.

(b) On a Project-by-Project basis, the Managing Manager shall determine how the construction is handled.

(c) The Managers shall have regular (no less than monthly) business calls to discuss implementation of the Business Plan for each Project. The Managing Manager will execute the capital expenditure plan (including tenant improvements) for each Project which is not under construction per the Business Plan for such Project.

(d) If the Managing Manager elects to obtain third-party debt financing for a Project, and any such lender requires environmental indemnities, guaranties (whether full or non-recourse carve-outs) or any other indemnities as part of such financing, the MOM Member will provide the same, but, as between the Members, each Member shall be responsible for paying the portion of any claim under such indemnities or guaranties on a 50/50 basis.

(e) The development budget for the development of any Project shall be determined by the Managers (the budget approved by the Managers is referred to herein as the "Development Budget"). All pre-development costs for a Project within the Development Budget shall be paid with Contributions by the Members on a 50/50 basis; provided, however, if the MOM Member determines not to invest in a Project, then such Project shall be deemed an Other Owned LLC and the MO Member shall make Contributions to pay all costs associated with such Project.

(f) The approval of both of the Managers shall be required, subject to good faith negotiation, for the selection of the general contractor for construction of any Project and the guaranteed maximum price construction contract with such general contractor for such construction (including the market-rate compensation to be paid to such general contractor for its services).

(g) The approval of both of the Managers shall be required, subject to good faith negotiation, for the selection of the architect for construction of any Project.

(h) The MOM Member shall be entitled to determine to conduct rehabilitation or construction of property owned by an Other Owned LLC, in which event the Other Owned LLC shall become a Project.

9.11 Fees.

(a) For each Project which is to be constructed, the Administrative Manager (or its designee) will receive a fee equal to 4% of total construction costs (excluding such fee) or such lesser amount as an unaffiliated lender requires (for each Project, the "Construction Management Fee"), in exchange for the Administrative Manager (or its designee) overseeing construction of such Project. Such fee shall be payable from funds provided for such construction and shall be paid pursuant to a schedule reasonably determined by the Managing Manager, subject to approval of any construction lender. In the event that the Managing

Manager reasonably determines that the Administrative Manager (or its designee) is not satisfying the performance standards relative to reaching the goals in the Business Plan for a Project, the Managing Manager shall have the right to terminate the services of the Administrative Manager (or its designee) with respect to overseeing construction of such Project upon thirty (30) days' written notice. Upon such termination, the Administrative Manager and any designee thereof shall not be entitled to receive any unpaid portion of the Construction Management Fee. No termination under this clause (a) shall result in a loss of any capital account of the MO Member or a loss of any right of the MO Member to distributions hereunder.

(b) In exchange for asset management services to Company, the Managing Manager (or its designee) shall receive the following fees: (i) 1% of total equity raised for each Project, with this being a one-time fee that shall accrue until such time as the applicable Project has sufficient cash flow to pay the same as determined in the sole discretion of the Managing Manager (however, such fee shall not be paid prior to the third anniversary of the Effective Date unless an MH Default occurs); (ii) 1% of the gross revenue of each Project for which the MOM Member has made a Contribution payable in monthly installments in arrears; this fee shall accrue until such time as the applicable Project has sufficient cash flow to pay the same as determined in the sole discretion of the Managing Manager; and (iii) 1% of the gross sale and/or refinance proceeds for each Project payable at the closing of such sale or refinance; provided, however, the fee payable under this clause (iii) shall be subject to an aggregate cap of \$160 million.

9.12 Operating Budgets. For each Project that has been completed, no less than 30 days prior to the completion of each Fiscal Year, the Managers shall work in good faith to approve an operating budget for such Project for the next Fiscal Year. If the Managers cannot agree upon an operating budget for a Fiscal Year, then the operating budget for the current Fiscal Year shall continue in effect as the approved operating budget for the next Fiscal Year until the Managers approve a new operating budget. An operating budget approved hereunder shall be referred to herein as an "Approved Budget".

9.13 Special Indemnity. The MO Member shall indemnify the Managing Manager and the MOM Member for all damages, losses, claims, expenses or liabilities incurred by the Managing Manager and the MOM Member with respect to any litigation with respect to a Project pending on the date hereof. The MO Member shall pay all costs and expenses of defending such litigation; such payments shall not be deemed a loan or Contribution to the Company and the MO Member shall not be entitled to reimbursement from the Company or a Subsidiary for such costs and expenses. If a Project is subject to pending litigation on the date hereof and the MOM Member has made a Contribution with respect to such Project, then the MOM Member shall be entitled to cause such litigation to be settled in its sole discretion; provided, that the Administrative Manager can block such settlement by purchasing (or causing the MO Member to purchase) from the MOM Member its indirect interest in such Project for a purchase price equal to the amount the MOM Member would receive under Section 8.2(a) hereof if such Project was sold for the appraised "as-built" value as determined by an appraiser mutually agreed to by the Managers and the proceeds thereof were distributed under Section 8.2(a) hereof and obtaining a full release of any guaranties or indemnities provided by MM, the MOM Member or any Affiliate of MM or the MOM Member under any financing for such Project (if such purchase occurs, then the Project shall become an Other Owned LLC).

9.14 Officers. The Managing Manager may, from time to time, appoint one or more persons to be officers of the Company. Unless the Managing Manager decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office, subject to the terms of this Agreement and any written employment agreement of such individual with the Company. No such appointment and no prescribed duties will reduce or dilute the power of the Managing Manager as set forth herein or at law. The Managing Manager may remove any officer from office with or without cause; provided, however, that no removal will impair the contract rights, if any, of the officer removed or of the Company or of any other Person. Any officer may resign at any time by giving written notice to the Managing Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

9.15 Affiliate Transaction. No agreement between the Company, on the one hand, and the Administrative Manager, the MO Member or an Affiliate of the Administrative Manager or the MO Member, on the other hand, shall be effective unless approved in writing by the Managing Manager. No agreement between the Company, on the one hand, and the Managing Manager, the MOM Member or an Affiliate of the Managing Manager or MOM Member, on the other hand, shall be effective unless approved in writing by the Administrative Manager, except for an agreement expressly provided for herein.

10. RESTRICTIONS ON TRANSFER; NEW MEMBERS.

10.1 Limitations on Transfers.

(a) No Member shall for any reason, whether voluntarily, involuntarily or by operation of law, Transfer all or any of such Member's Membership Interest, nor shall any Member indirectly Transfer all of such Member's Membership Interest through a transaction that results in a change in the Person(s) Controlling such Member, without MM Consent. Notwithstanding the foregoing, the MOM Member shall not for any reason, whether voluntarily, involuntarily or by operation of law, Transfer all or any of such Member's Membership Interest (other than a Transfer to an Affiliate of the MOM Member), nor shall the MOM Member indirectly Transfer all of such Member's Membership Interest through a transaction that results in a change in the Person(s) Controlling the MOM Member, without the prior written consent of MH (which shall not be unreasonably withheld, delayed or conditioned) ("MH Consent") except such MH Consent is not required if the manager of the MOM Member does not change in connection with such Transfer. Any Transfer not expressly permitted in this Agreement shall be null and void. Whether or not MM Consent or MH Consent is required for a Transfer, a transferee of a Membership Interest shall have the right to become a substitute Member only if (i) such Person executes an instrument satisfactory to the Managing Manager accepting and adopting the terms and provisions of this Agreement, and (ii) such Person pays any reasonable expenses in connection with his or her admission as a substitute Member. Neither the admission of a substitute Member nor any Transfer complying with Section 10 shall release the Member

who assigned the Membership Interest from any liability that such Member may have to the Company.

(b) No Transfer of any Membership Interest may be made which (i) could cause a termination of the Company for federal income tax purposes; (ii) alone or in conjunction with any other Transfer, might adversely affect, or tend to affect adversely, the characterization of the Company as a partnership for federal income tax purposes; (iii) could result in the assets of the Company being considered by law to be assets of employee benefit plans and therefore subjecting those assets to the fiduciary standards of the Employee Retirement Income Security Act of 1974, as amended; or (iv) violates the Securities Act and any rules promulgated thereunder and any similar state 'Blue Sky' laws. In addition, in no event may a Transfer occur which results in more than ninety-nine (99) beneficial owners of Membership Interests.

10.2 [reserved].

10.3 Drag Along Sale. If the MOM Member proposes to sell or transfer for value, directly or indirectly, to one or more purchasers all of its Membership Interests in an arm's length transaction, then the MOM Member shall have the option (the "Drag-Along Option") to require the other Members (individually a "Drag Member" and collectively the "Drag Members") to sell, to the prospective purchaser acquiring the Membership Interests held by the MOM Member, the Membership Interests held by each Drag Member. If the MOM Member exercises the Drag-Along Option, then (a) each of the Members shall receive an amount in respect of Membership Interests sold equal to the amount that such Member would have received in respect of such Membership Interests if the Drag-Along Sale Consideration was treated as Cash From Capital Transactions in a deemed sale of all of the assets of the Company and such Cash From Capital Transactions was distributed to the Members pursuant to Section 8.2 (after making allocations pursuant to Section 6 in respect of such deemed sale), and (b) the Members shall (i) be subject to the same terms and conditions of sale (including without limitation any deferred payments of the Drag-Along Sale Consideration) and (ii) execute such documents and take such actions as may be reasonably required to effect such sale. The Drag Along Option shall be exercisable by delivery of written notice to the Drag Members by the MOM Member. For purposes of this Section 10.3, "Drag-Along Sale Consideration" means the aggregate net purchase price (after payment of all transaction expenses) received from the purchaser(s) in the sale of the Membership Interests pursuant to this Section 10.3, excluding amounts relating to market employment arrangements.

10.4 Tag Along Sale. If the MOM Member proposes to sell or transfer for value, directly or indirectly, to one or more purchasers all of its Membership Interests in an arm's length transaction, then the MO Member shall have the option (the "Tag-Along Option") to require the purchaser of such Membership Interests to purchase the Membership Interests held by the MO Member. If the MO Member exercises the Tag-Along Option, then (a) the MO Member shall receive an amount in respect of the Membership Interests sold by the MO Member equal to the amount that such Member would have received in respect of such Membership Interests if the Tag-Along Sale Consideration was treated as Cash From Capital Transactions in a deemed sale of all of the assets of the Company and such Cash From Capital Transactions was distributed to the Members pursuant to Section 8.2 (after making allocations pursuant to Section

6 in respect of such deemed sale), and (b) the Members shall (i) be subject to the same terms and conditions of sale (including without limitation any deferred payments of the Tag-Along Sale Consideration) and (ii) execute such documents and take such actions as may be reasonably required to effect such sale. The Tag-Along Option shall be exercisable by the MO Member by delivery of written notice to the MOM Member during the five Business Day period after the MO Member received written notice from the MOM Member of the terms and conditions of the proposed sale of the Membership Interests held by the MOM Member. For purposes of this Section 10.4, "Tag-Along Sale Consideration" means the aggregate net purchase price (after payment of all transaction expenses) received from the purchaser(s) in the sale of Membership Interests pursuant to this Section 10.4, excluding amounts relating to market employment arrangements, provided that such net purchase price shall be grossed-up (as determined by the MOM Member) to account for any Membership Interests not being purchased pursuant to this Section 10.4.

10.5 Buy-Out. At any time after the fifth anniversary of the Effective Date, the MOM Member may propose to purchase the MOM Member's interest in any Project (each such Project, a "Buy-Out Project") by delivering written notice of the MOM Member's desire to purchase such Buy-Out Projects to the MO Members (the "Buy-Out Notice"). The MO Member shall have the right to accept the terms of purchase set forth in the Buy-Out Notice or request that the price for the purchase be established by the appraisal process set forth in this Section, in each case by delivery of written notice to the MOM Member within 15 days after delivery of the Buy-Out Notice (the "Acceptance Period"). If the request set forth in the prior sentence (the "Appraisal Request") is not delivered within the Acceptance Period, then the MO Member shall be deemed to have accepted the terms of the purchase set forth in the Buy-Out Notice. If the Appraisal Request is delivered within the Acceptance Period, (a) promptly after such Appraisal Request is delivered, the MOM Member (on the one hand) and the MO Members (on the other hand) will each engage an independent appraiser to perform an appraisal of each Buy-Out Project for its highest and best use, (b) if the two appraisals for any one Buy-Out Project are within five percent (5%) of each other, then the value for that Buy-Out Project shall be the average of the two appraisals, (c) if the two appraisals for any one Buy-Out Project are not within five percent (5%) of each other, then (x) the two existing appraisers shall select a third independent appraiser to perform an appraisal of the Buy-Out Project for its highest and best use and (y) the value for that Buy-Out Project shall be the average of (i) the third appraisal and (ii) whichever of the first two appraisals is closest to the third appraisal and (d) the purchase price for the MO Member's interest in such Buy-Out Project shall be the portion of the Cash From Capital Transactions attributable to a sale of such Buy-Out Project at such value which the MO Member would receive under Section 8.2; provided, however, the MOM Member has no obligation to purchase the Membership Interests for such price, (e) if the MOM Member desires to purchase the Membership Interests held by the MO Member for the price established under the foregoing clause (d), the MOM Member shall deliver written notice to the MO Member within 60 days after the MOM Member delivers to the MO Member the calculation of the purchase price under the foregoing clause (d), and (f) if the MOM Member does not deliver written notice under the foregoing clause (e) within the 60 day period set forth therein, the MOM Member shall be deemed to have elected not to purchase the MO Member's interest in such Buy-Out Project for such price. If the MO Member accepts or is deemed to have accepted the terms of the purchase set forth in the Buy-Out Notice, then the closing of the purchase of the MO Member's interest in such Buy-Out Project shall occur within 30 days after the end of the

Acceptance Period. If the Appraisal Request is delivered and the MOM Member elects to purchase the MO Member's interest in such Buy-Out Project for the price established under clause (d) of this subsection, then the closing of the purchase of the MO Member's interest in such Buy-Out Project shall occur within 30 days after the date on which the MOM Member delivers written notice of its election to purchase under clause (e) of this subsection. The transfer of the MO Member's interest in such Buy-Out Project shall be made pursuant to an assignment under which the MO Member represents he owns such interest free and clear of all security interests, lien, claim of ownership, right of first refusal or options of any kind and have the authority to sell interest without obtaining the consent or authorization from any Person or governmental authority.

10.6 No Dissolution. If a Member Transfers all or any part of its interests in the Company without complying with the provisions of this Agreement, such action shall not cause or constitute a dissolution of the Company.

10.7 New Members. No new Member may be admitted into the Company, and no Membership Interests may be issued, without MM Consent.

11. DISSOLUTION AND WINDING UP OF THE COMPANY.

11.1 Dissolution of Company. The Company shall be dissolved upon the happening of any of the following events:

- (a) MM Consent to dissolve;
- (b) The sale or other disposition of all or substantially all of the assets of the Company;
- (c) The termination of the Company pursuant to Section 5.1; or
- (d) Entry of a judicial decree of dissolution pursuant to the Act.

11.2 Winding Up of the Company. Upon dissolution of the Company, the Managing Manager shall wind up the affairs and liquidate the assets of the Company in accordance with the provisions of this Section 11.2 and the Act. Profits, Losses, Nonrecourse Deductions, Member Nonrecourse Deductions and all other Company items shall be allocated until the liquidation is completed in the same ratio as such items were allocated prior thereto. The proceeds from liquidation of the Company when and as received by the Company shall be utilized, paid and distributed in the following order:

- (a) First, to pay expenses of liquidation;
- (b) Next, to pay the debts of the Company to third parties other than the Members;
- (c) Next, to pay the debts of the Company owing to creditors who are Members;

(d) Next, to the establishment of any Cash Reserves which are reasonably determined to be necessary for contingent liabilities; and

(e) Thereafter, to the Members, in accordance with Section 8.2; provided, however, that the final Capital Account balances of each of the Members prior to the distribution contemplated by this Section 11.2(e), as determined by taking into account all Capital Account adjustments required by this Agreement, are intended to equal the amount that each Member will receive pursuant to Section 8.2. If, for any reason, the distributions pursuant to this Section 11.2(e) (in accordance with Section 8.2) do not result in the same distribution to each Member as would a distribution to the Members in accordance with their positive Capital Account balances upon liquidation of the Company, then the Profits and Losses of the Company and items thereof (including gross income and gross deduction) for the taxable year of the distribution contemplated by this Section 11.2(e) and, if necessary and agreed to by the Managing Manager in its sole discretion, for all prior taxable years for which amended federal tax returns can be filed, shall be revised or amended to the extent possible in order that the final Capital Account balance of each of the Members, prior to the distribution contemplated by this Section 11.2(e) (in accordance with Section 8.2) equals the amount that such Members will receive when the remaining proceeds available for distribution to the Members are distributed pursuant to Section 8.2.

11.3 Right To Receive Property. The Members shall have no right to demand or receive property other than cash in return for their Contributions.

12. BOOKS AND RECORDS; EXPENSES.

12.1 Books of Account. The Managing Manager shall, at the Company's sole cost and expense, keep separate, full and accurate books and records of the Company wherein shall be recorded and reflected all of the Contributions and all of the income, expenses and transactions of the Company and a list of the names and addresses of the Members in alphabetical order. The Administrative Manager or a Member shall have the right at any time to inspect the Company's books and records.

12.2 Accounting and Reports.

(a) Monthly and Annual Reports. The Managing Manager shall, at the Company's sole cost and expense, cause the following to be delivered to the Members on a monthly basis, provided the unaffiliated property management company provides to the Managing Manager the appropriate information for the Managing Manager to prepare applicable financial statement (each shall be prepared in accordance with GAAP, consistently applied, except the monthly financials shall not contain footnotes and shall be subject to normal year-end adjustments):

(i) A balance sheet for the Company as of the end of the month for each of the first 11 months in a Fiscal Year together with a profit and loss statement for the period then ended; and

(ii) For each Fiscal Year, a balance sheet for the Company as of the end of such Fiscal Year together with a profit and loss statement for the year then ended

(at the request of the MOM Member, such financial statements shall be audited by an accounting firm selected by the Managing Member).

The financial statements described in the foregoing clause (i) shall be delivered by the 25th day of the month following the last month in the period subject to such financial statements. The financial statements described in the foregoing clause (ii) shall be delivered by the March 31 after the end of the applicable Fiscal Year.

(b) Tax Returns. The Managing Manager shall engage a firm of independent certified public accountants to review, or sign as preparer, all federal, state and local tax returns which the Company is required to file. The Managing Manager shall deliver to the Members copies of all federal, state and local income tax returns and information returns, if any, which the Company is required to file.

12.3 Banking. The funds of the Company shall be deposited into such account or accounts as are designated by the Managing Manager. All withdrawals of funds of the Company from bank accounts shall be made upon checks (or wire transfer authorizations) signed by the Managing Manager or the Person or Persons designated by the Managing Manager.

12.4 Expenses of Company. All direct expenses incurred in connection with conducting the Company's Business shall be billed to and paid by the Company. If any such expense is paid directly by a Manager or any Affiliate of a Manager, such Person may be reimbursed for such direct expenses without interest.

13. ADJUSTMENT OF BASIS ELECTION. In the event of a Transfer of any Membership Interests in the Company, or in the event of a distribution of the property of the Company to any Member hereto, the Managing Manager may, in its sole discretion, file an election in accordance with Section 754 of the Code and applicable Treasury Regulations to cause the basis of the Company's property to be adjusted for federal income tax purposes, as provided in Sections 734, 743 and 754 of the Code.

14. WAIVER OF ACTION FOR PARTITION. Each of the Members hereby irrevocably waives, during the term of the Company, any right such Member may have to maintain any action for partition with respect to any property of the Company.

15. AMENDMENTS

15.1 Member Consent Required. Subject to Section 15.2 and the rights of the Managing Manager pursuant to Section 6.7, amendments to this Agreement may be made only if approved by the Members (and a Manager, if the amendment affects any of the rights or obligations of such Manager).

15.2 No Member Consent Required. Notwithstanding any provision of this Agreement, the following amendments to this Agreement may be made by the Managing Manager without any approval of any other Member:

(a) To reflect assignments of Membership Interests and substitutions of Members that comply with Section 10; and

(b) To reflect Contributions by the Member.

16. NOTICES. Any notice, communication, request, reply or advice provided for or permitted by this Agreement to be made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served by: (i) delivering the same to such party in person or by commercial courier or personal messenger; (ii) electronic delivery via E-mail (which may include a .pdf, .tif, .gif, .jpeg or similar attachment to the electronic mail message); or (iii) depositing the same into custody of a nationally recognized overnight delivery service such as Federal Express or UPS. Notice given in any of the foregoing manners shall be effective only if and when delivered to (or refusal to accept delivery by) the party to be notified, or in the case of electronic mail, upon the entrance of such electronic mail into the information processing system designated by the recipient's e-mail address provided that the date of transmission is a Business Day (and the transmission is transmitted prior to the close of business) and further provided that: (i) an overnight delivery is forwarded to the party being noticed on the same day as the electronic transmission; or (ii) there is a confirmed receipt of delivery by the sender's server; or (iii) the recipient sends a reply email acknowledging receipt. The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least one (1) Business Day prior written notice to the other party. For the purposes of notice, the addresses of the Managers and the Members, until changed, shall be as follows:

If to MH or the MO Member:

c/o 4G Wireless, Inc.
8871 Research Dr.
Irvine, CA 92610
Attention: Mohammad Honarkar
Email: mhonarkar@4g-ventures.com

Copies to:

Much Shelist, P.C.
660 Newport Center Drive, Suite 900
Newport Beach, CA 92660
Attention: Glenn D. Taxman
Email: gtaxman@muchlaw.com

If to MM or the MOM Member:

c/o Continuum Analytics
520 Newport Center Drive, Suite 480
Newport Beach, CA 92660
Attention: Mahender Makhijani
Email: mahender@continuumanalytics.com

17. ATTORNEYS' FEES. Should any party hereto institute any arbitration, action or proceeding at law or in equity to enforce any provision hereof, including an action for declaratory relief or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision hereof, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

18. REPRESENTATIONS OF THE MEMBERS.

18.1 Representations of MM. MM hereby represents and warrants to MHI and the MO Member as follows:

(a) Binding Agreement. This Agreement constitutes the valid and binding agreement of MM and the MOM Member, enforceable against MM and the MOM Member in accordance with its terms, subject as to enforcement to bankruptcy, insolvency and other similar laws affecting the rights of creditors and to general principals of equity;

(b) Authority. Each of MM and the MOM Member has been duly formed and is validly existing in good standing under the laws of the State of Delaware, with all requisite power and authority to enter into this Agreement, to carry out the provisions and conditions hereof and to perform all acts necessary or appropriate to consummate all of the transactions contemplated hereby and no further action by MM or the MOM Member is necessary to authorize the execution or delivery of this Agreement;

(c) Execution. This Agreement has been duly and validly executed and delivered by MM and the MOM Member; and

(d) Litigation. There is no action, suit or proceeding pending or, to MM's knowledge, threatened against MM and the MOM Member that questions the validity or enforceability of this Agreement.

18.2 Representations of MH. MH hereby represents and warrants to MM and the MOM Member as follows:

(a) Binding Agreement. This Agreement constitutes the valid and binding agreement of MH and the MO Member, enforceable against MH and the MO Member in accordance with its terms, subject as to enforcement to bankruptcy, insolvency and other similar laws affecting the rights of creditors and to general principals of equity;

(b) [reserved];

(c) Execution. This Agreement has been duly and validly executed and delivered by MH and the MO Member; and

(d) Litigation. There is no action, suit or proceeding pending or, to MH's knowledge, threatened against MH or the MO Member that questions the validity or enforceability of this Agreement.

19. MISCELLANEOUS.

19.1 Applicable Law; Venue. This Agreement shall, in all respects, be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of law principles. Subject only to the arbitration provisions set forth at Section 19.10 of this Agreement, the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the state courts of the State of California in Los Angeles County or the United States District Court for the Central District of California, for the purposes of any lawsuit, action or other proceeding arising out of or based upon this Agreement and the subject matter hereof. The parties hereto, to the greatest extent permitted by applicable law, hereby irrevocably and unconditionally waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such lawsuit, action or other proceeding brought in the above-named courts or as provided in the arbitration provisions of this Agreement, any claim that it is not subject personally to the jurisdiction of such courts or arbitration tribunal, that its property is exempt or immune from attachment or execution, that the lawsuit, action or proceeding is brought in an inconvenient forum, that the venue of the lawsuit, action or proceeding is improper or that this Agreement may not be enforced in or by such court or tribunal. Final judgment against a party in any such lawsuit, action or proceeding shall be conclusive, and may be enforced in any other jurisdiction (x) by lawsuit, action or proceeding on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of the liability of the party as therein described or (y) in any other manner provided by or pursuant to the laws of such other jurisdiction.

19.2 Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

19.3 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their successors and permitted assigns.

19.4 Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so requires.

19.5 Entire Agreement. This Agreement (including the Exhibits) executed by each Member constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and thereof and any and all prior agreements, understandings or representations with respect to the subject matter hereof and thereof, including without limitation the Term Sheet, are hereby terminated and canceled in their entirety and are of no further force or effect.

19.6 Waiver. A waiver of any provision of this Agreement shall be valid only if it is in writing and signed by the party making the waiver. No waiver by any party hereto of any breach of this Agreement or any provision hereof shall be deemed to be a waiver of any

preceding or succeeding breach of the same or any other provision hereof. No custom, practice or course of dealings which arise among the Members and/or the Managers in the administration hereof shall be construed as a waiver or diminution of the right of any Member or Manager to insist upon the strict performance by any other Member or Manager of the terms, covenants, agreements and conditions herein contained.

19.7 Counterparts. 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. Signatures provided by facsimile or in portable document format (a/k/a pdf) or other electronic format shall be as binding as original signatures. The parties agree that this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on such parties as if it were physically executed and each party to this Agreement hereby consents to the use of any third party electronic signature capture service providers as may be chosen by the other party.

19.8 Interpretation. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

19.9 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the parties and their successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any party to this Agreement, nor shall any provision give any third Person any right of subrogation or action over or against any party to this Agreement.

19.10 Arbitration. In the event a Member or Manager breaches the terms of this Agreement, the non-breaching party shall have all rights and remedies available at law (for actual damages) and/or in equity; provided that no party shall be liable for consequential, punitive or special damages. Any dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (including whether the claims asserted are arbitrable), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or such other rules as the parties may agree upon. Such arbitration shall be conducted by a single independent arbitrator. The parties to the arbitration shall within five (5) Business Days mutually agree on a single independent arbitrator. If they are unable to agree on an independent person within such five (5) Business Day period, the arbitrator shall be appointed by JAMS in accordance with its rules. Any arbitrator shall be either (A) a retired judge or (B) an attorney with at least twenty (20) years of litigation experience. The place of arbitration shall be Irvine, California. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives and judgment may be entered thereon in any court of competent jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the

arbitration, including the fees of the arbitrator, and may award attorneys' fees and costs to the prevailing party. Discovery in accordance with California law shall be permitted. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the parties.

19.11 Expenses. Each party shall be responsible for all fees and expenses incurred by or on behalf of such party in connection with the negotiation and execution of this Agreement and the transfer of interests in the Subsidiaries to the Company.

19.12 Further Assurances. The MO Member shall take any and all action, and execute all documents necessary, to complete the assignment to the Company or a Subsidiary of any rights the MO Member has, directly or indirectly through another entity or entities, in and to the Projects.

19.13 Confidentiality. The Members and the Managers agree to keep the contents of this Agreement confidential; provided, however, the Members and Managers may disclose this agreement to their respective Affiliates and to the directors, officers, employees, agents, investors, representatives, attorneys, accountants and other advisors of a Member, a Manager or an Affiliate of a Member or a Manager and disclosure shall be permitted as required in connection with any financing or equity capital obtained or sought by the Company or any Subsidiary, by law (including in connection with any tax filing or audit), in accordance with legal process, or in connection with any dispute hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

MOM AS Investor Group LLC

By: MOM AS Manager, LLC, a Delaware limited liability company

By: _____
Banayotis Rhaddad, Manager

MOM AS Manager LLC

By: _____
Banayotis Rhaddad, Manager

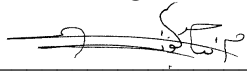

Mohammad Honarkar

Signature Page to Operating Agreement

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

MOM AS Investor Group LLC

By: MOM AS Manager LLC, a Delaware limited liability company, Manager

By: 
Banayotis Haddad, Manager

MOM AS Manager LLC

By: 
Banayotis Haddad, Manager

Mohammad Honarkar

Exhibit A

Participation Percentages and Capital Percentages

The Participation Percentages of the Members for Projects are as follows:

MOM Member: 50%
MO Member: 50%

If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b). The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence.

The Participation Percentages of the Members for Other Owned LLCs are as follows:

MOM Member: 0%
MO Member: 100%

If MO Member does do not make the Contributions for an Other Owned LLC pursuant to Section 6.1(c) and the MOM Member makes a Contribution for an Other Owned LLC (or a loan pursuant to Section 6.2(d)), then the Participation Percentage for each Member for the Other Owned LLCs shall be adjusted to equal the Contributions made by such Member for the Other Owned LLCs plus any loan made by such Member under Section 6.2(d) divided by the total Contributions made by all Members for the Other Owned LLCs plus the loans made by the MOM Member pursuant to Section 6.2(d). The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence. The initial Contributions made by the MOM Member as of the date hereof for the Other Owned LLCs are \$14,835,000.

The Capital Percentages of the Members for Projects are as follows:

MOM Member: 80.1%
MO Member: 19.9%

If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section

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6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b); provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence.

The Capital Percentages of the Members for Other Owned LLCs are as follows:

MOM Member: 80.1%

MO Member: 19.9%

If MO Member does do not make the Contributions for an Other Owned LLC pursuant to Section 6.1(c) and the MOM Member makes a Contribution for an Other Owned LLC (or a loan pursuant to Section 6.2(d)), then the Capital Percentage for each Member for the Other Owned LLCs shall be adjusted to equal the Contributions made by such Member for the Other Owned LLCs plus any loan made by such Member under Section 6.2(d) divided by the total Contributions made by all Members for the Other Owned LLCs plus the loans made by the MOM Member pursuant to Section 6.2(d); provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence.

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Exhibit B

Subsidiaries

Retreat at Laguna Villas, LLC
Sunset Cove Villas, LLC
Duplex at Sleepy Hollow, LLC
Cliff Drive Properties DE, LLC
694 NCH Apartments, LLC
Heisler Laguna, LLC

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Exhibit C

First Choice LLC

MOM BS Investco LLC, a Delaware limited liability company.

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FIRST AMENDMENT TO OPERATING AGREEMENT OF
MOM AS INVESTCO LLC

This First Amendment to Operating Agreement of MOM AS Investco LLC (this "Amendment") is made as of June 30, 2021, among MOM AS Manager LLC, a Delaware limited liability company, as the Managing Manager of the Company (as hereinafter defined), MOM AS Investor Group LLC, a Delaware limited liability company, as a member of the Company, and Mohammad Honarkar, as a member and Administrative Manager of the Company, with reference to the following facts:

A. MOM AS Investco LLC, a Delaware limited liability company (the "Company") is governed by an Operating Agreement of the Company, dated as of as of June 8, 2021 (the "Agreement").

B. The parties desire to amend the Agreement on the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Amendment. The Agreement is amended as follows:

(a) The MOM Member may designate Museum (Heisler Laguna, LLC) as a Project at any time without any further action by the Managers or the Members.

(b) No later than August 31, 2021, the Administrative Manager shall prepare an initial business plan for Museum (Heisler Laguna, LLC). If the Administrative Manager does not prepare an initial business plan for such project by August 31, 2021, then the Managing Manager shall be entitled to prepare a business plan for such project. The business plan for such project shall include the development budget for such project. The final business plan for any Project shall be determined by the Managing Manager in its sole discretion.

(c) The architect and general contractor for a Project shall be determined in the sole discretion of the Managing Manager after consultation with the Administrative Manager.

(d) The following definition is added to Section 1:

"MO Member Capital Credit" means the portion of the \$35 million capital credit allocated to Projects hereunder by the MOM Member.

(e) Section 6.2(a) is deleted and replaced with the following:

"(a) With respect to a Project, if the MOM Member in its good faith business judgment determines that additional Contributions are required any reason (including to pay any pre-development costs), then the MOM Member may provide written notice to all Members calling for additional Contributions (the 'Mandatory Additional Contributions'), which notice shall set forth the date on which such Contributions are due (which shall not be less than five Business Days after the date of such notice). Each

Member shall make a Contribution equal to 50% of the aggregate Mandatory Additional Contributions being called."

(f) The reference to "\$35,000,000" in Section 8.2(a)(iv) is deleted and replaced with "the MO Member Capital Credit".

(g) Section 9.10 (e) is deleted and replaced with "(e) [reserved]"

(h) Section 9.13 is deleted in its entirety and replaced with the following:

"9.13 Special Indemnity. The MO Member shall indemnify the Managing Manager and the MOM Member for all damages, losses, claims, expenses or liabilities incurred by the Managing Manager and the MOM Member with respect to (i) any litigation with respect to a Project pending, or (ii) arising out of facts or circumstances occurring, on or before June 30, 2021 specifically related to the Newport Crossing Project. The MO Member shall pay all costs and expenses of defending such litigation; such payments shall not be deemed a loan or Contribution to the Company and the MO Member shall not be entitled to reimbursement from the Company or a Subsidiary for such costs and expenses. If a Project is subject to (i) litigation pending, or (ii) arising out of facts or circumstances occurring, on or before June 30, 2021 specifically related to the Newport Crossing Project, then the MOM Member shall be entitled to cause such litigation to be settled in its sole discretion; provided, that the Administrative Manager can block such settlement by purchasing (or causing the MO Member to purchase) from the MOM Member its indirect interest in such Project for a purchase price equal to the amount the MOM Member would receive under Section 8.2(a) hereof if such Project was sold for the appraised "as-built" value as determined by an appraiser mutually agreed to by the Managers and the proceeds thereof were distributed under Section 8.2(a) hereof and obtaining a full release of any guaranties or indemnities provided by MM, the MOM Member or any Affiliate of MM or the MOM Member under any financing for such Project (if such purchase occurs, then the Project shall become an Other Owned LLC)."

(i) Section 10.1(a) is amended to provide that the MO Consent is not required (i) if the person Controlling the manager of the MOM Member is the same person immediately before, and immediately after, the transaction involving a change in the Person(s) Controlling the MOM Member or (ii) with respect to a transfer of the MOM Member's Membership Interest to MOM CA Investor Group LLC, a Delaware limited liability company.

(j) Section 15.2 is deleted and replaced with the following:

"15.2 No Member Consent Required. Notwithstanding any provision of this Agreement, the following amendments to this Agreement may be made by the Managing Manager without any approval of any other Member or Manager:

(a) To reflect assignments of Membership Interests and substitutions of Members that comply with Section 10; and

(b) To reflect Contributions by the Member;

(c) To cure any ambiguity, or correct or supplement any provision herein which may be inconsistent with any other provision herein or any provision of relevant law (including amendments to the allocations provided herein that may be appropriate in view of the regulations under Section 704 of the Code or otherwise to comply with relevant law) provided that any such ambiguity or inconsistency is resolved in a manner which the Board believes in good faith to be neutral or favorable to the Members or required by law;

(d) To correct any printing, stenographic or clerical errors or omissions;

(e) A modification, deletion or addition of any provision to this Agreement which is necessary to maintain the status of the Company as a tax partnership under federal or state law; or

(f) To make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement, in each case so long as the change does not materially and adversely affect a Member or a Manager and a Member or Manager does not object to such change in writing within ten (10) days of being advised thereof in writing by the Managing Manager."

(k) The paragraph in Exhibit A which reads as follows:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b). The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

is deleted and replaced with the following:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) plus the MO Member Capital Credit, (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) plus the Contributions made by the Members

pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b) plus the MO Member Capital Credit. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

(l) The sentence in Exhibit A which reads "The initial Contributions made by the MOM Member as of the date hereof for the Other Owned LLCs are \$14,835,000." is deleted and changed to "The initial Contributions made by the MO Member as of the date hereof for the Other Owned LLCs are \$14,835,000."

(m) The paragraph in Exhibit A which reads as follows:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a) then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) (ii) plus any Contributions made by such Member under Section 6.2(a) (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)) plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b); provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

is deleted and replaced with the following:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a) then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) plus the MO Member Capital Credit, (ii) plus any Contributions made by such Member under Section 6.2(a) (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b) plus the MO Member Capital Credit; provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

2. Agreement in Full Force. Except as amended by this Amendment, the Agreement is unchanged and in full force and effect.
3. Facsimile/PDF; Counterparts. Each party hereto shall be authorized to rely upon the signatures of all of the parties hereto on this Amendment which are delivered by facsimile or PDF as constituting a duly authorized, irrevocable, actual, current delivery of this Amendment

with original ink signatures of each party. This Amendment may be executed in counterparts, each of which shall be deemed an original part and all of which together shall constitute a single agreement.

[Remainder of page intentionally left blank and signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first written above.

MOM AS Investor Group LLC

By: MOM AS Manager, LLC, a Delaware limited liability company, Manager

By: 
Banayotis Haddad, Manager

MOM AS Manager LLC

By: 
Banayotis Haddad, Manager

Mohammad Honarkar

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IN WITNESS WHEREOF, the parties have executed this Amendment on the date first written above.

MOM AS Investor Group LLC

By: MOM AS Manager, LLC, a Delaware limited liability company, Manager

By: _____
Banayotis Haddad, Manager

MOM AS Manager LLC

By: _____
Banayotis Haddad, Manager



Mohammad Honarkar

**SECOND AMENDMENT TO OPERATING AGREEMENT OF
MOM AS INVESTCO LLC; MOM BS INVESTCO LLC; MOM CA INVESTCO LLC**

This Agreement (“**Agreement**”) is made as of August 26, 2021 (the “**Effective Date**”) by and among MOHAMMAD HONARKAR and MO Member (collectively, “**MH**”), MOM AS INVESTCO LLC, a Delaware limited liability company (the “**AS Company**”), MOM AS MANAGER LLC, a Delaware limited liability company (“**AS Manager**”), MOM AS INVESTOR GROUP LLC, a Delaware limited liability company (“**AS Investor**”), MOM BS INVESTCO LLC, a Delaware limited liability company (the “**BS Company**”), MOM BS MANAGER LLC, a Delaware limited liability company (“**BS Manager**”), MOM BS INVESTOR GROUP LLC, a Delaware limited liability company (“**BS Investor**”), MOM CA INVESTCO LLC, a Delaware limited liability company, (the “**CA Company**”; together with the AS Company and the BS Company are sometimes collectively referred to as the “**Companies**”), MOM CA MANAGER LLC, a Delaware limited liability company (“**CA Manager**”), and MOM CA INVESTOR GROUP LLC, a Delaware limited liability company (“**AS Investor**”). The Companies, together with AS Manager, AS Investor, BS Manager, BS Investor, CA Manager and CA Investor are sometimes collectively referred to as the “**Non-MH Parties**.”

RECITALS

A. The AS Company is governed by an Operating Agreement of the AS Company, dated as of as of June 8, 2021, as amended by a First Amendment dated as of June 30, 2021 (collectively, the “**AS Agreement**”).

B. The BS Company is governed by an Operating Agreement of the BS Company, dated as of as of June 8, 2021, as amended by a First Amendment dated as of June 30, 2021 (collectively, the “**BS Agreement**”).

C. The CA Company is governed by an Operating Agreement of the CA Company, dated as of as of June 8, 2021, as amended by a First Amendment dated as of June 30, 2021 (collectively, the “**CA Agreement**”; together with the AS Agreement and the BS Agreement are sometimes collectively referred to as the “**Operating Agreements**”).

D. As of the Effective Date, various of the Other Owned LLCs and Subsidiaries are executing that certain Promissory Note (the “**Note**”) in the principal amount of Seventeen Million Two Hundred Fifty-Five Thousand Three Hundred Sixteen Dollars (\$17,255,316.00) (the “**Loan**”) in favor of Coastline Santa Monica Investments, LLC. MH is providing a full guaranty of such Loan. All of the proceeds of the Loan are being used for the sole purpose of avoiding a claim made pursuant to a Judgment being made by the beneficiary of the Judgment against the Projects and real property owned by the Other Owned LLCs and Subsidiaries. Such a claim can be avoided by satisfying the Judgment and paying it in full.

E. The parties desire to amend the respective Operating Agreements.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are hereby incorporated herein by this specific reference. All capitalized terms used in this Agreement and not otherwise defined shall have the same definitions as are ascribed to them in the Operating Agreements.

2. Amendment: The Operating Agreements are amended by adding the following new Section 9.8(j):

“(j) For the MO Member and MH, Sections 9.8(b) and (c) of this Operating Agreement are modified to add “negligence” immediately after “bad faith”. In addition, the MO Member and MH, jointly and severally, shall indemnify and hold harmless MOM AS Investco LLC, a Delaware limited liability company, MOM AS Manager LLC, a Delaware limited liability company, MOM AS Investor Group LLC, a Delaware limited liability company, MOM BS Investco LLC, a Delaware limited liability company, MOM BS Manager LLC, a Delaware limited liability company, MOM BS Investor Group LLC, a Delaware limited liability company, MOM CA Investco LLC, a Delaware limited liability company, MOM CA Manager LLC, a Delaware limited liability company, and MOM CA Investor Group LLC, a Delaware limited liability company, and each of their respective permitted successors, officers, directors, managers, members, partners, employees, agents and affiliates (individually an “**Indemnitee**”) from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys’ fees and disbursements), judgments, fines, settlements and other amounts incurred by an Indemnitee relating to or arising from (i) any intentional fraud, willful misconduct, bad faith, negligence or material breach of this Agreement by the MO Member or MH, or (ii) any fact or circumstance first arising prior to June 8, 2021, with respect to any Project or other asset owned directly or indirectly by the Company (including, without limitation, any asset owned by any of the Other Owned LLCs), or (iii) in the event that said property is sold then any fact or circumstance arising through the date of the sale including the execution of the required sale documents, except, with respect to this clause (iii) only, for any intentional fraud, willful misconduct, bad faith or material breach of this Agreement by any Indemnitee.”

3. Representations & Warranties by the Non-MH Parties. The Non-MH Parties will obtain a written consent from Preferred Bank to the Loan and provide such consent to MH within 90 days following the Effective Date. If the Non-MH Parties are unable to obtain written consent from Preferred Bank within said 90 days and a default under the loan documents is declared as a result of the Loan, then the Non-MH Parties shall refinance the Preferred Bank loan prior to foreclosure. In the event Lone Oak Fund LLC claims a default under its loan documents as a result of the Loan, then the Non-MH Parties shall refinance the Lone Oak loan prior to foreclosure. In the event of a breach by the Non-MH Parties of this Section 3, MH shall have any and all rights and remedies available to him at law and/or in equity.

4. Agreement in Full Force. Except as amended by this Agreement, each Operating Agreement is unchanged and in full force and effect.

5. Prevailing Party: If any action or proceeding is commenced by either party to enforce its rights or remedies under this Agreement (an “**Action**”), the prevailing party in such Action shall be entitled to recover its actual attorneys’ fees and court costs incurred therewith.

6. Facsimile/PDF; Counterparts. This Agreement may be executed in one or more counterparts. All such counterparts, when taken together, shall comprise the fully executed Agreement. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to an electronic mail message or signed electronically using DocuSign or other similar software, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version of this Agreement, delivered in person. This Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on such parties as if it were physically executed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MOM AS INVESTCO LLC By: MOM AS Manager, LLC, Manager By: _____ Banayotis Haddad, Manager	 MOHAMMAD HONARKAR
MOM AS INVESTOR GROUP LLC By: MOM AS Manager, LLC, Manager By: _____ Banayotis Haddad, Manager	MOM CA INVESTCO LLC By: MOM CA Manager, LLC, Manager By: _____ Deba Shyam, Manager
MOM AS MANAGER LLC By: _____ Banayotis Haddad, Manager	MOM CA INVESTOR GROUP LLC By: MOM CA Manager, LLC, Manager By: _____ Deba Shyam, Manager
MOM BS INVESTCO LLC By: MOM BS Manager, LLC, Manager By: _____ Jason Everett Miller, Manager	MOM CA MANAGER LLC By: _____ Deba Shyam, Manager
MOM BS INVESTOR GROUP LLC By: MOM BS Manager, LLC, Manager By: _____ Jason Everett Miller, Manager	
MOM BS MANAGER LLC By: _____ Jason Everett Miller, Manager	

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EXHIBIT D

THE INTERESTS ACQUIRED PURSUANT TO THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS THEY HAVE BEEN REGISTERED UNDER SAID ACT OR UNLESS REGISTRATION UNDER SAID ACT IS NOT REQUIRED. THERE ARE SUBSTANTIAL RESTRICTIONS ON TRANSFER CONTAINED IN THIS AGREEMENT.

OPERATING AGREEMENT
OF
MOM BS INVESTCO LLC

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**OPERATING AGREEMENT
OF
MOM BS INVESTCO LLC
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**OPERATING AGREEMENT
OF MOM BS INVESTCO LLC**

THIS OPERATING AGREEMENT OF MOM BS INVESTCO LLC (this "Agreement") is made and entered into as of June 8, 2021, (the "Effective Date"), by and between MOM BS Manager LLC, a Delaware limited liability company ("MM"), as the Managing Manager of the Company, MOM BS Investor Group LLC, a Delaware limited liability company (the "MOM Member"), as a Member, Mohammad Honarkar, as a member (the "MO Member"), and Mohammad Honarkar ("MH"), as the Administrative Manager, with reference to the following facts:

A. On May 21, 2021 (the "Formation Date"), the Certificate of Formation for MOM BS Investco LLC (the "Company") was filed with the Delaware Secretary of State.

B. The Members intend for the Company to engage in the Business described herein.

C. Prior to the Effective Date, Continuum Analytics, a California corporation and an affiliate of MM, and 4G Wireless, Inc., a California corporation and an affiliate of MH documented their preliminary understanding regarding the material terms of the Business and this Agreement in a Term Sheet, dated May 24, 2021, (the "Term Sheet") and they now desire to cause the parties to enter into this Agreement to supersede any previous discussions or documentation regarding the Business and the Company, including without limitation the Term Sheet.

D. The Members now desire to adopt and approve this Agreement as the limited liability company agreement for the Company under the Act.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, as of the Effective Date, the Members hereby incorporate the foregoing recitals into, and make them a part of, this Agreement and agree as follows:

1. DEFINITIONS. When used in this Agreement, the following terms shall have the meanings set forth below:

1.1 Act. "Act" means the Delaware Limited Liability Company Act.

1.2 Administrative Manager. "Administrative Manager" has the meaning set forth in Section 9.1(a).

1.3 Affiliates. "Affiliates" of a Person means Persons Controlled by, Controlling or under common Control with such Person, or the family members of a Person.

1.4 Agreement. "Agreement" has the meaning set forth in the first paragraph of this Agreement.

1.5 Approved Budget. "Approved Budget" has the meaning set forth in Section 9.12 of this Agreement.

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1.6 Book Value. "Book Value" means for any asset the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Book Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as reasonably determined by the Tax Person.

(b) The Book Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Tax Person, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis capital contribution if the Tax Person reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company if the Tax Person reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g).

(c) The Book Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as reasonably determined by the Tax Person.

(d) The Book Values of Company assets shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Book Values shall not be adjusted pursuant to this subsection to the extent the Tax Person determines that an adjustment pursuant to subsection (b) of this Section is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection.

(e) If the Book Value of an asset has been determined or adjusted pursuant to subsections (a), (b) or (d) of this Section, such Book Value shall thereafter be adjusted by the Book Depreciation (hereafter defined) taken into account with respect to such asset for purposes of computing Profits and Losses. "Book Depreciation" for any asset means for any fiscal year or other period an amount that bears the same ratio to the Book Value of that asset at the beginning of such fiscal year or other period as the federal income tax depreciation, amortization or other cost recovery deduction allowable for that asset for such year or other period bears to the adjusted tax basis of that asset at the beginning of such year or other period. If the federal income tax depreciation, amortization or other cost recovery deduction allowable for any asset for such year or other period is zero, then Book Depreciation for that asset shall be determined with reference to such beginning Book Value using any reasonable method selected by the Tax Person.

1.7 Business Day. "Business Day" means any day other than Saturday, Sunday or any legal holiday observed in the State of California.

1.8 Business Plan. "Business Plan" has the meaning set forth in Section 9.10(a) of this Agreement.

1.9 Capital Account. "Capital Account" means an account established for each Member and determined in accordance with Section 1.704-1(b) of the Regulations. The Capital Accounts shall be adjusted in order to reflect allocations of depreciation, amortization, and gain and loss as computed for book purposes. Upon the Transfer of any Member's interest in the Company carried out in accordance with the terms of this Agreement, the Capital Account of the transferor Member shall carry over to the transferee Member.

1.10 Capital Percentage. "Capital Percentage" shall mean the percentages for the Members set forth on Exhibit A attached hereto.

1.11 Capital Transaction. "Capital Transaction" means a sale, refinance, exchange, transfer, assignment or other disposition of all or any portion of the assets of the Company or a Subsidiary.

1.12 Cash From Capital Transactions. "Cash From Capital Transactions" means the net proceeds received by the Company from a Capital Transaction that, in the sole discretion of the Managing Manager, are available for distribution to the Members after any loans made by a Member to the Company have been repaid, any expenses of the Company (including fees hereunder) have been paid, and a provision has been made for Cash Reserves. Cash From Capital Transactions shall be measured separately for Projects, as a group, and the Other Owned LLCs, as a group, such that only the expenses, loans or Cash Reserves for the Projects shall be paid or reserved from proceeds of a Capital Transaction for a Project and only the expenses, loans or Cash Reserves for the Other Owned LLCs shall be paid or reserved from proceeds of a Capital Transaction for an Other Owned LLC.

1.13 Cash From Operations. "Cash From Operations" means, for any period, such portion of the cash in the Company's bank accounts that, in the sole discretion of the Managing Manager, is available for distribution to the Members after any loans made by a Member to the Company have been repaid, any expenses of the Company (including fees hereunder) have been paid, and a provision has been made for Cash Reserves. Cash From Operations shall be measured separately for Projects, as a group, and the Other Owned LLCs, as a group, such that only the expenses, loans or Cash Reserves for the Projects shall be paid or reserved from cash for the Projects and only the expenses, loans or Cash Reserves for the Other Owned LLCs shall be paid or reserved from cash for an Other Owned LLC. Cash From Operations shall not include the proceeds of Contributions or Cash From Capital Transactions.

1.14 Cash Reserves. "Cash Reserves" means such amounts as may be estimated by the Managing Manager for payment of costs, expenses and liabilities incident to the business of the Company and for which the cash to make such payments will not, in the reasonable discretion of the Managing Manager, be expected to be available to the Company at or about the time such payments are required to be made, and which therefore, in the reasonable discretion of the Managing Manager, require that cash be set aside periodically to make such payments.

1.15 Certificate of Formation. "Certificate of Formation" means the written instrument filed with the Delaware Secretary of State for the purpose of forming the Company.

1.16 Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.17 Company. "Company" shall have the meaning set forth in Recital A.

1.18 Company Minimum Gain. "Company Minimum Gain" means "partnership minimum gain," as defined in the Regulations promulgated under Section 704(b) of the Code.

1.19 Contribution. "Contribution" means any money or property, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted by law, which a Member contributes to the Company as capital in that Member's capacity as a Member pursuant to this Agreement.

1.20 Control. "Control", "Controlled", and "Controlling" mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.21 Development Budget. "Development Budget" has the meaning set forth in Section 9.10(e) of this Agreement.

1.22 Effective Date. "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

1.23 First Choice LLC. "First Choice LLC" means the limited liability company set forth on Exhibit C attached hereto.

1.24 Fiscal Year. "Fiscal Year" means the calendar year.

1.25 Formation Date. "Formation Date" has the meaning set forth in the recitals to this Agreement.

1.26 GAAP. "GAAP" means United States generally accepted accounting principles.

1.27 Hotel Laguna Project. "Hotel Laguna Project" means Hotel Laguna, LLC **(and Beach Club)**, Cliff Village, LLC and all real property owned by either of such limited liability companies (including the real property located at 421 S Coast Hwy and 425 S Coast Highway, Laguna Beach, CA).

1.28 Managers. "Managers" has the meaning set forth in Section 9.1(a).

1.29 Managing Manager. "Managing Manager" has the meaning set forth in Section 9.1(a).

1.30 Mandatory Additional Contributions. "Mandatory Additional Contributions" has the meaning set forth in Section 6.2(a).

1.31 Member or Members. "Member" or "Members" shall mean those Persons entering into this Agreement as a Member, as set forth in the first paragraph of this Agreement, and shall also include any other Person admitted to the Company as a Member in accordance with this Agreement, or a Person who has been admitted as a Member pursuant to applicable law.

1.32 Member Nonrecourse Debt. "Member Nonrecourse Debt" has the meaning ascribed to the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

1.33 Member Nonrecourse Debt Minimum Gain. "Member Nonrecourse Debt Minimum Gain" means an amount, with respect each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability (as defined in Regulations Section 1.704-2(b)(3)), determined in accordance with Regulations Section 1.704-2(i)(3).

1.34 Member Nonrecourse Deductions. "Member Nonrecourse Deductions" means the Company deductions that are characterized as "partner nonrecourse deductions" pursuant to the Regulations promulgated under Section 704(b) of the Code.

1.35 Membership Interest. "Membership Interest" means the interest of a Member in the Company.

1.36 MH Default. "MH Default" means (a) a breach by MH or 4G Wireless, Inc., a California corporation ("4G"), of any of his or its representations, covenants or obligations under the Contribution Agreement, of even date herewith, among MH, 4G, the Company and the other parties named therein, including a failure to contribute the membership interests in a Held-back LLC (as defined in such Contribution Agreement) at the time required thereunder, or (b) a breach of any obligation of MH or the MO Member hereunder with respect to the Other Owned LLCs, (c) a receiver is appointed for any of the membership interests held by the MO Member or (d) a receiver is appointed for any of the Subsidiaries or assets contributed to the Company by the MO Member due to facts or circumstances related to the MO Member or any of its Affiliates; or (e) if MH fails to use best efforts to have his wife execute a stipulation on or after the date hereof which provides 90 days for MH to make the \$20 million payment to her and a family court appoints a receiver for any of the membership interests held by the MO Member or any of the Subsidiaries or assets contributed to the Company by the MO Member; provided, however the matters in clauses (c) and (d) shall not be a MH Default if the receiver is appointed by family court and MH uses best efforts to have such receiver removed.

1.37 MM Consent. "MM Consent" means the written consent of the Managing Manager in its sole discretion.

1.38 MOM CA Operating Agreement. "MOM CA Operating Agreement" means Operating Agreement for MOM CA Investco LLC, of even date herewith.

1.39 New Audit Procedures. "New Audit Procedures" has the meaning set forth in 9.6.

1.40 Nonrecourse Deductions. "Nonrecourse Deductions" mean the Company deductions that are characterized as "nonrecourse deductions" pursuant to the Regulations promulgated under Section 704(b) of the Code.

1.41 Other Owned LLCs. "Other Owned LLCs" means the Subsidiaries, excluding any Subsidiary which becomes a Project pursuant to Section 9.10(h).

1.42 Participation Percentage. "Participation Percentage" means the percentages for the Members set forth on Exhibit A attached hereto.

1.43 Person. "Person" means an individual, partnership, limited partnership, corporation, trust, estate, association, limited liability company or other entity, whether foreign or domestic.

1.44 Priority Return. "Priority Return" means, for the MOM Member, a cumulative return on the aggregate Unreturned Contributions of the MOM Member at a rate of 20% per annum (compounded); provided, however, with respect to the Hotel Laguna Project, "Priority Return" means a cumulative return on the Unreturned Contributions of the MOM Member made for Hotel Laguna Project at a rate of 20% per annum (compounded).

1.45 Profits and Losses. "Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

(b) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

(c) Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(1)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;

(d) In the event the Book Value of any Company asset is adjusted pursuant to Section 1.6(b), Section 1.6(d) or Section 1.6(e), the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(e) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704(b)(2)(iv)(m)(4), to be taken into account in determining the Capital Account as a result of a distribution other than in liquidation of a Membership Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(g) Any items which are specially allocated pursuant to Sections 7.2, 7.3, 7.6 and 7.7 hereof shall not be taken into account in computing Profits or Losses.

1.46 Project. "Project" means any Subsidiary which becomes a Project under Section 6.1(d) or 9.10(h).

1.47 Regulations. "Regulations" means the Income Tax Regulations promulgated under the Code, including Temporary and Proposed Regulations, as such Regulations may be amended from time to time, including corresponding provisions of succeeding Regulations.

1.48 Securities Act. "Securities Act" means the Securities Act of 1933, as amended.

1.49 Subsidiaries. "Subsidiaries" means the limited liability companies described on Exhibit B.

1.50 Tax Person. "Tax Person" means the Person designated as the "Tax Person" under Section 9.6.

1.51 Term Sheet. "Term Sheet" has the meaning set forth in the recitals to this Agreement.

1.52 Transfer. "Transfer" means any encumbrance, gift, assignment, pledge, hypothecation, sale or other transfer of all or any portion of a Membership Interest.

1.53 Unreturned Contributions. "Unreturned Contributions" means, for the MOM Member the excess (if any) of (a) the aggregate Contributions made by such Member under the MOM CA Operating Agreement, the operating agreement for the First Choice LLC or hereunder (excluding Contributions made under Section 6.6 hereof or under Section 6.6 of the MOM CA Operating Agreement or the operating agreement for the First Choice LLC), over (b) the aggregate distributions to such Member pursuant to Sections 8.1(a)(ii), 8.1(b)(ii), 8.2(a)(ii) and 8.2(b)(ii) hereof and any distributions to the MOM Member under the MOM CA Operating Agreement or from the First Choice LLC (other than a distribution to pay the Priority Return or the priority return under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC or a distribution made to return any capital contribution made by the MOM Member to the First Choice LLC or under the MOM CA Operating Agreement); provided,

however, with respect to the Hotel Laguna Project, "Unreturned Contributions" means the excess of (i) the Contributions of the MOM Member made for Hotel Laguna Project under the MOM CA Operating Agreement over (ii) the aggregate distributions to such Member pursuant to Sections 8.1(a)(ii) and 8.2(a)(ii) of the MOM CA Operating Agreement from cash attributable to the Hotel Laguna Project.

2. FORMATION OF LIMITED LIABILITY COMPANY. The Company has been formed by the filing of the Certificate of Formation with the Delaware Secretary of State pursuant to the provisions of the Act. To the extent anything contained in this Agreement modifies, supplements or otherwise affects any such right, liability or obligation arising under the Act, this Agreement shall supersede the Act to the extent not mandated thereby.

3. NAME AND PLACE OF BUSINESS.

3.1 Name. The name of the Company shall be MOM BS Investco LLC.

3.2 Office; Agent for Service of Process. The name and address of the agent for service of process are as set forth in the Certificate of Formation. The Managing Manager may change the registered office and the registered agent of the Company as the Managing Manager may deem appropriate. The Company shall maintain a principal place of business and office(s) at such place or places as the Managing Manager may from time to time designate.

4. PURPOSE. The purpose of the Company is to engage in (a) any activities with respect to the Subsidiaries (or the assets owned by the Subsidiaries) or the Projects and (b) any and all other activities permitted under the Act and approved by the Managers.

5. TERM OF COMPANY; RECORDINGS.

5.1 Term. The Company commenced as of the Formation Date and shall continue until dissolved, unless sooner terminated as herein provided or by operation of law.

5.2 Qualification. The Company shall file any documents with any other appropriate governmental agencies as may be required by applicable law. The Company shall qualify to do business in any other jurisdiction as may be required under the laws of such jurisdiction.

6. CONTRIBUTIONS AND LOANS.

6.1 Initial Contributions.

(a) The MO Member hereby is admitted as a Member with the rights in favor of the MO Member set forth herein and the Participation Percentages and Capital Percentages the MO Member set forth herein in exchange for the Contribution by the MO Member of the membership interests in the Subsidiaries and the Projects.

(b) The MOM Member hereby is admitted as a Member with a Membership Interest with the rights in favor of MOM Member set forth herein and the Participation Percentages and Capital Percentages for the MOM Member set forth herein.

(c) The MO Member shall be responsible for making Contributions to pay for any expense or liability of an Other Owned LLC to the extent such Other Owned LLC has insufficient cash to pay such expense or liability.

(d) MH shall provide to the MOM Member all information regarding Laguna Canyon (Laguna Festival Center, LLC, 891 Laguna Canyon Road, LLC, 777 At Laguna, LLC and Laguna Arts District Complex, LLC) reasonably available to MH. Within 30 days after the MOM Member receives all due diligence materials which the MOM Member desires to review with respect to such project, the MOM Member shall provide written notice to MH as to whether the MOM Member desires to make a Contribution with respect to such project and to cause it to be a Project. If the MOM Member agrees to make a Contribution with respect to such Project, then the MOM Member shall make such Contribution in accordance with a timeline and budget established by MH and the MOM Member.

(e) Except as set forth in this Section 6 or Section 9.10, the Members shall not be required to make any additional Contributions or loans to the Company.

6.2 Additional Contributions.

(a) With respect to Project which has been built or, for a Project to be developed, at any time after the completion of construction and opening of such Project to the public, if the MOM Member in its good faith business judgment determines that additional Contributions are required to: (i) implement the provisions of the Business Plan for such Project; and/or (ii) meet contractual obligations or liabilities of such Project, then the MOM Member may provide written notice to all Members calling for additional Contributions (the "Mandatory Additional Contributions"), which notice shall set forth the date on which such Contributions are due (which shall not be less than five Business Days after the date of such notice). Each Member shall make a Contribution equal to 50% of the aggregate Mandatory Additional Contributions being called.

(b) If a Member makes a Mandatory Additional Contribution and the other Member fails to do so (the "Failing Member"), then the funding Member may elect to either: (i) not fund its share; or (ii) cover the Failing Member's share which shall be treated as a loan which is recourse to the Failing Member and is payable from, but not limited to, any distributions from the Company to the Failing Member. Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at any time by the Failing Member. If there is a failing Member, the Company may admit a new Member for purposes of having the Contribution funded by the new Member, so long as the Participation Percentages and Capital Percentages with respect to the Projects provided to the new Member are consistent with the adjustment mechanism set forth on Exhibit A.

(c) If all Members agree to make additional Contributions, then the Members shall make such additional Contributions at the times and in the amounts agreed upon by all of the Members.

(d) If the MO Member fails to make the Contributions required under Section 6.1(c), the MOM Member may elect to fund the shortfall to the Company which shall be

treated as a recourse loan to the MO Member that is payable from, but not limited to, any distributions from the Company to the MO Member (and a subsequent Contribution of the proceeds of such loan to the Company by the MO Member). Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at any time by the MO Member. In lieu of providing the foregoing loan, the MOM Member may cause the Company to admit a new Member for purposes of having the Contribution funded, so long as the Participation Percentages and Capital Percentages with respect to the Other Owned LLCs provided to the new Member are consistent with the adjustment mechanism set forth on Exhibit A.

6.3 Interest on Contributions. No interest shall be paid by the Company on any Contribution made by any Member to the Company.

6.4 Return of Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to withdraw or reduce (or receive a return of) such Member's Contribution, except as a result of dissolution. No Member shall have the right to demand or receive property other than cash in return for such Member's Contributions.

6.5 Loans By a Member. Loans by a Member to the Company shall not be considered Contributions for purposes of this Agreement, increase such Member's Capital Account or entitle such Member to any greater share of the Profits, Losses or distributions of the Company than such Member is otherwise entitled to under this Agreement. No loan shall be made by a Member to the Company unless approved by the Managing Manager.

6.6 Tax Withholding. If the Company is required to withhold or otherwise pay taxes with respect to the Profits, distributions or Membership Interests of a Member, the Managing Manager may require an additional Contribution (without adjustment to Membership Interests or interests in the distributions or allocations associated with such Member's Membership Interests) of such Member in the amount of the required tax and/or the Company may withhold such taxes from any distribution to such Member.

6.7 Additional Membership Interests. The MOM Member, in its sole and absolute discretion, is hereby authorized to cause the Company from time to time to issue Membership Interests in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers, and duties, including rights, powers, and duties senior to then existing Membership Interests, all as shall be determined by the MOM Member in its sole and absolute discretion subject to applicable law, including without limitation, (i) the allocations of items of Company income, gain, loss, deduction, and credit to such class or series of Membership Interests; (ii) the right of each such class or series of Membership Interests to share in Company distributions; and (iii) the rights of each such class or series of Membership Interests upon dissolution and liquidation of the Company; provided, however, the MOM Member shall not be entitled to cause the Company to issue additional Membership Interests which dilute existing Membership Interests disproportionately. In the event that the Company issues additional Membership Interests pursuant to this Section 6.7, the Managing Manager shall be entitled to amend this Agreement as it determines is necessary to reflect the issuance of such additional Membership Interests.

7. ALLOCATIONS.

7.1 Allocation of Profits and Losses. After giving effect to the special allocations set forth in Sections 7.2, 7.3, 7.6 and 7.7, Profits and Losses in respect of each Fiscal Year of the Company (and, in each case, each item of income, gain, loss, deduction and tax preference, required to be taken into account by the Members separately under Section 702(a) of the Code, which are included in the computation of such Profits and Losses for such year) shall be allocated to the Members in a manner such that the Capital Account of each Member is, as nearly as possible, equal (proportionately) to the excess of:

(a) the distributions that would be made to that Member pursuant to Section 8.2 if:

(i) the Company were dissolved, its affairs wound up and its assets sold for an amount of cash equal to their Book Values;

(ii) all liabilities of the Company were satisfied (limited with respect to each non-recourse liability to the Book Value of the assets securing such liability); and

(iii) the assets of the Company were distributed to the Members in accordance with Section 8.2 immediately after making such allocation; over

(b) the sum of (i) the Member's respective share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and (ii) the amount, if any, that such Member is obligated (or deemed obligated) to contribute, in its capacity as a Member, to the Company, computed immediately prior to the hypothetical sale of assets described in Section 7.1(a).

7.2 Allocation of Nonrecourse Deductions. Nonrecourse Deductions for each Fiscal Year shall be allocated among the Members as determined by the Managing Manager in a manner consistent with the Code and Regulations.

7.3 Member Nonrecourse Deductions. Member Nonrecourse Deductions for each Fiscal Year shall be allocated as required by the Regulations promulgated under Section 704(b) of the Code.

7.4 704(c) Agreement. The Members agree that items attributable to contributed property shall be allocated as required by Section 704(c) of the Code.

7.5 Allocation of Tax Credits. Except as may otherwise be required by law, any tax credits to which the Company may be entitled shall be allocated among the Members as determined by the Managing Manager in a manner consistent with the Code and Regulations.

7.6 Qualified Income Offset. Except as provided in Section 7.7 of this Agreement, if any Member unexpectedly receives an adjustment, allocation or distribution described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any deficit in said Member's Capital

Account as quickly as possible. For purposes of this Section 7.6, the Member's Capital Account, as of the end of the relevant Fiscal Year, shall take into account the adjustments described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6), any amount of any deficit Capital Account balance which the Member is obligated to restore, and any amount of any deficit Capital Account balance which the Member is deemed obligated to restore pursuant to the Regulations promulgated under Section 704(b) of the Code.

7.7 Minimum Gain Chargeback. Prior to any allocation hereunder, if there is a net decrease in the Company Minimum Gain during a Company taxable year, each Member shall be allocated items of income and gain in accordance with the Regulations promulgated under Section 704(b) of the Code and its requirements for a "minimum gain chargeback." If there is a net decrease in minimum gain attributable to debt associated with Member Nonrecourse Deductions, income and gain shall be allocated to the Members in accordance with the Regulations.

7.8 Allocations of Tax Items. For federal income tax purposes, every item of income, gain, loss and deduction shall be allocated among the Members in accordance with the foregoing allocations. Whenever items of income or loss of the Company allocable hereunder consist of items of different character for tax purposes (i.e., ordinary income, long-term capital gain, depreciation recapture, interest expense, etc.) the items of income or loss of the Company allocable to each Member shall include, to the extent possible, its pro rata share of each such item; provided, however, in making allocations of depreciation recapture under Section 1245 or Section 1250 of the Code, or unrecaptured Section 1250 gain under Section 1(h) of the Code, principles consistent with those of Regulations Section 1.1245-1(e) shall be followed such that amounts treated as ordinary income shall be allocated first to the Member that was allocated the related ordinary deduction.

7.9 No Deficit Restoration Obligation. At no time during the term of the Company or upon dissolution and liquidation thereof shall a Member with a negative balance in its Capital Account have any obligation to the Company or the other Members to restore such negative balance, except as may be required by law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

8. DISTRIBUTIONS.

8.1 Distribution of Cash From Operations.

(a) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Operations for Projects shall be distributed as follows:

(i) First, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(b)(i), 8.2(a)(i) and 8.2(b)(i) and any distributions under the MOM CA Operating Agreement or from the First Choice LLC to pay the Priority Return for Contributions made hereunder for the Projects in an aggregate amount equal to such Member's Priority Return for Contributions made hereunder for the Projects calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, to the MOM Member, until the Unreturned Contribution balance of the MOM Member for Contributions made hereunder for the Projects is reduced to zero;

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Participation Percentages of the Members for Projects; provided, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iii) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the operating agreement for the First Choice LLC or under the MOM CA Operating Agreement and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the operating agreement for the First Choice LLC or under the MOM CA Operating Agreement and such reduction shall be distributed to the MOM Member.

(b) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Operations for Other Owned LLCs shall be distributed as follows:

(i) First, if there has been a MH Default or the third annual anniversary of the Effective Date has occurred, to the MOM Member, until the MOM Member has received cumulative distributions under this clause (i) and Sections 8.1(a)(i), 8.2(a)(i) and 8.2(b)(i) and any distributions under the MOM CA Operating Agreement or from the First Choice LLC to pay the Priority Return in an aggregate amount equal to such Member's Priority Return calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, if there has been a MH Default or the third annual anniversary of the Effective Date has occurred, to the MOM Member, until the Unreturned Contribution balance of the MOM Member is reduced to zero;

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Participation Percentages of the Members for Other Owned LLCs.

8.2 Distributions of Cash From Capital Transactions.

(a) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Capital Transactions for Projects shall be distributed/paid as follows:

(i) First, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(a)(i), 8.1(b)(i) and 8.2(b)(i) and any distributions under the MOM CA Operating Agreement or from the First Choice LLC to pay the Priority Return for Contributions made hereunder for the Projects in an aggregate amount equal to such Member's Priority Return for Contributions made hereunder for the Projects calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, to the MOM Member, until the Unreturned Contribution balance for Contributions made under this Agreement by the MOM Member for the Projects is reduced to zero;

(iii) Next, if distributions from Other Owned LLCs were used to

reduce the Unreturned Contribution balance for Contributions made under this Agreement for the Projects by the MOM Member to zero, then to the MO Member in an amount equal to such distributions from the Other Owned LLCs; provided, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iii) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and such reduction shall be distributed to the MOM Member;

(iv) Next, until the MO Member has received cumulative distributions pursuant this clause (iv) equal to \$35,000,000, the balance shall be divided among the Members pro-rata based on the Capital Percentages of the Members, with the amount payable to the MOM Member being a fee to the MOM Member for services to the Company in connection with the Capital Transaction and the amount payable to the MO Member being a distribution; provided, however, 50% of the distributions made under Section 8.2(a)(i) to the MOM Member shall be deducted from the fee payable under this clause (iv) and added to the distributions to the MO Member and provided further, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iv) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and such reduction shall be distributed to the MOM Member; and

(v) Finally, the balance shall be distributed to the Members pro-rata based on the Capital Percentages of the Members for Projects; provided, however, if the entire 50% of the distributions made under Section 8.2(a)(i) to the MOM Member is not deducted from the fee payable under Section 8.2(a)(iv), then the portion not deducted shall be deducted from the distributions to the MOM Member under this clause (v) and added to the distributions to the MO Member and provided further, however, if an MH Default has occurred, a distribution to the MO Member under this clause (v) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under the MOM CA Operating Agreement or the operating agreement for the First Choice LLC and such reduction shall be distributed to the MOM Member.

(b) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Capital Transactions for Other Owned LLCs shall be distributed/paid as follows:

(i) First, if there has been a MH Default or the fifth annual anniversary of the Effective Date has occurred, to the MOM Member, until the MOM Member

has received cumulative distributions pursuant to this clause (i) and Sections 8.1(a)(i), 8.1(b)(i) and 8.2(a)(i) and any distributions from a First Choice LLC in an aggregate amount equal to such Member's Priority Return calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, if there has been a MH Default or the fifth annual anniversary of the Effective Date has occurred, to the MOM Member, until the Unreturned Contribution balance of the MOM Member is reduced to zero; and

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Capital Percentages of the Members for Other Owned LLCs.

8.3 Offset. If any amounts are owed to the Managing Manager or the MOM Member by the MO Member hereunder, the MO Member hereby authorizes the Managing Manager to pay such amounts from any distributions to be made to the MO Member hereunder. Such payment shall be deemed a distribution to the MO Member and then a payment by the MO Member to the Managing Manager or the MOM Member.

8.4 To Whom Distributions Are Made. Unless named in this Agreement or unless admitted as a Member as provided in this Agreement, no Person shall be considered a Member in the Company. Any distribution by the Company to the Person shown on the Company records as a Member, or to such Member's legal representatives, or to a named assignee of the right to receive distributions, shall acquit the Company and the Members of all liability to any other Person who may be interested in such distribution by reason of an assignment by a Member or for any other reason.

9. MANAGEMENT.

9.1 Managers.

(a) Generally. The Company shall be managed by a Person or Persons acting as a "manager" as that term is defined under the Act (each "Manager"). The Managers may be, but shall not be required to be, a Member. One Manager is designated as the managing Manager (the "Managing Manager"). There may be another Manager designated as the administrative Manager (the "Administrative Manager") and the other Manager is designated as the managing Manager (the "Managing Manager"). The initial Managing Manager shall be MM, which shall hold the office of Managing Manager for an indefinite term unless and until MM resigns (in which event the MOM Member shall designate a replacement Managing Manager). The initial Administrative Manager shall be MH, which shall hold the office of Administrative Manager for an indefinite term unless and until MH resigns or is replaced or removed by the Managing Manager. To the fullest extent permitted by law, the Members acknowledge and agree that no Member of the Company nor a Manager owes any fiduciary or other duties to the other Members, to the Managers or to the Company and all such duties are hereby waived by the Members, the Managers and the Company. Unless another standard is specifically provided in this Agreement, each party to this Agreement shall act reasonably with respect to the other parties in carrying out its responsibilities and exercising its rights set forth in this Agreement.

(b) Resignation. A Manager may resign from its position as Manager at any time upon giving notice to the other Manager without liability resulting solely from such

resignation to the Company or any of its Members. Resignation shall not affect in any manner membership interest in the Company held by a Manager as a Member. Such resignation shall become effective as set forth in such notice. The Managing Manager shall have the sole authority to designate a replacement for a Manager which resigns (including a replacement for itself upon a resignation by it)

(c) Removal. The Managing Manager shall not be subject to removal for any reason. The Managing Manager shall be entitled to remove the Administrative Manager at any time; upon such removal the Managing Manager shall have the sole discretion as to whether to appoint a substitute Administrative Manager.

9.2 Authority Delegated to Administrative Manager. The Administrative Manager shall only have the duties regarding day to day operations designated in writing to it by the Managing Manager.

9.3 General Powers of the Managing Manager.

(a) Other than duties delegated to the Administrative Manager pursuant to Section 9.2 and as set forth in Section 9.3(b), the Company's business shall be managed by the Managing Manager and the Managing Manager shall be entitled to take all action on behalf of the Company. The Managing Manager shall be responsible for the management of the Company's business and shall have all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith. Without limiting the generality of the foregoing, the Managing Manager shall have the sole power and authority (a) to take all action on behalf of the Company as the member of each Subsidiary, including, without limitation, the power to determine whether to sell, exchange or dispose of any ownership interests in, or property held by, any Subsidiary, (b) to retain legal counsel or accountants (including tax accountants), and (c) to manage all disbursements under any loan made to any Subsidiary or with respect to any Project.

(b) With respect to the Other Owned LLCs and the assets owned by the Other Owned LLCs, the Managing Manager shall not be entitled to sell the ownership interests in an Other Owned LLC or the assets owned by an Other Owned LLC without the prior written consent of MH, except no consent is required if an MH Default has occurred or if the fifth anniversary of the Effective Date has occurred.

9.4 Other Payments. Other than the rights to distributions and the reimbursement of certain expenses as provided in this Agreement, no Member nor any of its Affiliates shall receive any compensation or other payment from the Company.

9.5 Members.

(a) Member Meetings. The Managing Manager may hold meetings of the Members at such place as the Managing Manager may determine or may at any time call for a vote without a meeting of the Members on matters on which they are entitled to vote as specifically provided in this Agreement. Written notice of a meeting or vote shall be given to the Members not less than ten (10) Business Days before the date of the meeting or vote. Each notice of meeting or vote, if any, shall contain a detailed statement of any resolution to be

adopted by the Members and any proposed amendment to the Agreement. A Member shall be entitled to vote at a meeting in person or by written proxy delivered to the Managing Manager prior to the meeting. Nothing in this Section 9.5 shall be deemed to give any Member the right to vote on any matters other than those specifically set forth in the other provisions of this Agreement.

(b) Action by Written Consent. The Managing Manager may allow the Members to take action without any meeting of the Members by written consent setting forth the action to be approved. The approval or consent of the Members required pursuant to this Agreement shall mean Member Consent unless specifically provided otherwise in this Agreement.

(c) No Authority of Members to Act on Behalf of the Company. Unless authorized to do so by the Managing Manager in writing, no Member, agent, or employee of the Company shall have any power or authority to act on behalf of the Company, to bind the Company in any way, to execute any instrument on behalf of the Company or to render the Company liable in any way. Except as expressly set forth in this Agreement, no Member (other than a Member acting in the capacity of a Manager, having been delegated certain duties and responsibilities by the Managing Manager or as set forth herein, and only to the extent of such duties and responsibilities) shall have a right to participate in the control, operation, management or direction of the Company.

9.6 Tax Person. The Members acknowledge the recent passage of the Bi-Partisan Budget Act of 2015, H.R. 1314, which contains, among other things, revisions to the audit procedures for Persons treated as partnerships for U.S. federal income tax purposes (the "New Audit Procedures"). The New Audit Procedures generally are effective for federal tax returns filed for partnership tax years commencing after December 31, 2017. The Managing Manager shall serve as the "partnership representative" as that term is defined in Section 6223 of the Code (as in effect under the New Audit Procedures) (the "Tax Person"). If the Managing Manager is subsequently unable or unwilling to serve as the Tax Person, then another Person designated by the Managing Manager (and consented to by such Person) shall serve as the Tax Person. The Tax Person shall have all powers necessary and appropriate in connection with such role, including without limitation representing the Company in any tax audit, proceeding or dispute with the Internal Revenue Service or state or local tax authority, consenting to extending the statute of limitations for assessing tax against a Member and/or the Company attributable to a Company item, negotiating and entering into a settlement agreement, contesting any proposed adjustment of a Company item, the payment of any tax liability imposed by the New Audit Procedures or the allocation of such liability pursuant to the New Audit Procedures and any and all elections in connection therewith. Each Member shall be charged and shall indemnify the Company for the portion of any imputed underpayment paid by the Company attributable to such Member as determined by the Tax Person. This indemnity shall survive each Member's withdrawal as a Member of the Company, the sale of any Company assets and the dissolution of the Company. The Tax Person may make all tax elections and execute all waivers and consents for tax purposes on behalf of the Company

9.7 Execution of Documents. Each check, contract, deed, lease, promissory note, deed of trust, escrow instruction, bond, release or any other documents of any nature

whatsoever, in any way pertaining to the Company or on behalf of the Company, shall be signed by the Managing Manager or the Person or Persons designated from time to time by the Managing Manager. Each check, contract, deed, lease, promissory note, deed of trust, escrow instruction, bond, release or any other documents of any nature whatsoever, in any way pertaining to a Subsidiary or on behalf of a Subsidiary, shall be signed by the Person or Persons designated from time to time by the Managing Manager.

9.8 Liability/Indemnification.

(a) For purposes of this Agreement, "Indemnified Persons" means the Members, a Manager and each of their respective permitted successors, officers, directors, managers, members, partners, employees, agents and affiliates.

(b) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Company or to the Members for any acts performed within the scope of the authority conferred on such Indemnified Person by this Agreement, except for such Indemnified Person's intentional fraud, willful misconduct, bad faith, or a material breach of this Agreement.

(c) The Company shall indemnify and hold harmless the Indemnified Persons from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, brought against, or threatened against, such Indemnified Person by reason of any act performed or omitted to be performed by such Member or Manager (or other Indemnified Person in his or her capacity with respect to the Member or Manager or the Company) in connection with the business of, or on behalf of, the Company or by reason of the fact such Indemnified Person was a Member, Manager (or other Indemnified Person in his or her capacity with respect to the Member or Manager or the Company), except for such Indemnified Person's intentional fraud, willful misconduct, bad faith, or a material breach of this Agreement. Such indemnification shall be provided regardless of whether the Member or Manager continues to act as Member or Manager (or the other Indemnified Person continues to act in his or her capacity with respect to the Member or Manager or the Company) at the time any such liability or expense is paid or incurred.

(d) Expenses incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding subject to indemnification pursuant to this Section 9.8, shall from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking in a form satisfactory to the Company by or on behalf of the Indemnified Person to repay such amount if it shall be determined that such Person is not entitled to be indemnified under this Section 9.8.

(e) The indemnification provided by this Section 9.8 shall be in addition to any other rights to which the Indemnified Person may be entitled under any agreement, vote of the Members, as a matter of law or equity or otherwise and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnified Person.

(f) The Company may purchase and maintain insurance, at the Company's expense, on behalf of the Indemnified Persons as the Managing Manager shall determine (but only as approved in an Approved Budget) against any liability that may be asserted against, or any expense that may be incurred by, such Persons in connection with the activities of the Company and/or the acts or omissions of such Persons regardless of whether the Company would have the power to indemnify such Persons against such liability under the provisions of this Agreement.

(g) Any indemnification under this Section 9.8 shall be satisfied solely out of the assets of the Company. No Member shall be subject to personal liability or required to provide any funds, or to cause any funds to be provided, to Company to satisfy any indemnification obligation of the Company under this Section 9.8.

(h) Except as set forth in the Act, no Member shall be liable under a judgment, decree or order of a court, or in any other manner, for the debts, liabilities, or obligations of the Company; provided, however, nothing contained in this Section 9.8 shall limit the obligation of a Member to make Contributions required under this Agreement.

(i) Notwithstanding anything to the contrary in this Section 9.8, if any Manager or Member or its Affiliate enters into a separate agreement to provide services to the Company, then the rights (including rights to indemnification), liabilities and obligations of such Manager or Member or its Affiliate, in its capacity as service provider under such agreement, shall be governed by the terms and provisions of such service agreement, and the terms and provisions hereof shall not apply nor shall the Company be obligated to indemnify such Manager, Member or its Affiliate against any claims arising in connection with such agreements, unless and to the extent required by the terms of provisions thereof.

9.9 Other Business Ventures.

(a) MH shall not, directly or indirectly, engage in or possess any interest in other business ventures of any nature and description, independently or with others, that adversely affect the real estate projects owned by any Subsidiary or the Company.

(b) MM may engage in or possess an interest in other business ventures of every nature and description, independently or with others, and neither the Company, nor the other Members shall have, and each of them hereby expressly waives, relinquishes and renounces, any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Moreover, MM shall not be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and MM shall have the right to take for its own account, for the account of other business entities of which it is an owner, or to recommend to others any such particular investment opportunity.

9.10 Projects.

(a) The Administrative Manager shall prepare an initial business plan for each Project, including, without limitation, detailed timelines, budgets, pro-formas, execution strategies and proposed vendors. The Managing Manager, in its sole discretion, may

amend/reject any business plan proposed by the Administrative Manager for each Project. A business plan for a Project approved by the Managing Manager is referred to herein as the "Business Plan" for such Project.

(b) On a Project-by-Project basis, the Managing Manager shall determine how the construction is handled.

(c) The Managers shall have regular (no less than monthly) business calls to discuss implementation of the Business Plan for each Project. The Managing Manager will execute the capital expenditure plan (including tenant improvements) for each Project which is not under construction per the Business Plan for such Project.

(d) If the Managing Manager elects to obtain third-party debt financing for a Project, and any such lender requires environmental indemnities, guaranties (whether full or non-recourse carve-outs) or any other indemnities as part of such financing, the MOM Member will provide the same, but, as between the Members, each Member shall be responsible for paying the portion of any claim under such indemnities or guaranties on a 50/50 basis.

(e) The development budget for the development of any Project shall be determined by the Managers (the budget approved by the Managers is referred to herein as the "Development Budget"). All pre-development costs for a Project within the Development Budget shall be paid with Contributions by the Members on a 50/50 basis; provided, however, if the MOM Member determines not to invest in a Project, then such Project shall be deemed an Other Owned LLC and the MO Member shall make Contributions to pay all costs associated with such Project.

(f) The approval of both of the Managers shall be required, subject to good faith negotiation, for the selection of the general contractor for construction of any Project and the guaranteed maximum price construction contract with such general contractor for such construction (including the market-rate compensation to be paid to such general contractor for its services).

(g) The approval of both of the Managers shall be required, subject to good faith negotiation, for the selection of the architect for construction of any Project.

(h) The MOM Member shall be entitled to determine to conduct rehabilitation or construction of property owned by an Other Owned LLC, in which event the Other Owned LLC shall become a Project.

9.11 Fees.

(a) For each Project which is to be constructed, the Administrative Manager (or its designee) will receive a fee equal to 4% of total construction costs (excluding such fee) or such lesser amount as an unaffiliated lender requires (for each Project, the "Construction Management Fee"), in exchange for the Administrative Manager (or its designee) overseeing construction of such Project. Such fee shall be payable from funds provided for such construction and shall be paid pursuant to a schedule reasonably determined by the Managing Manager, subject to approval of any construction lender. In the event that the Managing

Manager reasonably determines that the Administrative Manager (or its designee) is not satisfying the performance standards relative to reaching the goals in the Business Plan for a Project, the Managing Manager shall have the right to terminate the services of the Administrative Manager (or its designee) with respect to overseeing construction of such Project upon thirty (30) days' written notice. Upon such termination, the Administrative Manager and any designee thereof shall not be entitled to receive any unpaid portion of the Construction Management Fee. No termination under this clause (a) shall result in a loss of any capital account of the MO Member or a loss of any right of the MO Member to distributions hereunder.

(b) In exchange for asset management services to Company, the Managing Manager (or its designee) shall receive the following fees: (i) 1% of total equity raised for each Project, with this being a one-time fee that shall accrue until such time as the applicable Project has sufficient cash flow to pay the same as determined in the sole discretion of the Managing Manager (however, such fee shall not be paid prior to the third anniversary of the Effective Date unless an MH Default occurs); (ii) 1% of the gross revenue of each Project for which the MOM Member has made a Contribution payable in monthly installments in arrears; this fee shall accrue until such time as the applicable Project has sufficient cash flow to pay the same as determined in the sole discretion of the Managing Manager; and (iii) 1% of the gross sale and/or refinance proceeds for each Project payable at the closing of such sale or refinance; provided, however, the fee payable under this clause (iii) shall be subject to an aggregate cap of \$160 million.

9.12 Operating Budgets. For each Project that has been completed, no less than 30 days prior to the completion of each Fiscal Year, the Managers shall work in good faith to approve an operating budget for such Project for the next Fiscal Year. If the Managers cannot agree upon an operating budget for a Fiscal Year, then the operating budget for the current Fiscal Year shall continue in effect as the approved operating budget for the next Fiscal Year until the Managers approve a new operating budget. An operating budget approved hereunder shall be referred to herein as an "Approved Budget".

9.13 Special Indemnity. The MO Member shall indemnify the Managing Manager and the MOM Member for all damages, losses, claims, expenses or liabilities incurred by the Managing Manager and the MOM Member with respect to any litigation with respect to a Project pending on the date hereof. The MO Member shall pay all costs and expenses of defending such litigation; such payments shall not be deemed a loan or Contribution to the Company and the MO Member shall not be entitled to reimbursement from the Company or a Subsidiary for such costs and expenses. If a Project is subject to pending litigation on the date hereof and the MOM Member has made a Contribution with respect to such Project, then the MOM Member shall be entitled to cause such litigation to be settled in its sole discretion; provided, that the Administrative Manager can block such settlement by purchasing (or causing the MO Member to purchase) from the MOM Member its indirect interest in such Project for a purchase price equal to the amount the MOM Member would receive under Section 8.2(a) hereof if such Project was sold for the appraised "as-built" value as determined by an appraiser mutually agreed to by the Managers and the proceeds thereof were distributed under Section 8.2(a) hereof and obtaining a full release of any guaranties or indemnities provided by MM, the MOM Member or any Affiliate of MM or the MOM Member under any financing for such Project (if such purchase occurs, then the Project shall become an Other Owned LLC).

9.14 Officers. The Managing Manager may, from time to time, appoint one or more persons to be officers of the Company. Unless the Managing Manager decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office, subject to the terms of this Agreement and any written employment agreement of such individual with the Company. No such appointment and no prescribed duties will reduce or dilute the power of the Managing Manager as set forth herein or at law. The Managing Manager may remove any officer from office with or without cause; provided, however, that no removal will impair the contract rights, if any, of the officer removed or of the Company or of any other Person. Any officer may resign at any time by giving written notice to the Managing Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

9.15 Affiliate Transaction. No agreement between the Company, on the one hand, and the Administrative Manager, the MO Member or an Affiliate of the Administrative Manager or the MO Member, on the other hand, shall be effective unless approved in writing by the Managing Manager. No agreement between the Company, on the one hand, and the Managing Manager, the MOM Member or an Affiliate of the Managing Manager or MOM Member, on the other hand, shall be effective unless approved in writing by the Administrative Manager, except for an agreement expressly provided for herein.

10. RESTRICTIONS ON TRANSFER; NEW MEMBERS.

10.1 Limitations on Transfers.

(a) No Member shall for any reason, whether voluntarily, involuntarily or by operation of law, Transfer all or any of such Member's Membership Interest, nor shall any Member indirectly Transfer all of such Member's Membership Interest through a transaction that results in a change in the Person(s) Controlling such Member, without MM Consent. Notwithstanding the foregoing, the MOM Member shall not for any reason, whether voluntarily, involuntarily or by operation of law, Transfer all or any of such Member's Membership Interest (other than a Transfer to an Affiliate of the MOM Member), nor shall the MOM Member indirectly Transfer all of such Member's Membership Interest through a transaction that results in a change in the Person(s) Controlling the MOM Member, without the prior written consent of MH (which shall not be unreasonably withheld, delayed or conditioned) ("MH Consent") except such MH Consent is not required if the manager of the MOM Member does not change in connection with such Transfer. Any Transfer not expressly permitted in this Agreement shall be null and void. Whether or not MM Consent or MH Consent is required for a Transfer, a transferee of a Membership Interest shall have the right to become a substitute Member only if (i) such Person executes an instrument satisfactory to the Managing Manager accepting and adopting the terms and provisions of this Agreement, and (ii) such Person pays any reasonable expenses in connection with his or her admission as a substitute Member. Neither the admission of a substitute Member nor any Transfer complying with Section 10 shall release the Member

who assigned the Membership Interest from any liability that such Member may have to the Company.

(b) No Transfer of any Membership Interest may be made which (i) could cause a termination of the Company for federal income tax purposes; (ii) alone or in conjunction with any other Transfer, might adversely affect, or tend to affect adversely, the characterization of the Company as a partnership for federal income tax purposes; (iii) could result in the assets of the Company being considered by law to be assets of employee benefit plans and therefore subjecting those assets to the fiduciary standards of the Employee Retirement Income Security Act of 1974, as amended; or (iv) violates the Securities Act and any rules promulgated thereunder and any similar state 'Blue Sky' laws. In addition, in no event may a Transfer occur which results in more than ninety-nine (99) beneficial owners of Membership Interests.

10.2 [reserved].

10.3 Drag Along Sale. If the MOM Member proposes to sell or transfer for value, directly or indirectly, to one or more purchasers all of its Membership Interests in an arm's length transaction, then the MOM Member shall have the option (the "Drag-Along Option") to require the other Members (individually a "Drag Member" and collectively the "Drag Members") to sell, to the prospective purchaser acquiring the Membership Interests held by the MOM Member, the Membership Interests held by each Drag Member. If the MOM Member exercises the Drag-Along Option, then (a) each of the Members shall receive an amount in respect of Membership Interests sold equal to the amount that such Member would have received in respect of such Membership Interests if the Drag-Along Sale Consideration was treated as Cash From Capital Transactions in a deemed sale of all of the assets of the Company and such Cash From Capital Transactions was distributed to the Members pursuant to Section 8.2 (after making allocations pursuant to Section 6 in respect of such deemed sale), and (b) the Members shall (i) be subject to the same terms and conditions of sale (including without limitation any deferred payments of the Drag-Along Sale Consideration) and (ii) execute such documents and take such actions as may be reasonably required to effect such sale. The Drag Along Option shall be exercisable by delivery of written notice to the Drag Members by the MOM Member. For purposes of this Section 10.3, "Drag-Along Sale Consideration" means the aggregate net purchase price (after payment of all transaction expenses) received from the purchaser(s) in the sale of the Membership Interests pursuant to this Section 10.3, excluding amounts relating to market employment arrangements.

10.4 Tag Along Sale. If the MOM Member proposes to sell or transfer for value, directly or indirectly, to one or more purchasers all of its Membership Interests in an arm's length transaction, then the MO Member shall have the option (the "Tag-Along Option") to require the purchaser of such Membership Interests to purchase the Membership Interests held by the MO Member. If the MO Member exercises the Tag-Along Option, then (a) the MO Member shall receive an amount in respect of the Membership Interests sold by the MO Member equal to the amount that such Member would have received in respect of such Membership Interests if the Tag-Along Sale Consideration was treated as Cash From Capital Transactions in a deemed sale of all of the assets of the Company and such Cash From Capital Transactions was distributed to the Members pursuant to Section 8.2 (after making allocations pursuant to Section

6 in respect of such deemed sale), and (b) the Members shall (i) be subject to the same terms and conditions of sale (including without limitation any deferred payments of the Tag-Along Sale Consideration) and (ii) execute such documents and take such actions as may be reasonably required to effect such sale. The Tag-Along Option shall be exercisable by the MO Member by delivery of written notice to the MOM Member during the five Business Day period after the MO Member received written notice from the MOM Member of the terms and conditions of the proposed sale of the Membership Interests held by the MOM Member. For purposes of this Section 10.4, "Tag-Along Sale Consideration" means the aggregate net purchase price (after payment of all transaction expenses) received from the purchaser(s) in the sale of Membership Interests pursuant to this Section 10.4, excluding amounts relating to market employment arrangements, provided that such net purchase price shall be grossed-up (as determined by the MOM Member) to account for any Membership Interests not being purchased pursuant to this Section 10.4.

10.5 Buy-Out. At any time after the fifth anniversary of the Effective Date, the MOM Member may propose to purchase the MOM Member's interest in any Project (each such Project, a "Buy-Out Project") by delivering written notice of the MOM Member's desire to purchase such Buy-Out Projects to the MO Members (the "Buy-Out Notice"). The MO Member shall have the right to accept the terms of purchase set forth in the Buy-Out Notice or request that the price for the purchase be established by the appraisal process set forth in this Section, in each case by delivery of written notice to the MOM Member within 15 days after delivery of the Buy-Out Notice (the "Acceptance Period"). If the request set forth in the prior sentence (the "Appraisal Request") is not delivered within the Acceptance Period, then the MO Member shall be deemed to have accepted the terms of the purchase set forth in the Buy-Out Notice. If the Appraisal Request is delivered within the Acceptance Period, (a) promptly after such Appraisal Request is delivered, the MOM Member (on the one hand) and the MO Members (on the other hand) will each engage an independent appraiser to perform an appraisal of each Buy-Out Project for its highest and best use, (b) if the two appraisals for any one Buy-Out Project are within five percent (5%) of each other, then the value for that Buy-Out Project shall be the average of the two appraisals, (c) if the two appraisals for any one Buy-Out Project are not within five percent (5%) of each other, then (x) the two existing appraisers shall select a third independent appraiser to perform an appraisal of the Buy-Out Project for its highest and best use and (y) the value for that Buy-Out Project shall be the average of (i) the third appraisal and (ii) whichever of the first two appraisals is closest to the third appraisal and (d) the purchase price for the MO Member's interest in such Buy-Out Project shall be the portion of the Cash From Capital Transactions attributable to a sale of such Buy-Out Project at such value which the MO Member would receive under Section 8.2; provided, however, the MOM Member has no obligation to purchase the Membership Interests for such price, (e) if the MOM Member desires to purchase the Membership Interests held by the MO Member for the price established under the foregoing clause (d), the MOM Member shall deliver written notice to the MO Member within 60 days after the MOM Member delivers to the MO Member the calculation of the purchase price under the foregoing clause (d), and (f) if the MOM Member does not deliver written notice under the foregoing clause (e) within the 60 day period set forth therein, the MOM Member shall be deemed to have elected not to purchase the MO Member's interest in such Buy-Out Project for such price. If the MO Member accepts or is deemed to have accepted the terms of the purchase set forth in the Buy-Out Notice, then the closing of the purchase of the MO Member's interest in such Buy-Out Project shall occur within 30 days after the end of the

Acceptance Period. If the Appraisal Request is delivered and the MOM Member elects to purchase the MO Member's interest in such Buy-Out Project for the price established under clause (d) of this subsection, then the closing of the purchase of the MO Member's interest in such Buy-Out Project shall occur within 30 days after the date on which the MOM Member delivers written notice of its election to purchase under clause (e) of this subsection. The transfer of the MO Member's interest in such Buy-Out Project shall be made pursuant to an assignment under which the MO Member represents he owns such interest free and clear of all security interests, lien, claim of ownership, right of first refusal or options of any kind and have the authority to sell interest without obtaining the consent or authorization from any Person or governmental authority.

10.6 No Dissolution. If a Member Transfers all or any part of its interests in the Company without complying with the provisions of this Agreement, such action shall not cause or constitute a dissolution of the Company.

10.7 New Members. No new Member may be admitted into the Company, and no Membership Interests may be issued, without MM Consent.

11. DISSOLUTION AND WINDING UP OF THE COMPANY.

11.1 Dissolution of Company. The Company shall be dissolved upon the happening of any of the following events:

- (a) MM Consent to dissolve;
- (b) The sale or other disposition of all or substantially all of the assets of the Company;
- (c) The termination of the Company pursuant to Section 5.1; or
- (d) Entry of a judicial decree of dissolution pursuant to the Act.

11.2 Winding Up of the Company. Upon dissolution of the Company, the Managing Manager shall wind up the affairs and liquidate the assets of the Company in accordance with the provisions of this Section 11.2 and the Act. Profits, Losses, Nonrecourse Deductions, Member Nonrecourse Deductions and all other Company items shall be allocated until the liquidation is completed in the same ratio as such items were allocated prior thereto. The proceeds from liquidation of the Company when and as received by the Company shall be utilized, paid and distributed in the following order:

- (a) First, to pay expenses of liquidation;
- (b) Next, to pay the debts of the Company to third parties other than the Members;
- (c) Next, to pay the debts of the Company owing to creditors who are Members;

(d) Next, to the establishment of any Cash Reserves which are reasonably determined to be necessary for contingent liabilities; and

(e) Thereafter, to the Members, in accordance with Section 8.2; provided, however, that the final Capital Account balances of each of the Members prior to the distribution contemplated by this Section 11.2(e), as determined by taking into account all Capital Account adjustments required by this Agreement, are intended to equal the amount that each Member will receive pursuant to Section 8.2. If, for any reason, the distributions pursuant to this Section 11.2(e) (in accordance with Section 8.2) do not result in the same distribution to each Member as would a distribution to the Members in accordance with their positive Capital Account balances upon liquidation of the Company, then the Profits and Losses of the Company and items thereof (including gross income and gross deduction) for the taxable year of the distribution contemplated by this Section 11.2(e) and, if necessary and agreed to by the Managing Manager in its sole discretion, for all prior taxable years for which amended federal tax returns can be filed, shall be revised or amended to the extent possible in order that the final Capital Account balance of each of the Members, prior to the distribution contemplated by this Section 11.2(e) (in accordance with Section 8.2) equals the amount that such Members will receive when the remaining proceeds available for distribution to the Members are distributed pursuant to Section 8.2.

11.3 Right To Receive Property. The Members shall have no right to demand or receive property other than cash in return for their Contributions.

12. BOOKS AND RECORDS; EXPENSES.

12.1 Books of Account. The Managing Manager shall, at the Company's sole cost and expense, keep separate, full and accurate books and records of the Company wherein shall be recorded and reflected all of the Contributions and all of the income, expenses and transactions of the Company and a list of the names and addresses of the Members in alphabetical order. The Administrative Manager or a Member shall have the right at any time to inspect the Company's books and records.

12.2 Accounting and Reports.

(a) Monthly and Annual Reports. The Managing Manager shall, at the Company's sole cost and expense, cause the following to be delivered to the Members on a monthly basis, provided the unaffiliated property management company provides to the Managing Manager the appropriate information for the Managing Manager to prepare applicable financial statement (each shall be prepared in accordance with GAAP, consistently applied, except the monthly financials shall not contain footnotes and shall be subject to normal year-end adjustments):

(i) A balance sheet for the Company as of the end of the month for each of the first 11 months in a Fiscal Year together with a profit and loss statement for the period then ended; and

(ii) For each Fiscal Year, a balance sheet for the Company as of the end of such Fiscal Year together with a profit and loss statement for the year then ended

(at the request of the MOM Member, such financial statements shall be audited by an accounting firm selected by the Managing Member).

The financial statements described in the foregoing clause (i) shall be delivered by the 25th day of the month following the last month in the period subject to such financial statements. The financial statements described in the foregoing clause (ii) shall be delivered by the March 31 after the end of the applicable Fiscal Year.

(b) Tax Returns. The Managing Manager shall engage a firm of independent certified public accountants to review, or sign as preparer, all federal, state and local tax returns which the Company is required to file. The Managing Manager shall deliver to the Members copies of all federal, state and local income tax returns and information returns, if any, which the Company is required to file.

12.3 Banking. The funds of the Company shall be deposited into such account or accounts as are designated by the Managing Manager. All withdrawals of funds of the Company from bank accounts shall be made upon checks (or wire transfer authorizations) signed by the Managing Manager or the Person or Persons designated by the Managing Manager.

12.4 Expenses of Company. All direct expenses incurred in connection with conducting the Company's Business shall be billed to and paid by the Company. If any such expense is paid directly by a Manager or any Affiliate of a Manager, such Person may be reimbursed for such direct expenses without interest.

13. ADJUSTMENT OF BASIS ELECTION. In the event of a Transfer of any Membership Interests in the Company, or in the event of a distribution of the property of the Company to any Member hereto, the Managing Manager may, in its sole discretion, file an election in accordance with Section 754 of the Code and applicable Treasury Regulations to cause the basis of the Company's property to be adjusted for federal income tax purposes, as provided in Sections 734, 743 and 754 of the Code.

14. WAIVER OF ACTION FOR PARTITION. Each of the Members hereby irrevocably waives, during the term of the Company, any right such Member may have to maintain any action for partition with respect to any property of the Company.

15. AMENDMENTS

15.1 Member Consent Required. Subject to Section 15.2 and the rights of the Managing Manager pursuant to Section 6.7, amendments to this Agreement may be made only if approved by the Members (and a Manager, if the amendment affects any of the rights or obligations of such Manager).

15.2 No Member Consent Required. Notwithstanding any provision of this Agreement, the following amendments to this Agreement may be made by the Managing Manager without any approval of any other Member:

(a) To reflect assignments of Membership Interests and substitutions of Members that comply with Section 10; and

(b) To reflect Contributions by the Member.

16. NOTICES. Any notice, communication, request, reply or advice provided for or permitted by this Agreement to be made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served by: (i) delivering the same to such party in person or by commercial courier or personal messenger; (ii) electronic delivery via E-mail (which may include a .pdf, .tif, .gif, .jpeg or similar attachment to the electronic mail message); or (iii) depositing the same into custody of a nationally recognized overnight delivery service such as Federal Express or UPS. Notice given in any of the foregoing manners shall be effective only if and when delivered to (or refusal to accept delivery by) the party to be notified, or in the case of electronic mail, upon the entrance of such electronic mail into the information processing system designated by the recipient's e-mail address provided that the date of transmission is a Business Day (and the transmission is transmitted prior to the close of business) and further provided that: (i) an overnight delivery is forwarded to the party being noticed on the same day as the electronic transmission; or (ii) there is a confirmed receipt of delivery by the sender's server; or (iii) the recipient sends a reply email acknowledging receipt. The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least one (1) Business Day prior written notice to the other party. For the purposes of notice, the addresses of the Managers and the Members, until changed, shall be as follows:

If to MH or the MO Member:

c/o 4G Wireless, Inc.
8871 Research Dr.
Irvine, CA 92610
Attention: Mohammad Honarkar
Email: mhonarkar@4g-ventures.com

Copies to:

Much Shelist, P.C.
660 Newport Center Drive, Suite 900
Newport Beach, CA 92660
Attention: Glenn D. Taxman
Email: gtaxman@muchlaw.com

If to MM or the MOM Member:

c/o Continuum Analytics
520 Newport Center Drive, Suite 480
Newport Beach, CA 92660
Attention: Mahender Makhijani
Email: mahender@continuumanalytics.com

17. ATTORNEYS' FEES. Should any party hereto institute any arbitration, action or proceeding at law or in equity to enforce any provision hereof, including an action for declaratory relief or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision hereof, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

18. REPRESENTATIONS OF THE MEMBERS.

18.1 Representations of MM. MM hereby represents and warrants to MHI and the MO Member as follows:

(a) Binding Agreement. This Agreement constitutes the valid and binding agreement of MM and the MOM Member, enforceable against MM and the MOM Member in accordance with its terms, subject as to enforcement to bankruptcy, insolvency and other similar laws affecting the rights of creditors and to general principals of equity;

(b) Authority. Each of MM and the MOM Member has been duly formed and is validly existing in good standing under the laws of the State of Delaware, with all requisite power and authority to enter into this Agreement, to carry out the provisions and conditions hereof and to perform all acts necessary or appropriate to consummate all of the transactions contemplated hereby and no further action by MM or the MOM Member is necessary to authorize the execution or delivery of this Agreement;

(c) Execution. This Agreement has been duly and validly executed and delivered by MM and the MOM Member; and

(d) Litigation. There is no action, suit or proceeding pending or, to MM's knowledge, threatened against MM and the MOM Member that questions the validity or enforceability of this Agreement.

18.2 Representations of MH. MH hereby represents and warrants to MM and the MOM Member as follows:

(a) Binding Agreement. This Agreement constitutes the valid and binding agreement of MH and the MO Member, enforceable against MH and the MO Member in accordance with its terms, subject as to enforcement to bankruptcy, insolvency and other similar laws affecting the rights of creditors and to general principals of equity;

(b) [reserved];

(c) Execution. This Agreement has been duly and validly executed and delivered by MH and the MO Member; and

(d) Litigation. There is no action, suit or proceeding pending or, to MH's knowledge, threatened against MH or the MO Member that questions the validity or enforceability of this Agreement.

19. MISCELLANEOUS.

19.1 Applicable Law; Venue. This Agreement shall, in all respects, be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of law principles. Subject only to the arbitration provisions set forth at Section 19.10 of this Agreement, the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the state courts of the State of California in Los Angeles County or the United States District Court for the Central District of California, for the purposes of any lawsuit, action or other proceeding arising out of or based upon this Agreement and the subject matter hereof. The parties hereto, to the greatest extent permitted by applicable law, hereby irrevocably and unconditionally waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such lawsuit, action or other proceeding brought in the above-named courts or as provided in the arbitration provisions of this Agreement, any claim that it is not subject personally to the jurisdiction of such courts or arbitration tribunal, that its property is exempt or immune from attachment or execution, that the lawsuit, action or proceeding is brought in an inconvenient forum, that the venue of the lawsuit, action or proceeding is improper or that this Agreement may not be enforced in or by such court or tribunal. Final judgment against a party in any such lawsuit, action or proceeding shall be conclusive, and may be enforced in any other jurisdiction (x) by lawsuit, action or proceeding on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of the liability of the party as therein described or (y) in any other manner provided by or pursuant to the laws of such other jurisdiction.

19.2 Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

19.3 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their successors and permitted assigns.

19.4 Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so requires.

19.5 Entire Agreement. This Agreement (including the Exhibits) executed by each Member constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and thereof and any and all prior agreements, understandings or representations with respect to the subject matter hereof and thereof, including without limitation the Term Sheet, are hereby terminated and canceled in their entirety and are of no further force or effect.

19.6 Waiver. A waiver of any provision of this Agreement shall be valid only if it is in writing and signed by the party making the waiver. No waiver by any party hereto of any breach of this Agreement or any provision hereof shall be deemed to be a waiver of any

preceding or succeeding breach of the same or any other provision hereof. No custom, practice or course of dealings which arise among the Members and/or the Managers in the administration hereof shall be construed as a waiver or diminution of the right of any Member or Manager to insist upon the strict performance by any other Member or Manager of the terms, covenants, agreements and conditions herein contained.

19.7 Counterparts. 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. Signatures provided by facsimile or in portable document format (a/k/a pdf) or other electronic format shall be as binding as original signatures. The parties agree that this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on such parties as if it were physically executed and each party to this Agreement hereby consents to the use of any third party electronic signature capture service providers as may be chosen by the other party.

19.8 Interpretation. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

19.9 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the parties and their successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any party to this Agreement, nor shall any provision give any third Person any right of subrogation or action over or against any party to this Agreement.

19.10 Arbitration. In the event a Member or Manager breaches the terms of this Agreement, the non-breaching party shall have all rights and remedies available at law (for actual damages) and/or in equity; provided that no party shall be liable for consequential, punitive or special damages. Any dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (including whether the claims asserted are arbitrable), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or such other rules as the parties may agree upon. Such arbitration shall be conducted by a single independent arbitrator. The parties to the arbitration shall within five (5) Business Days mutually agree on a single independent arbitrator. If they are unable to agree on an independent person within such five (5) Business Day period, the arbitrator shall be appointed by JAMS in accordance with its rules. Any arbitrator shall be either (A) a retired judge or (B) an attorney with at least twenty (20) years of litigation experience. The place of arbitration shall be Irvine, California. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives and judgment may be entered thereon in any court of competent jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the

arbitration, including the fees of the arbitrator, and may award attorneys' fees and costs to the prevailing party. Discovery in accordance with California law shall be permitted. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the parties.

19.11 Expenses. Each party shall be responsible for all fees and expenses incurred by or on behalf of such party in connection with the negotiation and execution of this Agreement and the transfer of interests in the Subsidiaries to the Company.

19.12 Further Assurances. The MO Member shall take any and all action, and execute all documents necessary, to complete the assignment to the Company or a Subsidiary of any rights the MO Member has, directly or indirectly through another entity or entities, in and to the Projects.

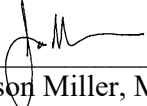
19.13 Confidentiality. The Members and the Managers agree to keep the contents of this Agreement confidential; provided, however, the Members and Managers may disclose this agreement to their respective Affiliates and to the directors, officers, employees, agents, investors, representatives, attorneys, accountants and other advisors of a Member, a Manager or an Affiliate of a Member or a Manager and disclosure shall be permitted as required in connection with any financing or equity capital obtained or sought by the Company or any Subsidiary, by law (including in connection with any tax filing or audit), in accordance with legal process, or in connection with any dispute hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

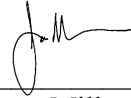
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

MOM BS Investor Group LLC

By: MOM BS Manager LLC, a Delaware limited liability company, Manager

By: _____
Jason Miller, Manager

MOM BS Manager LLC

By: _____
Jason Miller, Manager

Mohammad Honarkar

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

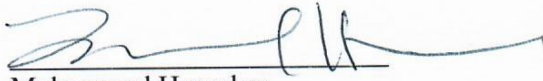
MOM BS Investor Group LLC

By: MOM BS Manager, LLC, a Delaware limited liability company

By: _____
Jason Everett Miller, Manager

MOM BS Manager LLC

By: _____
Jason Everett Miller, Manager


Mohammad Honarkar

Signature Page to Operating Agreement

Exhibit A

Participation Percentages and Capital Percentages

The Participation Percentages of the Members for Projects are as follows:

MOM Member: 50%
MO Member: 50%

If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b). The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence.

The Participation Percentages of the Members for Other Owned LLCs are as follows:

MOM Member: 0%
MO Member: 100%

If MO Member does do not make the Contributions for an Other Owned LLC pursuant to Section 6.1(c) and the MOM Member makes a Contribution for an Other Owned LLC (or a loan pursuant to Section 6.2(d)), then the Participation Percentage for each Member for the Other Owned LLCs shall be adjusted to equal the Contributions made by such Member for the Other Owned LLCs plus any loan made by such Member under Section 6.2(d) divided by the total Contributions made by all Members for the Other Owned LLCs plus the loans made by the MOM Member pursuant to Section 6.2(d). The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence. The initial Contributions made by the MOM Member as of the date hereof for the Other Owned LLCs are \$7,400,000.

The Capital Percentages of the Members for Projects are as follows:

MOM Member: 80.1%
MO Member: 19.9%

If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section

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6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b); provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence.

The Capital Percentages of the Members for Other Owned LLCs are as follows:

MOM Member: 80.1%

MO Member: 19.9%

If MO Member does do not make the Contributions for an Other Owned LLC pursuant to Section 6.1(c) and the MOM Member makes a Contribution for an Other Owned LLC (or a loan pursuant to Section 6.2(d)), then the Capital Percentage for each Member for the Other Owned LLCs shall be adjusted to equal the Contributions made by such Member for the Other Owned LLCs plus any loan made by such Member under Section 6.2(d) divided by the total Contributions made by all Members for the Other Owned LLCs plus the loans made by the MOM Member pursuant to Section 6.2(d); provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence.

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Exhibit B

Subsidiaries

Laguna Festival Center, LLC
891 Laguna Canyon Road, LLC
777 At Laguna, LLC
Laguna Art District Complex, LLC

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Exhibit C

First Choice LLC

MOM AS Investco LLC, a Delaware limited liability company.

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**FIRST AMENDMENT TO OPERATING AGREEMENT OF
MOM BS INVESTCO LLC**

This First Amendment to Operating Agreement of MOM BS Investco LLC (this "Amendment") is made as of June 30, 2021, among MOM BS Manager LLC, a Delaware limited liability company, as the Managing Manager of the Company (as hereinafter defined), MOM BS Investor Group LLC, a Delaware limited liability company, as a member of the Company, and Mohammad Honarkar, as a member and Administrative Manager of the Company, with reference to the following facts:

A. MOM BS Investco LLC, a Delaware limited liability company (the "Company"), is governed by an Operating Agreement of the Company, dated as of as of June 8, 2021 (the "Agreement").

B. The parties desire to amend the Agreement on the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Amendment. The Agreement is amended as follows:

(a) The MOM Member may designate Laguna Canyon (Laguna Festival Center, LLC, 891 Laguna Canyon Road, LLC, 777 At Laguna, LLC and Laguna Arts District Complex, LLC) as a Project at any time without any further action by the Managers or the Members.

(b) No later than August 31, 2021, the Administrative Manager shall prepare an initial business plan for Laguna Canyon (Laguna Festival Center, LLC, 891 Laguna Canyon Road, LLC, 777 At Laguna, LLC and Laguna Arts District Complex, LLC). If the Administrative Manager does not prepare an initial business plan for such project by August 31, 2021, then the Managing Manager shall be entitled to prepare a business plan for such project. The business plan for such project shall include the development budget for such project. The final business plan for any Project shall be determined by the Managing Manager in its sole discretion.

(c) The architect and general contractor for a Project shall be determined in the sole discretion of the Managing Manager after consultation with the Administrative Manager.

(d) The following definition is added to Section 1:

"MO Member Capital Credit" means the portion of the \$35 million capital credit allocated to Projects hereunder by the MOM Member.

(e) Section 6.2(a) is deleted and replaced with the following:

"(a) With respect to a Project, if the MOM Member in its good faith business judgment determines that additional Contributions are required any reason (including to pay any pre-development costs), then the MOM Member may provide written notice to

all Members calling for additional Contributions (the 'Mandatory Additional Contributions'), which notice shall set forth the date on which such Contributions are due (which shall not be less than five Business Days after the date of such notice). Each Member shall make a Contribution equal to 50% of the aggregate Mandatory Additional Contributions being called."

(f) The reference to "\$35,000,000" in Section 8.2(a)(iv) is deleted and replaced with "the MO Member Capital Credit".

(g) Section 9.10(e) is deleted and replaced with "(e) [reserved]"

(h) Section 9.13 is deleted in its entirety and replaced with the following:

"9.13 Special Indemnity. The MO Member shall indemnify the Managing Manager and the MOM Member for all damages, losses, claims, expenses or liabilities incurred by the Managing Manager and the MOM Member with respect to (i) any litigation with respect to a Project pending, or (ii) arising out of facts or circumstances occurring, on or before June 30, 2021 specifically related to the Newport Crossing Project. The MO Member shall pay all costs and expenses of defending such litigation; such payments shall not be deemed a loan or Contribution to the Company and the MO Member shall not be entitled to reimbursement from the Company or a Subsidiary for such costs and expenses. If a Project is subject to (i) litigation pending, or (ii) arising out of facts or circumstances occurring, on or before June 30, 2021 specifically related to the Newport Crossing Project, then the MOM Member shall be entitled to cause such litigation to be settled in its sole discretion; provided, that the Administrative Manager can block such settlement by purchasing (or causing the MO Member to purchase) from the MOM Member its indirect interest in such Project for a purchase price equal to the amount the MOM Member would receive under Section 8.2(a) hereof if such Project was sold for the appraised "as-built" value as determined by an appraiser mutually agreed to by the Managers and the proceeds thereof were distributed under Section 8.2(a) hereof and obtaining a full release of any guaranties or indemnities provided by MM, the MOM Member or any Affiliate of MM or the MOM Member under any financing for such Project (if such purchase occurs, then the Project shall become an Other Owned LLC)."

(i) Section 10.1(a) is amended to provide that the MO Consent is not required (i) if the person Controlling the manager of the MOM Member is the same person immediately before, and immediately after, the transaction involving a change in the Person(s) Controlling the MOM Member or (ii) with respect to a transfer of the MOM Member's Membership Interest to MOM CA Investor Group LLC, a Delaware limited liability company.

(j) Section 15.2 is deleted and replaced with the following:

"15.2 No Member Consent Required. Notwithstanding any provision of this Agreement, the following amendments to this Agreement may be made by the Managing Manager without any approval of any other Member or Manager:

(a) To reflect assignments of Membership Interests and substitutions of Members that comply with Section 10; and

(b) To reflect Contributions by the Member;

(c) To cure any ambiguity, or correct or supplement any provision herein which may be inconsistent with any other provision herein or any provision of relevant law (including amendments to the allocations provided herein that may be appropriate in view of the regulations under Section 704 of the Code or otherwise to comply with relevant law), provided that any such ambiguity or inconsistency is resolved in a manner which the Board believes in good faith to be neutral or favorable to the Members or required by law;

(d) To correct any printing, stenographic or clerical errors or omissions;

(e) A modification, deletion or addition of any provision to this Agreement which is necessary to maintain the status of the Company as a tax partnership under federal or state law; or

(f) To make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement, in each case so long as the change does not materially and adversely affect a Member or a Manager and a Member or Manager does not object to such change in writing within ten (10) days of being advised thereof in writing by the Managing Manager."

(k) The paragraph in Exhibit A which reads as follows:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b). The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

is deleted and replaced with the following:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) plus the MO Member

Capital Credit, (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a), plus the loans made by Members pursuant to Section 6.2(b) plus the MO Member Capital Credit. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

(l) The sentence in Exhibit A which reads "The initial Contributions made by the MOM Member as of the date hereof for the Other Owned LLCs are \$7,400,000." is deleted and changed to "The initial Contributions made by the MO Member as of the date hereof for the Other Owned LLCs are \$7,400,000."

(m) The paragraph in Exhibit A which reads as follows:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total initial Contributions made by the MOM Member for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b); provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

is deleted and replaced with the following:

"If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of the initial Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)) plus the MO Member Capital Credit, (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total Contributions made by the Members for the Projects (other than pursuant to Section 6.2(a)), plus the Contributions made by the Members pursuant to Section 6.2(a) plus the loans made by Members pursuant to Section 6.2(b) plus the MO Member Capital Credit; provided, however, the Capital Percentage of the MO Member may not ever exceed 19.9%. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence."

2. Agreement in Full Force. Except as amended by this Amendment, the Agreement is unchanged and in full force and effect.

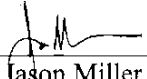
3. Facsimile/PDF; Counterparts. Each party hereto shall be authorized to rely upon the signatures of all of the parties hereto on this Amendment which are delivered by facsimile or PDF as constituting a duly authorized, irrevocable, actual, current delivery of this Amendment with original ink signatures of each party. This Amendment may be executed in counterparts, each of which shall be deemed an original part and all of which together shall constitute a single agreement.

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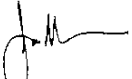
IN WITNESS WHEREOF, the parties have executed this Amendment on the date first written above.

MOM BS Investor Group LLC

By: MOM BS Manager, LLC, a Delaware limited liability company, Manager

By: 
Jason Miller, Manager

MOM BS Manager LLC

By: 
Jason Miller, Manager

Mohammad Honarkar

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IN WITNESS WHEREOF, the parties have executed this Amendment on the date first written above.

MOM BS Investor Group LLC

By: MOM BS Manager, LLC, a Delaware limited liability company, Manager

By: _____
Jason Miller, Manager

MOM BS Manager LLC

By: _____
Jason Miller, Manager



Mohammad Honarkar

**SECOND AMENDMENT TO OPERATING AGREEMENT OF
MOM AS INVESTCO LLC; MOM BS INVESTCO LLC; MOM CA INVESTCO LLC**

This Agreement (“**Agreement**”) is made as of August 26, 2021 (the “**Effective Date**”) by and among MOHAMMAD HONARKAR and MO Member (collectively, “**MH**”), MOM AS INVESTCO LLC, a Delaware limited liability company (the “**AS Company**”), MOM AS MANAGER LLC, a Delaware limited liability company (“**AS Manager**”), MOM AS INVESTOR GROUP LLC, a Delaware limited liability company (“**AS Investor**”), MOM BS INVESTCO LLC, a Delaware limited liability company (the “**BS Company**”), MOM BS MANAGER LLC, a Delaware limited liability company (“**BS Manager**”), MOM BS INVESTOR GROUP LLC, a Delaware limited liability company (“**BS Investor**”), MOM CA INVESTCO LLC, a Delaware limited liability company, (the “**CA Company**”; together with the AS Company and the BS Company are sometimes collectively referred to as the “**Companies**”), MOM CA MANAGER LLC, a Delaware limited liability company (“**CA Manager**”), and MOM CA INVESTOR GROUP LLC, a Delaware limited liability company (“**AS Investor**”). The Companies, together with AS Manager, AS Investor, BS Manager, BS Investor, CA Manager and CA Investor are sometimes collectively referred to as the “**Non-MH Parties**.”

RECITALS

A. The AS Company is governed by an Operating Agreement of the AS Company, dated as of as of June 8, 2021, as amended by a First Amendment dated as of June 30, 2021 (collectively, the “**AS Agreement**”).

B. The BS Company is governed by an Operating Agreement of the BS Company, dated as of as of June 8, 2021, as amended by a First Amendment dated as of June 30, 2021 (collectively, the “**BS Agreement**”).

C. The CA Company is governed by an Operating Agreement of the CA Company, dated as of as of June 8, 2021, as amended by a First Amendment dated as of June 30, 2021 (collectively, the “**CA Agreement**”; together with the AS Agreement and the BS Agreement are sometimes collectively referred to as the “**Operating Agreements**”).

D. As of the Effective Date, various of the Other Owned LLCs and Subsidiaries are executing that certain Promissory Note (the “**Note**”) in the principal amount of Seventeen Million Two Hundred Fifty-Five Thousand Three Hundred Sixteen Dollars (\$17,255,316.00) (the “**Loan**”) in favor of Coastline Santa Monica Investments, LLC. MH is providing a full guaranty of such Loan. All of the proceeds of the Loan are being used for the sole purpose of avoiding a claim made pursuant to a Judgment being made by the beneficiary of the Judgment against the Projects and real property owned by the Other Owned LLCs and Subsidiaries. Such a claim can be avoided by satisfying the Judgment and paying it in full.

E. The parties desire to amend the respective Operating Agreements.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are hereby incorporated herein by this specific reference. All capitalized terms used in this Agreement and not otherwise defined shall have the same definitions as are ascribed to them in the Operating Agreements.

2. Amendment: The Operating Agreements are amended by adding the following new Section 9.8(j):

“(j) For the MO Member and MH, Sections 9.8(b) and (c) of this Operating Agreement are modified to add “negligence” immediately after “bad faith”. In addition, the MO Member and MH, jointly and severally, shall indemnify and hold harmless MOM AS Investco LLC, a Delaware limited liability company, MOM AS Manager LLC, a Delaware limited liability company, MOM AS Investor Group LLC, a Delaware limited liability company, MOM BS Investco LLC, a Delaware limited liability company, MOM BS Manager LLC, a Delaware limited liability company, MOM BS Investor Group LLC, a Delaware limited liability company, MOM CA Investco LLC, a Delaware limited liability company, MOM CA Manager LLC, a Delaware limited liability company, and MOM CA Investor Group LLC, a Delaware limited liability company, and each of their respective permitted successors, officers, directors, managers, members, partners, employees, agents and affiliates (individually an “**Indemnitee**”) from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys’ fees and disbursements), judgments, fines, settlements and other amounts incurred by an Indemnitee relating to or arising from (i) any intentional fraud, willful misconduct, bad faith, negligence or material breach of this Agreement by the MO Member or MH, or (ii) any fact or circumstance first arising prior to June 8, 2021, with respect to any Project or other asset owned directly or indirectly by the Company (including, without limitation, any asset owned by any of the Other Owned LLCs), or (iii) in the event that said property is sold then any fact or circumstance arising through the date of the sale including the execution of the required sale documents, except, with respect to this clause (iii) only, for any intentional fraud, willful misconduct, bad faith or material breach of this Agreement by any Indemnitee.”

3. Representations & Warranties by the Non-MH Parties. The Non-MH Parties will obtain a written consent from Preferred Bank to the Loan and provide such consent to MH within 90 days following the Effective Date. If the Non-MH Parties are unable to obtain written consent from Preferred Bank within said 90 days and a default under the loan documents is declared as a result of the Loan, then the Non-MH Parties shall refinance the Preferred Bank loan prior to foreclosure. In the event Lone Oak Fund LLC claims a default under its loan documents as a result of the Loan, then the Non-MH Parties shall refinance the Lone Oak loan prior to foreclosure. In the event of a breach by the Non-MH Parties of this Section 3, MH shall have any and all rights and remedies available to him at law and/or in equity.

4. Agreement in Full Force. Except as amended by this Agreement, each Operating Agreement is unchanged and in full force and effect.

5. Prevailing Party: If any action or proceeding is commenced by either party to enforce its rights or remedies under this Agreement (an “**Action**”), the prevailing party in such Action shall be entitled to recover its actual attorneys’ fees and court costs incurred therewith.

6. Facsimile/PDF; Counterparts. This Agreement may be executed in one or more counterparts. All such counterparts, when taken together, shall comprise the fully executed Agreement. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to an electronic mail message or signed electronically using DocuSign or other similar software, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version of this Agreement, delivered in person. This Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on such parties as if it were physically executed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MOM AS INVESTCO LLC By: MOM AS Manager, LLC, Manager By: _____ Banayotis Haddad, Manager	 MOHAMMAD HONARKAR
MOM AS INVESTOR GROUP LLC By: MOM AS Manager, LLC, Manager By: _____ Banayotis Haddad, Manager	MOM CA INVESTCO LLC By: MOM CA Manager, LLC, Manager By: _____ Deba Shyam, Manager
MOM AS MANAGER LLC By: _____ Banayotis Haddad, Manager	MOM CA INVESTOR GROUP LLC By: MOM CA Manager, LLC, Manager By: _____ Deba Shyam, Manager
MOM BS INVESTCO LLC By: MOM BS Manager, LLC, Manager By: _____ Jason Everett Miller, Manager	MOM CA MANAGER LLC By: _____ Deba Shyam, Manager
MOM BS INVESTOR GROUP LLC By: MOM BS Manager, LLC, Manager By: _____ Jason Everett Miller, Manager	
MOM BS MANAGER LLC By: _____ Jason Everett Miller, Manager	

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EXHIBIT E



THE INTERESTS ACQUIRED PURSUANT TO THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS THEY HAVE BEEN REGISTERED UNDER SAID ACT OR UNLESS REGISTRATION UNDER SAID ACT IS NOT REQUIRED. THERE ARE SUBSTANTIAL RESTRICTIONS ON TRANSFER CONTAINED IN THIS AGREEMENT.

**OPERATING AGREEMENT
OF
MOM CA INVESTCO LLC**

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ARB EX 0315-001

**OPERATING AGREEMENT
OF
MOM CA INVESTCO LLC
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**OPERATING AGREEMENT
OF MOM CA INVESTCO LLC**

THIS OPERATING AGREEMENT OF MOM CA INVESTCO LLC (this "Agreement") is made and entered into as of June 8, 2021, (the "Effective Date"), by and between MOM CA Manager LLC, a Delaware limited liability company ("MM"), as the Managing Manager of the Company, MOM CA Investor Group LLC, a Delaware limited liability company (the "MOM Member"), as a Member, Mohammad Honarkar, as a member (the "MO Member"), and Mohammad Honarkar ("MH"), as the Administrative Manager, with reference to the following facts:

A. On May 21, 2021 (the "Formation Date"), the Certificate of Formation for MOM CA Investco LLC (the "Company") was filed with the Delaware Secretary of State.

B. The Members intend for the Company to engage in the Business described herein.

C. Prior to the Effective Date, Continuum Analytics, a California corporation and an affiliate of MM, and 4G Wireless, Inc., a California corporation and an affiliate of MH documented their preliminary understanding regarding the material terms of the Business and this Agreement in a Term Sheet, dated May 24, 2021, (the "Term Sheet") and they now desire to cause the parties to enter into this Agreement to supersede any previous discussions or documentation regarding the Business and the Company, including without limitation the Term Sheet.

D. The Members now desire to adopt and approve this Agreement as the limited liability company agreement for the Company under the Act.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, as of the Effective Date, the Members hereby incorporate the foregoing recitals into, and make them a part of, this Agreement and agree as follows:

1. DEFINITIONS. When used in this Agreement, the following terms shall have the meanings set forth below:

1.1 Act. "Act" means the Delaware Limited Liability Company Act.

1.2 Administrative Manager. "Administrative Manager" has the meaning set forth in Section 9.1(a).

1.3 Affiliates. "Affiliates" of a Person means Persons Controlled by, Controlling or under common Control with such Person, or the family members of a Person.

1.4 Agreement. "Agreement" has the meaning set forth in the first paragraph of this Agreement.

1.5 Approved Budget. "Approved Budget" has the meaning set forth in Section 9.12 of this Agreement.

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1.6 Book Value. "Book Value" means for any asset the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Book Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as reasonably determined by the Tax Person.

(b) The Book Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Tax Person, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis capital contribution if the Tax Person reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company if the Tax Person reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g).

(c) The Book Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as reasonably determined by the Tax Person.

(d) The Book Values of Company assets shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Book Values shall not be adjusted pursuant to this subsection to the extent the Tax Person determines that an adjustment pursuant to subsection (b) of this Section is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection.

(e) If the Book Value of an asset has been determined or adjusted pursuant to subsections (a), (b) or (d) of this Section, such Book Value shall thereafter be adjusted by the Book Depreciation (hereafter defined) taken into account with respect to such asset for purposes of computing Profits and Losses. "Book Depreciation" for any asset means for any fiscal year or other period an amount that bears the same ratio to the Book Value of that asset at the beginning of such fiscal year or other period as the federal income tax depreciation, amortization or other cost recovery deduction allowable for that asset for such year or other period bears to the adjusted tax basis of that asset at the beginning of such year or other period. If the federal income tax depreciation, amortization or other cost recovery deduction allowable for any asset for such year or other period is zero, then Book Depreciation for that asset shall be determined with reference to such beginning Book Value using any reasonable method selected by the Tax Person.

1.7 Business Day. "Business Day" means any day other than Saturday, Sunday or any legal holiday observed in the State of California.

1.8 Business Plan. "Business Plan" has the meaning set forth in Section 9.10(a) of this Agreement.

1.9 Capital Account. "Capital Account" means an account established for each Member and determined in accordance with Section 1.704-1(b) of the Regulations. The Capital Accounts shall be adjusted in order to reflect allocations of depreciation, amortization, and gain and loss as computed for book purposes. Upon the Transfer of any Member's interest in the Company carried out in accordance with the terms of this Agreement, the Capital Account of the transferor Member shall carry over to the transferee Member.

1.10 Capital Percentage. "Capital Percentage" shall mean the percentages for the Members set forth on Exhibit A attached hereto.

1.11 Capital Transaction. "Capital Transaction" means a sale, refinance, exchange, transfer, assignment or other disposition of all or any portion of the assets of the Company or a Subsidiary.

1.12 Cash From Capital Transactions. "Cash From Capital Transactions" means the net proceeds received by the Company from a Capital Transaction that, in the sole discretion of the Managing Manager, are available for distribution to the Members after any loans made by a Member to the Company have been repaid, any expenses of the Company (including fees hereunder) have been paid, and a provision has been made for Cash Reserves. Cash From Capital Transactions shall be measured separately for Projects, as a group, and the Other Owned LLCs, as a group, such that only the expenses, loans or Cash Reserves for the Projects shall be paid or reserved from proceeds of a Capital Transaction for a Project and only the expenses, loans or Cash Reserves for the Other Owned LLCs shall be paid or reserved from proceeds of a Capital Transaction for an Other Owned LLC.

1.13 Cash From Operations. "Cash From Operations" means, for any period, such portion of the cash in the Company's bank accounts that, in the sole discretion of the Managing Manager, is available for distribution to the Members after any loans made by a Member to the Company have been repaid, any expenses of the Company (including fees hereunder) have been paid, and a provision has been made for Cash Reserves. Cash From Operations shall be measured separately for Projects, as a group, and the Other Owned LLCs, as a group, such that only the expenses, loans or Cash Reserves for the Projects shall be paid or reserved from cash for the Projects and only the expenses, loans or Cash Reserves for the Other Owned LLCs shall be paid or reserved from cash for an Other Owned LLC. Cash From Operations shall not include the proceeds of Contributions or Cash From Capital Transactions.

1.14 Cash Reserves. "Cash Reserves" means such amounts as may be estimated by the Managing Manager for payment of costs, expenses and liabilities incident to the business of the Company and for which the cash to make such payments will not, in the reasonable discretion of the Managing Manager, be expected to be available to the Company at or about the time such payments are required to be made, and which therefore, in the reasonable discretion of the Managing Manager, require that cash be set aside periodically to make such payments.

1.15 Certificate of Formation. "Certificate of Formation" means the written instrument filed with the Delaware Secretary of State for the purpose of forming the Company.

1.16 Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.17 Company. "Company" shall have the meaning set forth in Recital A.

1.18 Company Minimum Gain. "Company Minimum Gain" means "partnership minimum gain," as defined in the Regulations promulgated under Section 704(b) of the Code.

1.19 Contribution. "Contribution" means any money or property, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted by law, which a Member contributes to the Company as capital in that Member's capacity as a Member pursuant to this Agreement.

1.20 Control. "Control", "Controlled", and "Controlling" mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.21 Development Budget. "Development Budget" has the meaning set forth in Section 9.10(e) of this Agreement.

1.22 Effective Date. "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

1.23 First Choice LLCs. "First Choice LLCs" means the limited liability companies set forth on Exhibit E attached hereto.

1.24 Fiscal Year. "Fiscal Year" means the calendar year.

1.25 Formation Date. "Formation Date" has the meaning set forth in the recitals to this Agreement.

1.26 GAAP. "GAAP" means United States generally accepted accounting principles.

1.27 Hotel Laguna Project. "Hotel Laguna Project" means Hotel Laguna, LLC (and Beach Club), Cliff Village, LLC and all real property owned by either of such limited liability companies (including the real property located at 421 S Coast Hwy and 425 S Coast Highway, Laguna Beach, CA).

1.28 Managers. "Managers" has the meaning set forth in Section 9.1(a).

1.29 Managing Manager. "Managing Manager" has the meaning set forth in Section 9.1(a).

1.30 Mandatory Additional Contributions. "Mandatory Additional Contributions" has the meaning set forth in Section 6.2(a).

1.31 Member or Members. "Member" or "Members" shall mean those Persons entering into this Agreement as a Member, as set forth in the first paragraph of this Agreement, and shall also include any other Person admitted to the Company as a Member in accordance with this Agreement, or a Person who has been admitted as a Member pursuant to applicable law.

1.32 Member Nonrecourse Debt. "Member Nonrecourse Debt" has the meaning ascribed to the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

1.33 Member Nonrecourse Debt Minimum Gain. "Member Nonrecourse Debt Minimum Gain" means an amount, with respect each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability (as defined in Regulations Section 1.704-2(b)(3)), determined in accordance with Regulations Section 1.704-2(i)(3).

1.34 Member Nonrecourse Deductions. "Member Nonrecourse Deductions" means the Company deductions that are characterized as "partner nonrecourse deductions" pursuant to the Regulations promulgated under Section 704(b) of the Code.

1.35 Membership Interest. "Membership Interest" means the interest of a Member in the Company.

1.36 MH Default. "MH Default" means (a) a breach by MH or 4G Wireless, Inc., a California corporation ("4G"), of any of his or its representations, covenants or obligations under the Contribution Agreement, of even date herewith, among MH, 4G, the Company and the other parties named therein, including a failure to contribute the membership interests in a Held-back LLC (as defined in such Contribution Agreement) at the time required thereunder, or (b) a breach of any obligation of MH or the MO Member hereunder with respect to the Other Owned LLCs, (c) a receiver is appointed for any of the membership interests held by the MO Member or (d) a receiver is appointed for any of the Subsidiaries or assets contributed to the Company by the MO Member due to facts or circumstances related to the MO Member or any of its Affiliates; or (e) if MH fails to use best efforts to have his wife execute a stipulation on or after the date hereof which provides 90 days for MH to make the \$20 million payment to her and a family court appoints a receiver for any of the membership interests held by the MO Member or any of the Subsidiaries or assets contributed to the Company by the MO Member; provided, however the matters in clauses (c) and (d) shall not be a MH Default if the receiver is appointed by family court and MH uses best efforts to have such receiver removed.

1.37 MM Consent. "MM Consent" means the written consent of the Managing Manager in its sole discretion.

1.38 New Audit Procedures. "New Audit Procedures" has the meaning set forth in 9.6.

1.39 Nonrecourse Deductions. "Nonrecourse Deductions" mean the Company deductions that are characterized as "nonrecourse deductions" pursuant to the Regulations promulgated under Section 704(b) of the Code.

1.40 Other Owned LLCs. "Other Owned LLCs" means the limited liability companies set forth on Exhibit C attached hereto and a Subsidiary (or rights with respect to a Project) which becomes an Other Owned LLC pursuant to Section 6.1(d) or 9.13.

1.41 Participation Percentage. "Participation Percentage" means the percentages for the Members set forth on Exhibit A attached hereto.

1.42 Person. "Person" means an individual, partnership, limited partnership, corporation, trust, estate, association, limited liability company or other entity, whether foreign or domestic.

1.43 Priority Return. "Priority Return" means, for the MOM Member, a cumulative return on the aggregate Unreturned Contributions of the MOM Member at a rate of 20% per annum (compounded); provided, however, with respect to the Hotel Laguna Project, "Priority Return" means a cumulative return on the Unreturned Contributions of the MOM Member made for Hotel Laguna Project at a rate of 20% per annum (compounded).

1.44 Profits and Losses. "Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(a) All items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;

(b) Any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;

(c) Any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(1)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;

(d) In the event the Book Value of any Company asset is adjusted pursuant to Section 1.6(b), Section 1.6(d) or Section 1.6(e), the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(e) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704(b)(2)(iv)(m)(4), to be taken into account in determining the Capital Account as a result of a distribution other than in liquidation of a Membership Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(g) Any items which are specially allocated pursuant to Sections 7.2, 7.3, 7.6 and 7.7 hereof shall not be taken into account in computing Profits or Losses.

1.45 Project. "Project" means the Hotel Laguna Project and any Other Owned LLC which becomes a Project under Section 6.1(d) or 9.10(h).

1.46 Regulations. "Regulations" means the Income Tax Regulations promulgated under the Code, including Temporary and Proposed Regulations, as such Regulations may be amended from time to time, including corresponding provisions of succeeding Regulations.

1.47 Securities Act. "Securities Act" means the Securities Act of 1933, as amended.

1.48 Subsidiaries. "Subsidiaries" means the limited liability companies set forth on Exhibit C attached hereto.

1.49 Tax Person. "Tax Person" means the Person designated as the "Tax Person" under Section 9.6.

1.50 Term Sheet. "Term Sheet" has the meaning set forth in the recitals to this Agreement.

1.51 Transfer. "Transfer" means any encumbrance, gift, assignment, pledge, hypothecation, sale or other transfer of all or any portion of a Membership Interest.

1.52 Unreturned Contributions. "Unreturned Contributions" means, for the MOM Member the excess (if any) of (a) the aggregate Contributions made by such Member under this Agreement or the operating agreement for a First Choice LLC (excluding Contributions made under Section 6.6 hereof or an operating agreement for a First Choice LLC), over (b) the aggregate distributions to such Member pursuant to Sections 8.1(a)(ii), 8.1(b)(ii), 8.2(a)(ii) and 8.2(b)(ii) hereof and any distributions to the MOM Member from a First Choice LLC (other than a distribution to pay the Priority Return or the priority return under an operating agreement for a First Choice LLC); provided, however, with respect to the Hotel Laguna Project, "Unreturned Contributions" means the excess of (i) the Contributions of the MOM Member made for Hotel Laguna Project over (ii) the aggregate distributions to such Member pursuant to Sections 8.1(a)(ii) and 8.2(a)(ii) from cash attributable to the Hotel Laguna Project.

2. FORMATION OF LIMITED LIABILITY COMPANY. The Company has been formed by the filing of the Certificate of Formation with the Delaware Secretary of State

pursuant to the provisions of the Act. To the extent anything contained in this Agreement modifies, supplements or otherwise affects any such right, liability or obligation arising under the Act, this Agreement shall supersede the Act to the extent not mandated thereby.

3. NAME AND PLACE OF BUSINESS.

3.1 Name. The name of the Company shall be MOM CA Investco LLC.

3.2 Office; Agent for Service of Process. The name and address of the agent for service of process are as set forth in the Certificate of Formation. The Managing Manager may change the registered office and the registered agent of the Company as the Managing Manager may deem appropriate. The Company shall maintain a principal place of business and office(s) at such place or places as the Managing Manager may from time to time designate.

4. PURPOSE. The purpose of the Company is to engage in (a) any activities with respect to the Subsidiaries (or the assets owned by the Subsidiaries) or the Projects and (b) any and all other activities permitted under the Act and approved by the Managers.

5. TERM OF COMPANY; RECORDINGS.

5.1 Term. The Company commenced as of the Formation Date and shall continue until dissolved, unless sooner terminated as herein provided or by operation of law.

5.2 Qualification. The Company shall file any documents with any other appropriate governmental agencies as may be required by applicable law. The Company shall qualify to do business in any other jurisdiction as may be required under the laws of such jurisdiction.

6. CONTRIBUTIONS AND LOANS.

6.1 Initial Contributions.

(a) The MO Member hereby is admitted as a Member with the rights in favor of the MO Member set forth herein and the Participation Percentages and Capital Percentages the MO Member set forth herein in exchange for the Contribution by the MO Member of the membership interests in the Subsidiaries and the Projects.

(b) The MOM Member hereby is admitted as a Member with a Membership Interest with the rights in favor of MOM Member set forth herein and the Participation Percentages and Capital Percentages for the MOM Member set forth herein.

(c) Concurrently with execution hereof, by all of the Members, the MOM Member shall make a Contribution of \$30 million to the Company for the Hotel Laguna Project, which shall be disbursed as set forth on Exhibit B attached hereto. MH shall provide to the MOM Member all information regarding the Hotel Laguna Project.

(d) MH shall provide to the MOM Member all information regarding each project set forth on Exhibit D attached hereto reasonably available to MH (the "Potential

Projects"). Within 30 days after the MOM Member receives all due diligence materials which the MOM Member desires to review with respect to a Potential Project, the MOM Member shall provide written notice to MH as to whether the MOM Member desires to make a Contribution with respect to such Potential Project and to cause it to be a Project. If the MOM Member agrees to make a Contribution with respect to a Project, then the MOM Member shall make such Contribution in accordance with a timeline and budget established by MH and the MOM Member.

(e) In the sole discretion of the MOM Member, the MOM Member may make Contributions of up to \$20 million for any Project at the times, in the increments and based on budgets, approved by the MOM Member in its sole discretion.

(f) The MO Member shall be responsible for making Contributions to pay for any expense or liability of an Other Owned LLC to the extent such Other Owned LLC has insufficient cash to pay such expense or liability.

(g) Except as set forth in this Section 6 or Section 9.10, the Members shall not be required to make any additional Contributions or loans to the Company.

6.2 Additional Contributions.

(a) With respect to Project which has been built or, for a Project to be developed, at any time after the completion of construction and opening of such Project to the public, if the MOM Member in its good faith business judgment determines that additional Contributions are required to: (i) implement the provisions of the Business Plan for such Project; and/or (ii) meet contractual obligations or liabilities of such Project, then the MOM Member may provide written notice to all Members calling for additional Contributions (the "Mandatory Additional Contributions"), which notice shall set forth the date on which such Contributions are due (which shall not be less than five Business Days after the date of such notice). Each Member shall make a Contribution equal to 50% of the aggregate Mandatory Additional Contributions being called.

(b) If a Member makes a Mandatory Additional Contribution and the other Member fails to do so (the "Failing Member"), then the funding Member may elect to either: (i) not fund its share; or (ii) cover the Failing Member's share which shall be treated as a loan which is recourse to the Failing Member and is payable from, but not limited to, any distributions from the Company to the Failing Member. Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at any time by the Failing Member. If there is a failing Member, the Company may admit a new Member for purposes of having the Contribution funded by the new Member, so long as the Participation Percentages and Capital Percentages with respect to the Projects provided to the new Member are consistent with the adjustment mechanism set forth on Exhibit A.

(c) If all Members agree to make additional Contributions, then the Members shall make such additional Contributions at the times and in the amounts agreed upon by all of the Members.

(d) If the MO Member fails to make the Contributions required under Section 6.1(f), the MOM Member may elect to fund the shortfall to the Company which shall be treated as a recourse loan to the MO Member that is payable from, but not limited to, any distributions from the Company to the MO Member (and a subsequent Contribution of the proceeds of such loan to the Company by the MO Member). Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at any time by the MO Member. In lieu of providing the foregoing loan, the MOM Member may cause the Company to admit a new Member for purposes of having the Contribution funded, so long as the Participation Percentages and Capital Percentages with respect to the Other Owned LLCs provided to the new Member are consistent with the adjustment mechanism set forth on Exhibit A.

6.3 Interest on Contributions. No interest shall be paid by the Company on any Contribution made by any Member to the Company.

6.4 Return of Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to withdraw or reduce (or receive a return of) such Member's Contribution, except as a result of dissolution. No Member shall have the right to demand or receive property other than cash in return for such Member's Contributions.

6.5 Loans By a Member. Loans by a Member to the Company shall not be considered Contributions for purposes of this Agreement, increase such Member's Capital Account or entitle such Member to any greater share of the Profits, Losses or distributions of the Company than such Member is otherwise entitled to under this Agreement. No loan shall be made by a Member to the Company unless approved by the Managing Manager.

6.6 Tax Withholding. If the Company is required to withhold or otherwise pay taxes with respect to the Profits, distributions or Membership Interests of a Member, the Managing Manager may require an additional Contribution (without adjustment to Membership Interests or interests in the distributions or allocations associated with such Member's Membership Interests) of such Member in the amount of the required tax and/or the Company may withhold such taxes from any distribution to such Member.

6.7 Additional Membership Interests. The MOM Member, in its sole and absolute discretion, is hereby authorized to cause the Company from time to time to issue Membership Interests in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers, and duties, including rights, powers, and duties senior to then existing Membership Interests, all as shall be determined by the MOM Member in its sole and absolute discretion subject to applicable law, including without limitation, (i) the allocations of items of Company income, gain, loss, deduction, and credit to such class or series of Membership Interests; (ii) the right of each such class or series of Membership Interests to share in Company distributions; and (iii) the rights of each such class or series of Membership Interests upon dissolution and liquidation of the Company; provided, however, the MOM Member shall not be entitled to cause the Company to issue additional Membership Interests which dilute existing Membership Interests disproportionately. In the event that the Company issues additional Membership Interests pursuant to this Section 6.7, the Managing Manager shall be entitled to amend this

Agreement as it determines is necessary to reflect the issuance of such additional Membership Interests.

7. ALLOCATIONS.

7.1 Allocation of Profits and Losses. After giving effect to the special allocations set forth in Sections 7.2, 7.3, 7.6 and 7.7, Profits and Losses in respect of each Fiscal Year of the Company (and, in each case, each item of income, gain, loss, deduction and tax preference, required to be taken into account by the Members separately under Section 702(a) of the Code, which are included in the computation of such Profits and Losses for such year) shall be allocated to the Members in a manner such that the Capital Account of each Member is, as nearly as possible, equal (proportionately) to the excess of:

(a) the distributions that would be made to that Member pursuant to Section 8.2 if:

(i) the Company were dissolved, its affairs wound up and its assets sold for an amount of cash equal to their Book Values;

(ii) all liabilities of the Company were satisfied (limited with respect to each non-recourse liability to the Book Value of the assets securing such liability); and

(iii) the assets of the Company were distributed to the Members in accordance with Section 8.2 immediately after making such allocation; over

(b) the sum of (i) the Member's respective share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and (ii) the amount, if any, that such Member is obligated (or deemed obligated) to contribute, in its capacity as a Member, to the Company, computed immediately prior to the hypothetical sale of assets described in Section 7.1(a).

7.2 Allocation of Nonrecourse Deductions. Nonrecourse Deductions for each Fiscal Year shall be allocated among the Members as determined by the Managing Manager in a manner consistent with the Code and Regulations.

7.3 Member Nonrecourse Deductions. Member Nonrecourse Deductions for each Fiscal Year shall be allocated as required by the Regulations promulgated under Section 704(b) of the Code.

7.4 704(c) Agreement. The Members agree that items attributable to contributed property shall be allocated as required by Section 704(c) of the Code.

7.5 Allocation of Tax Credits. Except as may otherwise be required by law, any tax credits to which the Company may be entitled shall be allocated among the Members as determined by the Managing Manager in a manner consistent with the Code and Regulations.

7.6 Qualified Income Offset. Except as provided in Section 7.7 of this Agreement, if any Member unexpectedly receives an adjustment, allocation or distribution

described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any deficit in said Member's Capital Account as quickly as possible. For purposes of this Section 7.6, the Member's Capital Account, as of the end of the relevant Fiscal Year, shall take into account the adjustments described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6), any amount of any deficit Capital Account balance which the Member is obligated to restore, and any amount of any deficit Capital Account balance which the Member is deemed obligated to restore pursuant to the Regulations promulgated under Section 704(b) of the Code.

7.7 Minimum Gain Chargeback. Prior to any allocation hereunder, if there is a net decrease in the Company Minimum Gain during a Company taxable year, each Member shall be allocated items of income and gain in accordance with the Regulations promulgated under Section 704(b) of the Code and its requirements for a "minimum gain chargeback." If there is a net decrease in minimum gain attributable to debt associated with Member Nonrecourse Deductions, income and gain shall be allocated to the Members in accordance with the Regulations.

7.8 Allocations of Tax Items. For federal income tax purposes, every item of income, gain, loss and deduction shall be allocated among the Members in accordance with the foregoing allocations. Whenever items of income or loss of the Company allocable hereunder consist of items of different character for tax purposes (i.e., ordinary income, long-term capital gain, depreciation recapture, interest expense, etc.) the items of income or loss of the Company allocable to each Member shall include, to the extent possible, its pro rata share of each such item; provided, however, in making allocations of depreciation recapture under Section 1245 or Section 1250 of the Code, or unrecaptured Section 1250 gain under Section 1(h) of the Code, principles consistent with those of Regulations Section 1.1245-1(e) shall be followed such that amounts treated as ordinary income shall be allocated first to the Member that was allocated the related ordinary deduction.

7.9 No Deficit Restoration Obligation. At no time during the term of the Company or upon dissolution and liquidation thereof shall a Member with a negative balance in its Capital Account have any obligation to the Company or the other Members to restore such negative balance, except as may be required by law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

8. DISTRIBUTIONS.

8.1 Distribution of Cash From Operations.

(a) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Operations for Projects shall be distributed as follows:

(i) First, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(b)(i), 8.2(a)(i) and 8.2(b)(i) and any distributions from a First Choice LLC to pay the Priority Return for

Contributions made hereunder for the Projects in an aggregate amount equal to such Member's Priority Return for Contributions made hereunder for the Projects calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, to the MOM Member, until the Unreturned Contribution balance of the MOM Member for Contributions made hereunder for the Projects is reduced to zero;

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Participation Percentages of the Members for Projects; provided, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iii) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and such reduction shall be distributed to the MOM Member.

(b) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Operations for Other Owned LLCs shall be distributed as follows:

(i) First, if there has been a MH Default or the third annual anniversary of the Effective Date has occurred, to the MOM Member, until the MOM Member has received cumulative distributions under this clause (i) and Sections 8.1(a)(i), 8.2(a)(i) and 8.2(b)(i) and any distributions from a First Choice LLC or under the MOM CA Operating Agreement used to pay a Priority Return in an aggregate amount equal to such Member's Priority Return calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, if there has been a MH Default or the third annual anniversary of the Effective Date has occurred, to the MOM Member, until the Unreturned Contribution balance of the MOM Member is reduced to zero;

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Participation Percentages of the Members for Other Owned LLCs.

8.2 Distributions of Cash From Capital Transactions.

(a) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Capital Transactions for Projects shall be distributed/paid as follows:

(i) First, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(a)(i), 8.1(b)(i) and 8.2(b)(i) and any distributions from a First Choice LLC to pay the Priority Return for Contributions made hereunder for the Projects in an aggregate amount equal to such Member's Priority Return for Contributions made hereunder for the Projects calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, to the MOM Member, until the Unreturned Contribution balance for Contributions made under this Agreement by the MOM Member for the Projects is reduced to zero;

(iii) Next, if distributions from Other Owned LLCs were used to reduce the Unreturned Contribution balance for Contributions made under this Agreement for the Projects by the MOM Member to zero, then to the MO Member in an amount equal to such distributions from the Other Owned LLCs; provided, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iii) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and such reduction shall be distributed to the MOM Member;

(iv) Next, until the MO Member has received cumulative distributions pursuant this clause (iv) equal to \$35,000,000, the balance shall be divided among the Members pro-rata based on the Capital Percentages of the Members, with the amount payable to the MOM Member being a fee to the MOM Member for services to the Company in connection with the Capital Transaction and the amount payable to the MO Member being a distribution; provided, however, 50% of the distributions made under Section 8.2(a)(i) to the MOM Member shall be deducted from the fee payable under this clause (iv) and added to the distributions to the MO Member and provided further, however, if an MH Default has occurred, a distribution to the MO Member under this clause (iv) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and such reduction shall be distributed to the MOM Member; and

(v) Finally, the balance shall be distributed to the Members pro-rata based on the Capital Percentages of the Members for Projects; provided, however, if the entire 50% of the distributions made under Section 8.2(a)(i) to the MOM Member is not deducted from the fee payable under Section 8.2(a)(iv), then the portion not deducted shall be deducted from the distributions to the MOM Member under this clause (v) and added to the distributions to the MO Member and provided further, however, if an MH Default has occurred, a distribution to the MO Member under this clause (v) shall be reduced by any unpaid Priority Return for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and the Unreturned Contribution balance of the MOM Member for Contributions made by the MOM Member for an Other Owned LLC or under a First Choice LLC and such reduction shall be distributed to the MOM Member.

The following are two examples of the distributions under this Section 8.2(a) for the Hotel Laguna Project assuming a \$25 million Contribution by the MOM Member and a \$30 million debt payoff and a Priority Return of \$18.2 million:

(x) \$125 million sale price (excluding closing costs, etc.) less \$30 million debt results in Cash From Capital Transaction of \$95 million.
 First distribution, \$18.2 to Priority Return
 Second distribution, \$25 million to reduce Unreturned Contribution balance to zero.
 Third distribution, \$16.8 million to MOM Member (\$51.8 million less 50% of the \$18.2 million Priority Return distribution) and \$35 million to MO Member.

(y) \$65 million sale price (excluding closing costs, etc.) less \$30 million debt results in Cash From Capital Transaction of \$35 million.

First distribution, \$18.2 to Priority Return

Second distribution, \$16.8 million to reduce Unreturned Contribution balance to zero.

No further distributions because \$35 million Contribution not returned.

(b) Subject to Section 8.3, at the times determined by the Managing Manager, Cash From Capital Transactions for Other Owned LLCs shall be distributed/paid as follows:

(i) First, if there has been a MH Default or the fifth annual anniversary of the Effective Date has occurred, to the MOM Member, until the MOM Member has received cumulative distributions pursuant to this clause (i) and Sections 8.1(a)(i), 8.1(b)(i) and 8.2(a)(i) and any distributions from a First Choice LLC in an aggregate amount equal to such Member's Priority Return calculated for all Fiscal Years or portions thereof as of such time;

(ii) Next, if there has been a MH Default or the fifth annual anniversary of the Effective Date has occurred, to the MOM Member, until the Unreturned Contribution balance of the MOM Member is reduced to zero; and

(iii) Finally, the balance shall be distributed to the Members pro-rata based on the Capital Percentages of the Members for Other Owned LLCs.

8.3 Offset. If any amounts are owed to the Managing Manager or the MOM Member by the MO Member hereunder, the MO Member hereby authorizes the Managing Manager to pay such amounts from any distributions to be made to the MO Member hereunder. Such payment shall be deemed a distribution to the MO Member and then a payment by the MO Member to the Managing Manager or the MOM Member.

8.4 To Whom Distributions Are Made. Unless named in this Agreement or unless admitted as a Member as provided in this Agreement, no Person shall be considered a Member in the Company. Any distribution by the Company to the Person shown on the Company records as a Member, or to such Member's legal representatives, or to a named assignee of the right to receive distributions, shall acquit the Company and the Members of all liability to any other Person who may be interested in such distribution by reason of an assignment by a Member or for any other reason.

9. MANAGEMENT.

9.1 Managers.

(a) Generally. The Company shall be managed by a Person or Persons acting as a "manager" as that term is defined under the Act (each "Manager"). The Managers may be, but shall not be required to be, a Member. One Manager is designated as the managing Manager (the "Managing Manager"). There may be another Manager designated as the administrative Manager (the "Administrative Manager") and the other Manager is designated as the managing Manager (the "Managing Manager"). The initial Managing Manager shall be MM, which shall hold the office of Managing Manager for an indefinite term unless and until MM

resigns (in which event the MOM Member shall designate a replacement Managing Manager). The initial Administrative Manager shall be MH, which shall hold the office of Administrative Manager for an indefinite term unless and until MH resigns or is replaced or removed by the Managing Manager. To the fullest extent permitted by law, the Members acknowledge and agree that no Member of the Company nor a Manager owes any fiduciary or other duties to the other Members, to the Managers or to the Company and all such duties are hereby waived by the Members, the Managers and the Company. Unless another standard is specifically provided in this Agreement, each party to this Agreement shall act reasonably with respect to the other parties in carrying out its responsibilities and exercising its rights set forth in this Agreement.

(b) Resignation. A Manager may resign from its position as Manager at any time upon giving notice to the other Manager without liability resulting solely from such resignation to the Company or any of its Members. Resignation shall not affect in any manner membership interest in the Company held by a Manager as a Member. Such resignation shall become effective as set forth in such notice. The Managing Manager shall have the sole authority to designate a replacement for a Manager which resigns (including a replacement for itself upon a resignation by it)

(c) Removal. The Managing Manager shall not be subject to removal for any reason. The Managing Manager shall be entitled to remove the Administrative Manager at any time; upon such removal the Managing Manager shall have the sole discretion as to whether to appoint a substitute Administrative Manager.

9.2 Authority Delegated to Administrative Manager. The Administrative Manager shall only have the duties regarding day to day operations designated in writing to it by the Managing Manager.

9.3 General Powers of the Managing Manager.

(a) Other than duties delegated to the Administrative Manager pursuant to Section 9.2 and as set forth in Section 9.3(b), the Company's business shall be managed by the Managing Manager and the Managing Manager shall be entitled to take all action on behalf of the Company. The Managing Manager shall be responsible for the management of the Company's business and shall have all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith. Without limiting the generality of the foregoing, the Managing Manager shall have the sole power and authority (a) to take all action on behalf of the Company as the member of each Subsidiary, including, without limitation, the power to determine whether to sell, exchange or dispose of any ownership interests in, or property held by, any Subsidiary, (b) to retain legal counsel or accountants (including tax accountants), and (c) to manage all disbursements under any loan made to any Subsidiary or with respect to any Project.

(b) With respect to the Other Owned LLCs and the assets owned by the Other Owned LLCs, the Managing Manager shall not be entitled to sell the ownership interests in an Other Owned LLC or the assets owned by an Other Owned LLC without the prior written consent of MH, except no consent is required if an MH Default has occurred or if the fifth anniversary of the Effective Date has occurred.

9.4 Other Payments. Other than the rights to distributions and the reimbursement of certain expenses as provided in this Agreement, no Member nor any of its Affiliates shall receive any compensation or other payment from the Company.

9.5 Members.

(a) Member Meetings. The Managing Manager may hold meetings of the Members at such place as the Managing Manager may determine or may at any time call for a vote without a meeting of the Members on matters on which they are entitled to vote as specifically provided in this Agreement. Written notice of a meeting or vote shall be given to the Members not less than ten (10) Business Days before the date of the meeting or vote. Each notice of meeting or vote, if any, shall contain a detailed statement of any resolution to be adopted by the Members and any proposed amendment to the Agreement. A Member shall be entitled to vote at a meeting in person or by written proxy delivered to the Managing Manager prior to the meeting. Nothing in this Section 9.5 shall be deemed to give any Member the right to vote on any matters other than those specifically set forth in the other provisions of this Agreement.

(b) Action by Written Consent. The Managing Manager may allow the Members to take action without any meeting of the Members by written consent setting forth the action to be approved. The approval or consent of the Members required pursuant to this Agreement shall mean Member Consent unless specifically provided otherwise in this Agreement.

(c) No Authority of Members to Act on Behalf of the Company. Unless authorized to do so by the Managing Manager in writing, no Member, agent, or employee of the Company shall have any power or authority to act on behalf of the Company, to bind the Company in any way, to execute any instrument on behalf of the Company or to render the Company liable in any way. Except as expressly set forth in this Agreement, no Member (other than a Member acting in the capacity of a Manager, having been delegated certain duties and responsibilities by the Managing Manager or as set forth herein, and only to the extent of such duties and responsibilities) shall have a right to participate in the control, operation, management or direction of the Company.

9.6 Tax Person. The Members acknowledge the recent passage of the Bi-Partisan Budget Act of 2015, H.R. 1314, which contains, among other things, revisions to the audit procedures for Persons treated as partnerships for U.S. federal income tax purposes (the "New Audit Procedures"). The New Audit Procedures generally are effective for federal tax returns filed for partnership tax years commencing after December 31, 2017. The Managing Manager shall serve as the "partnership representative" as that term is defined in Section 6223 of the Code (as in effect under the New Audit Procedures) (the "Tax Person"). If the Managing Manager is subsequently unable or unwilling to serve as the Tax Person, then another Person designated by the Managing Manager (and consented to by such Person) shall serve as the Tax Person. The Tax Person shall have all powers necessary and appropriate in connection with such role, including without limitation representing the Company in any tax audit, proceeding or dispute with the Internal Revenue Service or state or local tax authority, consenting to extending the statute of limitations for assessing tax against a Member and/or the Company attributable to a

Company item, negotiating and entering into a settlement agreement, contesting any proposed adjustment of a Company item, the payment of any tax liability imposed by the New Audit Procedures or the allocation of such liability pursuant to the New Audit Procedures and any and all elections in connection therewith. Each Member shall be charged and shall indemnify the Company for the portion of any imputed underpayment paid by the Company attributable to such Member as determined by the Tax Person. This indemnity shall survive each Member's withdrawal as a Member of the Company, the sale of any Company assets and the dissolution of the Company. The Tax Person may make all tax elections and execute all waivers and consents for tax purposes on behalf of the Company.

9.7 Execution of Documents. Each check, contract, deed, lease, promissory note, deed of trust, escrow instruction, bond, release or any other documents of any nature whatsoever, in any way pertaining to the Company or on behalf of the Company, shall be signed by the Managing Manager or the Person or Persons designated from time to time by the Managing Manager. Each check, contract, deed, lease, promissory note, deed of trust, escrow instruction, bond, release or any other documents of any nature whatsoever, in any way pertaining to a Subsidiary or on behalf of a Subsidiary, shall be signed by the Person or Persons designated from time to time by the Managing Manager.

9.8 Liability/Indemnification.

(a) For purposes of this Agreement, "Indemnified Persons" means the Members, a Manager and each of their respective permitted successors, officers, directors, managers, members, partners, employees, agents and affiliates.

(b) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Company or to the Members for any acts performed within the scope of the authority conferred on such Indemnified Person by this Agreement, except for such Indemnified Person's intentional fraud, willful misconduct, bad faith, or a material breach of this Agreement.

(c) The Company shall indemnify and hold harmless the Indemnified Persons from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, brought against, or threatened against, such Indemnified Person by reason of any act performed or omitted to be performed by such Member or Manager (or other Indemnified Person in his or her capacity with respect to the Member or Manager or the Company) in connection with the business of, or on behalf of, the Company or by reason of the fact such Indemnified Person was a Member, Manager (or other Indemnified Person in his or her capacity with respect to the Member or Manager or the Company), except for such Indemnified Person's intentional fraud, willful misconduct, bad faith, or a material breach of this Agreement. Such indemnification shall be provided regardless of whether the Member or Manager continues to act as Member or Manager (or the other Indemnified Person continues to act in his or her capacity with respect to the Member or Manager or the Company) at the time any such liability or expense is paid or incurred.

(d) Expenses incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding subject to indemnification pursuant to this Section 9.8, shall from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking in a form satisfactory to the Company by or on behalf of the Indemnified Person to repay such amount if it shall be determined that such Person is not entitled to be indemnified under this Section 9.8.

(e) The indemnification provided by this Section 9.8 shall be in addition to any other rights to which the Indemnified Person may be entitled under any agreement, vote of the Members, as a matter of law or equity or otherwise and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnified Person.

(f) The Company may purchase and maintain insurance, at the Company's expense, on behalf of the Indemnified Persons as the Managing Manager shall determine (but only as approved in an Approved Budget) against any liability that may be asserted against, or any expense that may be incurred by, such Persons in connection with the activities of the Company and/or the acts or omissions of such Persons regardless of whether the Company would have the power to indemnify such Persons against such liability under the provisions of this Agreement.

(g) Any indemnification under this Section 9.8 shall be satisfied solely out of the assets of the Company. No Member shall be subject to personal liability or required to provide any funds, or to cause any funds to be provided, to Company to satisfy any indemnification obligation of the Company under this Section 9.8.

(h) Except as set forth in the Act, no Member shall be liable under a judgment, decree or order of a court, or in any other manner, for the debts, liabilities, or obligations of the Company; provided, however, nothing contained in this Section 9.8 shall limit the obligation of a Member to make Contributions required under this Agreement.

(i) Notwithstanding anything to the contrary in this Section 9.8, if any Manager or Member or its Affiliate enters into a separate agreement to provide services to the Company, then the rights (including rights to indemnification), liabilities and obligations of such Manager or Member or its Affiliate, in its capacity as service provider under such agreement, shall be governed by the terms and provisions of such service agreement, and the terms and provisions hereof shall not apply nor shall the Company be obligated to indemnify such Manager, Member or its Affiliate against any claims arising in connection with such agreements, unless and to the extent required by the terms of provisions thereof.

9.9 Other Business Ventures.

(a) MH shall not, directly or indirectly, engage in or possess any interest in other business ventures of any nature and description, independently or with others, that adversely affect the real estate projects owned by any Subsidiary or the Company.

(b) MM may engage in or possess an interest in other business ventures of every nature and description, independently or with others, and neither the Company, nor the other Members shall have, and each of them hereby expressly waives, relinquishes and

renounces, any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Moreover, MM shall not be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and MM shall have the right to take for its own account, for the account of other business entities of which it is an owner, or to recommend to others any such particular investment opportunity.

9.10 Projects.

(a) The Administrative Manager shall prepare an initial business plan for each Project, including, without limitation, detailed timelines, budgets, pro-formas, execution strategies and proposed vendors. The Managing Manager, in its sole discretion, may amend/reject any business plan proposed by the Administrative Manager for each Project. A business plan for a Project approved by the Managing Manager is referred to herein as the "Business Plan" for such Project.

(b) On a Project-by-Project basis, the Managing Manager shall determine how the construction is handled.

(c) The Managers shall have regular (no less than monthly) business calls to discuss implementation of the Business Plan for each Project. The Managing Manager will execute the capital expenditure plan (including tenant improvements) for each Project which is not under construction per the Business Plan for such Project.

(d) If the Managing Manager elects to obtain third-party debt financing for a Project, and any such lender requires environmental indemnities, guaranties (whether full or non-recourse carve-outs) or any other indemnities as part of such financing, the MOM Member will provide the same, but, as between the Members, each Member shall be responsible for paying the portion of any claim under such indemnities or guaranties on a 50/50 basis.

(e) The development budget for the development of any Project shall be determined by the Managers (the budget approved by the Managers is referred to herein as the "Development Budget"). All pre-development costs for a Project within the Development Budget shall be paid with Contributions by the Members on a 50/50 basis; provided, however, if the MOM Member determines not to invest in a Project, then such Project shall be deemed an Other Owned LLC and the MO Member shall make Contributions to pay all costs associated with such Project.

(f) The approval of both of the Managers shall be required, subject to good faith negotiation, for the selection of the general contractor for construction of any Project and the guaranteed maximum price construction contract with such general contractor for such construction (including the market-rate compensation to be paid to such general contractor for its services).

(g) The approval of both of the Managers shall be required, subject to good faith negotiation, for the selection of the architect for construction of any Project.

(h) The MOM Member shall be entitled to determine to conduct

rehabilitation or construction of property owned by an Other Owned LLC, in which event the Other Owned LLC shall become a Project.

9.11 Fees.

(a) For each Project which is to be constructed, the Administrative Manager (or its designee) will receive a fee equal to 4% of total construction costs (excluding such fee) or such lesser amount as an unaffiliated lender requires (for each Project, the "Construction Management Fee"), in exchange for the Administrative Manager (or its designee) overseeing construction of such Project. Such fee shall be payable from funds provided for such construction and shall be paid pursuant to a schedule reasonably determined by the Managing Manager, subject to approval of any construction lender. In the event that the Managing Manager reasonably determines that the Administrative Manager (or its designee) is not satisfying the performance standards relative to reaching the goals in the Business Plan for a Project, the Managing Manager shall have the right to terminate the services of the Administrative Manager (or its designee) with respect to overseeing construction of such Project upon thirty (30) days' written notice. Upon such termination, the Administrative Manager and any designee thereof shall not be entitled to receive any unpaid portion of the Construction Management Fee. No termination under this clause (a) shall result in a loss of any capital account of the MO Member or a loss of any right of the MO Member to distributions hereunder.

(b) In exchange for asset management services to Company, the Managing Manager (or its designee) shall receive the following fees: (i) 1% of total equity raised for each Project, with this being a one-time fee that shall accrue until such time as the applicable Project has sufficient cash flow to pay the same as determined in the sole discretion of the Managing Manager (however, such fee shall not be paid prior to the third anniversary of the Effective Date unless an MH Default occurs); (ii) 1% of the gross revenue of each Project for which the MOM Member has made a Contribution payable in monthly installments in arrears; this fee shall accrue until such time as the applicable Project has sufficient cash flow to pay the same as determined in the sole discretion of the Managing Manager; and (iii) 1% of the gross sale and/or refinance proceeds for each Project payable at the closing of such sale or refinance; provided, however, the fee payable under this clause (iii) shall be subject to an aggregate cap of \$160 million.

9.12 Operating Budgets. For each Project that has been completed, no less than 30 days prior to the completion of each Fiscal Year, the Managers shall work in good faith to approve an operating budget for such Project for the next Fiscal Year. If the Managers cannot agree upon an operating budget for a Fiscal Year, then the operating budget for the current Fiscal Year shall continue in effect as the approved operating budget for the next Fiscal Year until the Managers approve a new operating budget. An operating budget approved hereunder shall be referred to herein as an "Approved Budget".

9.13 Special Indemnity. The MO Member shall indemnify the Managing Manager and the MOM Member for all damages, losses, claims, expenses or liabilities incurred by the Managing Manager and the MOM Member with respect to any litigation with respect to a Project pending on the date hereof. The MO Member shall pay all costs and expenses of defending such litigation; such payments shall not be deemed a loan or Contribution to the

Company and the MO Member shall not be entitled to reimbursement from the Company or a Subsidiary for such costs and expenses. If a Project is subject to pending litigation on the date hereof and the MOM Member has made a Contribution with respect to such Project, then the MOM Member shall be entitled to cause such litigation to be settled in its sole discretion; provided, that the Administrative Manager can block such settlement by purchasing (or causing the MO Member to purchase) from the MOM Member its indirect interest in such Project for a purchase price equal to the amount the MOM Member would receive under Section 8.2(a) hereof if such Project was sold for the appraised "as-built" value as determined by an appraiser mutually agreed to by the Managers and the proceeds thereof were distributed under Section 8.2(a) hereof and obtaining a full release of any guaranties or indemnities provided by MM, the MOM Member or any Affiliate of MM or the MOM Member under any financing for such Project (if such purchase occurs, then the Project shall become an Other Owned LLC).

9.14 Officers. The Managing Manager may, from time to time, appoint one or more persons to be officers of the Company. Unless the Managing Manager decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office, subject to the terms of this Agreement and any written employment agreement of such individual with the Company. No such appointment and no prescribed duties will reduce or dilute the power of the Managing Manager as set forth herein or at law. The Managing Manager may remove any officer from office with or without cause; provided, however, that no removal will impair the contract rights, if any, of the officer removed or of the Company or of any other Person. Any officer may resign at any time by giving written notice to the Managing Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

9.15 Affiliate Transaction. No agreement between the Company, on the one hand, and the Administrative Manager, the MO Member or an Affiliate of the Administrative Manager or the MO Member, on the other hand, shall be effective unless approved in writing by the Managing Manager. No agreement between the Company, on the one hand, and the Managing Manager, the MOM Member or an Affiliate of the Managing Manager or MOM Member, on the other hand, shall be effective unless approved in writing by the Administrative Manager, except for an agreement expressly provided for herein.

10. RESTRICTIONS ON TRANSFER: NEW MEMBERS.

10.1 Limitations on Transfers.

(a) No Member shall for any reason, whether voluntarily, involuntarily or by operation of law, Transfer all or any of such Member's Membership Interest, nor shall any Member indirectly Transfer all of such Member's Membership Interest through a transaction that results in a change in the Person(s) Controlling such Member, without MM Consent. Notwithstanding the foregoing, the MOM Member shall not for any reason, whether voluntarily,

involuntarily or by operation of law, Transfer all or any of such Member's Membership Interest (other than a Transfer to an Affiliate of the MOM Member), nor shall the MOM Member indirectly Transfer all of such Member's Membership Interest through a transaction that results in a change in the Person(s) Controlling the MOM Member, without the prior written consent of MH (which shall not be unreasonably withheld, delayed or conditioned) ("MH Consent") except such MH Consent is not required if the manager of the MOM Member does not change in connection with such Transfer. Any Transfer not expressly permitted in this Agreement shall be null and void. Whether or not MM Consent or MH Consent is required for a Transfer, a transferee of a Membership Interest shall have the right to become a substitute Member only if (i) such Person executes an instrument satisfactory to the Managing Manager accepting and adopting the terms and provisions of this Agreement, and (ii) such Person pays any reasonable expenses in connection with his or her admission as a substitute Member. Neither the admission of a substitute Member nor any Transfer complying with Section 10 shall release the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

(b) No Transfer of any Membership Interest may be made which (i) could cause a termination of the Company for federal income tax purposes; (ii) alone or in conjunction with any other Transfer, might adversely affect, or tend to affect adversely, the characterization of the Company as a partnership for federal income tax purposes; (iii) could result in the assets of the Company being considered by law to be assets of employee benefit plans and therefore subjecting those assets to the fiduciary standards of the Employee Retirement Income Security Act of 1974, as amended; or (iv) violates the Securities Act and any rules promulgated thereunder and any similar state "Blue Sky" laws. In addition, in no event may a Transfer occur which results in more than ninety-nine (99) beneficial owners of Membership Interests.

10.2 [reserved].

10.3 Drag Along Sale. If the MOM Member proposes to sell or transfer for value, directly or indirectly, to one or more purchasers all of its Membership Interests in an arm's length transaction, then the MOM Member shall have the option (the "Drag-Along Option") to require the other Members (individually a "Drag Member" and collectively the "Drag Members") to sell, to the prospective purchaser acquiring the Membership Interests held by the MOM Member, the Membership Interests held by each Drag Member. If the MOM Member exercises the Drag-Along Option, then (a) each of the Members shall receive an amount in respect of Membership Interests sold equal to the amount that such Member would have received in respect of such Membership Interests if the Drag-Along Sale Consideration was treated as Cash From Capital Transactions in a deemed sale of all of the assets of the Company and such Cash From Capital Transactions was distributed to the Members pursuant to Section 8.2 (after making allocations pursuant to Section 6 in respect of such deemed sale), and (b) the Members shall (i) be subject to the same terms and conditions of sale (including without limitation any deferred payments of the Drag-Along Sale Consideration) and (ii) execute such documents and take such actions as may be reasonably required to effect such sale. The Drag Along Option shall be exercisable by delivery of written notice to the Drag Members by the MOM Member. For purposes of this Section 10.3, "Drag-Along Sale Consideration" means the aggregate net purchase price (after payment of all transaction expenses) received from the purchaser(s) in the

sale of the Membership Interests pursuant to this Section 10.3, excluding amounts relating to market employment arrangements.

10.4 Tag Along Sale. If the MOM Member proposes to sell or transfer for value, directly or indirectly, to one or more purchasers all of its Membership Interests in an arm's length transaction, then the MO Member shall have the option (the "Tag-Along Option") to require the purchaser of such Membership Interests to purchase the Membership Interests held by the MO Member. If the MO Member exercises the Tag-Along Option, then (a) the MO Member shall receive an amount in respect of the Membership Interests sold by the MO Member equal to the amount that such Member would have received in respect of such Membership Interests if the Tag-Along Sale Consideration was treated as Cash From Capital Transactions in a deemed sale of all of the assets of the Company and such Cash From Capital Transactions was distributed to the Members pursuant to Section 8.2 (after making allocations pursuant to Section 6 in respect of such deemed sale), and (b) the Members shall (i) be subject to the same terms and conditions of sale (including without limitation any deferred payments of the Tag-Along Sale Consideration) and (ii) execute such documents and take such actions as may be reasonably required to effect such sale. The Tag-Along Option shall be exercisable by the MO Member by delivery of written notice to the MOM Member during the five Business Day period after the MO Member received written notice from the MOM Member of the terms and conditions of the proposed sale of the Membership Interests held by the MOM Member. For purposes of this Section 10.4, "Tag-Along Sale Consideration" means the aggregate net purchase price (after payment of all transaction expenses) received from the purchaser(s) in the sale of Membership Interests pursuant to this Section 10.4, excluding amounts relating to market employment arrangements, provided that such net purchase price shall be grossed-up (as determined by the MOM Member) to account for any Membership Interests not being purchased pursuant to this Section 10.4.

10.5 Buy-Out. At any time after the fifth anniversary of the Effective Date, the MOM Member may propose to purchase the MOM Member's interest in any Project (each such Project, a "Buy-Out Project") by delivering written notice of the MOM Member's desire to purchase such Buy-Out Projects to the MO Members (the "Buy-Out Notice"). The MO Member shall have the right to accept the terms of purchase set forth in the Buy-Out Notice or request that the price for the purchase be established by the appraisal process set forth in this Section, in each case by delivery of written notice to the MOM Member within 15 days after delivery of the Buy-Out Notice (the "Acceptance Period"). If the request set forth in the prior sentence (the "Appraisal Request") is not delivered within the Acceptance Period, then the MO Member shall be deemed to have accepted the terms of the purchase set forth in the Buy-Out Notice. If the Appraisal Request is delivered within the Acceptance Period, (a) promptly after such Appraisal Request is delivered, the MOM Member (on the one hand) and the MO Members (on the other hand) will each engage an independent appraiser to perform an appraisal of each Buy-Out Project for its highest and best use, (b) if the two appraisals for any one Buy-Out Project are within five percent (5%) of each other, then the value for that Buy-Out Project shall be the average of the two appraisals, (c) if the two appraisals for any one Buy-Out Project are not within five percent (5%) of each other, then (x) the two existing appraisers shall select a third independent appraiser to perform an appraisal of the Buy-Out Project for its highest and best use and (y) the value for that Buy-Out Project shall be the average of (i) the third appraisal and (ii) whichever of the first two appraisals is closest to the third appraisal and (d) the purchase price

for the MO Member's interest in such Buy-Out Project shall be the portion of the Cash From Capital Transactions attributable to a sale of such Buy-Out Project at such value which the MO Member would receive under Section 8.2; provided, however, the MOM Member has no obligation to purchase the Membership Interests for such price, (e) if the MOM Member desires to purchase the Membership Interests held by the MO Member for the price established under the foregoing clause (d), the MOM Member shall deliver written notice to the MO Member within 60 days after the MOM Member delivers to the MO Member the calculation of the purchase price under the foregoing clause (d), and (f) if the MOM Member does not deliver written notice under the foregoing clause (e) within the 60 day period set forth therein, the MOM Member shall be deemed to have elected not to purchase the MO Member's interest in such Buy-Out Project for such price. If the MO Member accepts or is deemed to have accepted the terms of the purchase set forth in the Buy-Out Notice, then the closing of the purchase of the MO Member's interest in such Buy-Out Project shall occur within 30 days after the end of the Acceptance Period. If the Appraisal Request is delivered and the MOM Member elects to purchase the MO Member's interest in such Buy-Out Project for the price established under clause (d) of this subsection, then the closing of the purchase of the MO Member's interest in such Buy-Out Project shall occur within 30 days after the date on which the MOM Member delivers written notice of its election to purchase under clause (e) of this subsection. The transfer of the MO Member's interest in such Buy-Out Project shall be made pursuant to an assignment under which the MO Member represents he owns such interest free and clear of all security interests, lien, claim of ownership, right of first refusal or options of any kind and have the authority to sell interest without obtaining the consent or authorization from any Person or governmental authority.

10.6 No Dissolution. If a Member Transfers all or any part of its interests in the Company without complying with the provisions of this Agreement, such action shall not cause or constitute a dissolution of the Company.

10.7 New Members. No new Member may be admitted into the Company, and no Membership Interests may be issued, without MM Consent.

11. DISSOLUTION AND WINDING UP OF THE COMPANY.

11.1 Dissolution of Company. The Company shall be dissolved upon the happening of any of the following events:

- (a) MM Consent to dissolve;
- (b) The sale or other disposition of all or substantially all of the assets of the Company;
- (c) The termination of the Company pursuant to Section 5.1; or
- (d) Entry of a judicial decree of dissolution pursuant to the Act.

11.2 Winding Up of the Company. Upon dissolution of the Company, the Managing Manager shall wind up the affairs and liquidate the assets of the Company in accordance with the provisions of this Section 11.2 and the Act. Profits, Losses, Nonrecourse

Deductions, Member Nonrecourse Deductions and all other Company items shall be allocated until the liquidation is completed in the same ratio as such items were allocated prior thereto. The proceeds from liquidation of the Company when and as received by the Company shall be utilized, paid and distributed in the following order:

- (a) First, to pay expenses of liquidation;
- (b) Next, to pay the debts of the Company to third parties other than the Members;
- (c) Next, to pay the debts of the Company owing to creditors who are Members;
- (d) Next, to the establishment of any Cash Reserves which are reasonably determined to be necessary for contingent liabilities; and
- (e) Thereafter, to the Members, in accordance with Section 8.2; provided, however, that the final Capital Account balances of each of the Members prior to the distribution contemplated by this Section 11.2(e), as determined by taking into account all Capital Account adjustments required by this Agreement, are intended to equal the amount that each Member will receive pursuant to Section 8.2. If, for any reason, the distributions pursuant to this Section 11.2(e) (in accordance with Section 8.2) do not result in the same distribution to each Member as would a distribution to the Members in accordance with their positive Capital Account balances upon liquidation of the Company, then the Profits and Losses of the Company and items thereof (including gross income and gross deduction) for the taxable year of the distribution contemplated by this Section 11.2(e) and, if necessary and agreed to by the Managing Manager in its sole discretion, for all prior taxable years for which amended federal tax returns can be filed, shall be revised or amended to the extent possible in order that the final Capital Account balance of each of the Members, prior to the distribution contemplated by this Section 11.2(e) (in accordance with Section 8.2) equals the amount that such Members will receive when the remaining proceeds available for distribution to the Members are distributed pursuant to Section 8.2.

11.3 Right To Receive Property. The Members shall have no right to demand or receive property other than cash in return for their Contributions.

12. BOOKS AND RECORDS; EXPENSES.

12.1 Books of Account. The Managing Manager shall, at the Company's sole cost and expense, keep separate, full and accurate books and records of the Company wherein shall be recorded and reflected all of the Contributions and all of the income, expenses and transactions of the Company and a list of the names and addresses of the Members in alphabetical order. The Administrative Manager or a Member shall have the right at any time to inspect the Company's books and records.

12.2 Accounting and Reports.

- (a) Monthly and Annual Reports. The Managing Manager shall, at the

Company's sole cost and expense, cause the following to be delivered to the Members on a monthly basis, provided the unaffiliated property management company provides to the Managing Manager the appropriate information for the Managing Manager to prepare applicable financial statement (each shall be prepared in accordance with GAAP, consistently applied, except the monthly financials shall not contain footnotes and shall be subject to normal year-end adjustments):

(i) A balance sheet for the Company as of the end of the month for each of the first 11 months in a Fiscal Year together with a profit and loss statement for the period then ended; and

(ii) For each Fiscal Year, a balance sheet for the Company as of the end of such Fiscal Year together with a profit and loss statement for the year then ended (at the request of the MOM Member, such financial statements shall be audited by an accounting firm selected by the Managing Member).

The financial statements described in the foregoing clause (i) shall be delivered by the 25th day of the month following the last month in the period subject to such financial statements. The financial statements described in the foregoing clause (ii) shall be delivered by the March 31 after the end of the applicable Fiscal Year.

(b) Tax Returns. The Managing Manager shall engage a firm of independent certified public accountants to review, or sign as preparer, all federal, state and local tax returns which the Company is required to file. The Managing Manager shall deliver to the Members copies of all federal, state and local income tax returns and information returns, if any, which the Company is required to file.

12.3 Banking. The funds of the Company shall be deposited into such account or accounts as are designated by the Managing Manager. All withdrawals of funds of the Company from bank accounts shall be made upon checks (or wire transfer authorizations) signed by the Managing Manager or the Person or Persons designated by the Managing Manager.

12.4 Expenses of Company. All direct expenses incurred in connection with conducting the Company's Business shall be billed to and paid by the Company. If any such expense is paid directly by a Manager or any Affiliate of a Manager, such Person may be reimbursed for such direct expenses without interest.

13. ADJUSTMENT OF BASIS ELECTION. In the event of a Transfer of any Membership Interests in the Company, or in the event of a distribution of the property of the Company to any Member hereto, the Managing Manager may, in its sole discretion, file an election in accordance with Section 754 of the Code and applicable Treasury Regulations to cause the basis of the Company's property to be adjusted for federal income tax purposes, as provided in Sections 734, 743 and 754 of the Code.

14. WAIVER OF ACTION FOR PARTITION. Each of the Members hereby irrevocably waives, during the term of the Company, any right such Member may have to maintain any action for partition with respect to any property of the Company.

15. AMENDMENTS

15.1 Member Consent Required. Subject to Section 15.2 and the rights of the Managing Manager pursuant to Section 6.7, amendments to this Agreement may be made only if approved by the Members (and a Manager, if the amendment affects any of the rights or obligations of such Manager).

15.2 No Member Consent Required. Notwithstanding any provision of this Agreement, the following amendments to this Agreement may be made by the Managing Manager without any approval of any other Member:

(a) To reflect assignments of Membership Interests and substitutions of Members that comply with Section 10; and

(b) To reflect Contributions by the Member.

16. NOTICES. Any notice, communication, request, reply or advice provided for or permitted by this Agreement to be made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served by: (i) delivering the same to such party in person or by commercial courier or personal messenger; (ii) electronic delivery via E-mail (which may include a .pdf, .tif, .gif, .jpeg or similar attachment to the electronic mail message); or (iii) depositing the same into custody of a nationally recognized overnight delivery service such as Federal Express or UPS. Notice given in any of the foregoing manners shall be effective only if and when delivered to (or refusal to accept delivery by) the party to be notified, or in the case of electronic mail, upon the entrance of such electronic mail into the information processing system designated by the recipient's e-mail address provided that the date of transmission is a Business Day (and the transmission is transmitted prior to the close of business) and further provided that: (i) an overnight delivery is forwarded to the party being noticed on the same day as the electronic transmission; or (ii) there is a confirmed receipt of delivery by the sender's server; or (iii) the recipient sends a reply email acknowledging receipt. The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least one (1) Business Day prior written notice to the other party. For the purposes of notice, the addresses of the Managers and the Members, until changed, shall be as follows:

If to MH or the MO Member:

c/o 4G Wireless, Inc.
8871 Research Dr.
Irvine, CA 92610
Attention: Mohammad Honarkar
Email: mhonarkar@4g-ventures.com

Copies to:

Much Shelist, P.C.
660 Newport Center Drive, Suite 900

Newport Beach, CA 92660
Attention: Glenn D. Taxman
Email: gtaxman@muchlaw.com

If to MM or the MOM Member:

c/o Continuum Analytics
520 Newport Center Drive, Suite 480
Newport Beach, CA 92660
Attention: Mahender Makhijani
Email: mahender@continuumanalytics.com

17. ATTORNEYS' FEES. Should any party hereto institute any arbitration, action or proceeding at law or in equity to enforce any provision hereof, including an action for declaratory relief or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision hereof, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

18. REPRESENTATIONS OF THE MEMBERS.

18.1 Representations of MM. MM hereby represents and warrants to MHI and the MO Member as follows:

(a) Binding Agreement. This Agreement constitutes the valid and binding agreement of MM and the MOM Member, enforceable against MM and the MOM Member in accordance with its terms, subject as to enforcement to bankruptcy, insolvency and other similar laws affecting the rights of creditors and to general principals of equity;

(b) Authority. Each of MM and the MOM Member has been duly formed and is validly existing in good standing under the laws of the State of Delaware, with all requisite power and authority to enter into this Agreement, to carry out the provisions and conditions hereof and to perform all acts necessary or appropriate to consummate all of the transactions contemplated hereby and no further action by MM or the MOM Member is necessary to authorize the execution or delivery of this Agreement;

(c) Execution. This Agreement has been duly and validly executed and delivered by MM and the MOM Member; and

(d) Litigation. There is no action, suit or proceeding pending or, to MM's knowledge, threatened against MM and the MOM Member that questions the validity or enforceability of this Agreement.

18.2 Representations of MH. MH hereby represents and warrants to MM and the MOM Member as follows:

(a) Binding Agreement. This Agreement constitutes the valid and binding agreement of MH and the MO Member, enforceable against MH and the MO Member in accordance with its terms, subject as to enforcement to bankruptcy, insolvency and other similar laws affecting the rights of creditors and to general principals of equity;

(b) [reserved];

(c) Execution. This Agreement has been duly and validly executed and delivered by MH and the MO Member; and

(d) Litigation. There is no action, suit or proceeding pending or, to MH's knowledge, threatened against MH or the MO Member that questions the validity or enforceability of this Agreement.

19. MISCELLANEOUS.

19.1 Applicable Law; Venue. This Agreement shall, in all respects, be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of law principles. Subject only to the arbitration provisions set forth at Section 19.10 of this Agreement, the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the state courts of the State of California in Los Angeles County or the United States District Court for the Central District of California, for the purposes of any lawsuit, action or other proceeding arising out of or based upon this Agreement and the subject matter hereof. The parties hereto, to the greatest extent permitted by applicable law, hereby irrevocably and unconditionally waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such lawsuit, action or other proceeding brought in the above-named courts or as provided in the arbitration provisions of this Agreement, any claim that it is not subject personally to the jurisdiction of such courts or arbitration tribunal, that its property is exempt or immune from attachment or execution, that the lawsuit, action or proceeding is brought in an inconvenient forum, that the venue of the lawsuit, action or proceeding is improper or that this Agreement may not be enforced in or by such court or tribunal. Final judgment against a party in any such lawsuit, action or proceeding shall be conclusive, and may be enforced in any other jurisdiction (x) by lawsuit, action or proceeding on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of the liability of the party as therein described or (y) in any other manner provided by or pursuant to the laws of such other jurisdiction.

19.2 Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

19.3 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their successors and permitted assigns.

19.4 Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so requires.

19.5 Entire Agreement. This Agreement (including the Exhibits) executed by each Member constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and thereof and any and all prior agreements, understandings or representations with respect to the subject matter hereof and thereof, including without limitation the Term Sheet, are hereby terminated and canceled in their entirety and are of no further force or effect.

19.6 Waiver. A waiver of any provision of this Agreement shall be valid only if it is in writing and signed by the party making the waiver. No waiver by any party hereto of any breach of this Agreement or any provision hereof shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof. No custom, practice or course of dealings which arise among the Members and/or the Managers in the administration hereof shall be construed as a waiver or diminution of the right of any Member or Manager to insist upon the strict performance by any other Member or Manager of the terms, covenants, agreements and conditions herein contained.

19.7 Counterparts. 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. Signatures provided by facsimile or in portable document format (a/k/a pdf) or other electronic format shall be as binding as original signatures. The parties agree that this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on such parties as if it were physically executed and each party to this Agreement hereby consents to the use of any third party electronic signature capture service providers as may be chosen by the other party.

19.8 Interpretation. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

19.9 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the parties and their successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any party to this Agreement, nor shall any provision give any third Person any right of subrogation or action over or against any party to this Agreement.

19.10 Arbitration. In the event a Member or Manager breaches the terms of this Agreement, the non-breaching party shall have all rights and remedies available at law (for actual damages) and/or in equity; provided that no party shall be liable for consequential,

punitive or special damages. Any dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (including whether the claims asserted are arbitrable), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or such other rules as the parties may agree upon. Such arbitration shall be conducted by a single independent arbitrator. The parties to the arbitration shall within five (5) Business Days mutually agree on a single independent arbitrator. If they are unable to agree on an independent person within such five (5) Business Day period, the arbitrator shall be appointed by JAMS in accordance with its rules. Any arbitrator shall be either (A) a retired judge or (B) an attorney with at least twenty (20) years of litigation experience. The place of arbitration shall be Irvine, California. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives and judgment may be entered thereon in any court of competent jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator, and may award attorneys' fees and costs to the prevailing party. Discovery in accordance with California law shall be permitted. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the parties.

19.11 Expenses. Each party shall be responsible for all fees and expenses incurred by or on behalf of such party in connection with the negotiation and execution of this Agreement and the transfer of interests in the Subsidiaries to the Company.

19.12 Further Assurances. The MO Member shall take any and all action, and execute all documents necessary, to complete the assignment to the Company or a Subsidiary of any rights the MO Member has, directly or indirectly through another entity or entities, in and to the Projects.

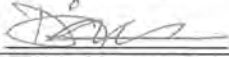
19.13 Confidentiality. The Members and the Managers agree to keep the contents of this Agreement confidential; provided, however, the Members and Managers may disclose this agreement to their respective Affiliates and to the directors, officers, employees, agents, investors, representatives, attorneys, accountants and other advisors of a Member, a Manager or an Affiliate of a Member or a Manager and disclosure shall be permitted as required in connection with any financing or equity capital obtained or sought by the Company or any Subsidiary, by law (including in connection with any tax filing or audit), in accordance with legal process, or in connection with any dispute hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

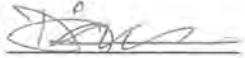
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

MOM CA Investor Group LLC

By: MOM CA Manager LLC, a Delaware limited liability company, Manager

By: 
Deba Shyam, Manager

MOM CA Manager LLC

By: 
Deba Shyam, Manager


Mohammad Honarkar

NANOSP0127

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ARB EX 0315-038

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

MOM CA Investor Group LLC

By: MOM CA Manager, LLC, a Delaware limited liability company

By: _____
Deba Shyam, Manager

MOM CA Manager LLC

By: _____
Deba Shyam, Manager



Mohammad Honarkar

Signature Page to Operating Agreement

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MOMRESP_00002963

ARB EX 0315-039

Exhibit A

Participation Percentages and Capital Percentages

The Participation Percentages of the Members for Projects are as follows:

MOM Member: 50%

MO Member: 50%

If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Participation Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of Contributions made by the MOM Member for the Projects pursuant to Section 6.1 plus \$35 million, (ii) plus any Contributions made by such Member under Section 6.2(a), (iii) plus any loan made by such Member under Section 6.2(b) and the denominator of which is (b) the sum of the total Contributions made by the MOM Member for the Projects pursuant to Section 6.1, plus the Contributions made by the Members pursuant to Section 6.2(a), plus the loans made by Members pursuant to Section 6.2(b) plus \$35 million. The deemed Contribution made by a Member under Section 6.2(b) shall not be included in the calculation under the prior sentence.

The Participation Percentages of the Members for Other Owned LLCs are as follows:

MOM Member: 0%

MO Member: 100%

If MO Member does do not make the Contributions for an Other Owned LLC pursuant to Section 6.1(f) and the MOM Member makes a Contribution for an Other Owned LLC (or a loan pursuant to Section 6.2(d)), then the Participation Percentage for each Member for the Other Owned LLCs shall be adjusted to equal the Contributions made by such Member for the Other Owned LLCs plus any loan made by such Member under Section 6.2(d) divided by the total Contributions made by all Members for the Other Owned LLCs plus the loans made by the MOM Member pursuant to Section 6.2(d). The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence. The initial Contributions made by the MOM Member as of the date hereof for the Other Owned LLCs are \$7,000,000.

The Capital Percentages of the Members for Projects are as follows:

MOM Member: 50%

MO Member: 50%

If all of the Members do not make Mandatory Additional Contributions pursuant to Section 6.2(a), then the Capital Percentage for each Member for the Projects shall be adjusted to equal the following expressed as a percentage: a fraction, the numerator which is (a) the sum of (i) 50% of the sum of Contributions made by the MOM Member for the Projects pursuant to Section 6.1 plus \$35 million, (ii) plus any Contributions made by such Member under Section 6.2(a), (iii)

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plus any loan made by such Member under Section 6.2(d) and the denominator of which is (b) the sum of the total Contributions made by the MOM Member for the Projects pursuant to Section 6.1, plus the Contributions made by the Members pursuant to Section 6.2(a) plus \$35 million. The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence.

The Capital Percentages of the Members for Other Owned LLCs are as follows:

MOM Member: 0%

MO Member: 100%

If MO Member does not make the Contributions for an Other Owned LLC pursuant to Section 6.1(f) and the MOM Member makes a Contribution for an Other Owned LLC (or a loan pursuant to Section 6.2(d)), then the Capital Percentage for each Member for the Other Owned LLCs shall be adjusted to equal the Contributions made by such Member for the Other Owned LLCs plus any loan made by such Member under Section 6.2(d) divided by the total Contributions made by all Members for the Other Owned LLCs plus the loans made by the MOM Member pursuant to Section 6.2(d). The deemed Contribution made by a Member under Section 6.2(d) shall not be included in the calculation under the prior sentence.

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Exhibit B

Disbursement of Contribution for Hotel Laguna Project

Fund shortfalls in the refinance of debt completed on or about the date hereof.

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Exhibit C

Other Owned LLCs

The Masters Building, LLC
689 S Coast Hwy, LLC
837 Park Ave, LLC
Laguna HI, LLC
Laguna HW, LLC
314 S. Harvard DE, LLC
4110 West 3rd Street DE, LLC
Tesoro Reedlands, LLC
Tustin Retail Properties, LLC
113 Canyon Acres, LLC
Terra Laguna Beach, Inc.
Pershing82, LLC
MJA Restaurants, Inc.
4G Wireless, Inc.
MS Nosh, LLC
Blue Lagoon Resort, LLC
Buena Vida RSM, LLC
Modan, LLC
Newport Crossing, LLC
Seven Degrees Laguna, Inc.
331 N. Coast, LLC
331 North Coast Hwy., LLC
BMV Apartments, LLC
7 Star Trade-In, LLC
Brookline Aliso Viejo, LLC
Laguna Beach Company, Inc
Marquis Marine, LLC
Poppy and Seed, LLC
2711 E Coast Hwy, LLC
Rancho San Joaquin Golf Course, LLC
The Fullest, LLC
Pizza 90, Inc
14 West Coast, LLC
Cliff Drive NB Properties, LLC
Cleo Hotel Project
 *Laguna HW, LLC (14 West)
 * Laguna HI, LLC (Holiday Inn)
Koreatown Project
 *314 S. Harvard DE, LLC
 *4110 West 3rd Street DE, LLC
Assisted Living/ Memory Care project
Newport Crossing project

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Exhibit D

Additional Projects

- 1) Cleo Hotel Project
 - *Laguna HW, LLC (14 West)
 - * Laguna HI, LLC (Holiday Inn)
- 2) Koreatown Project
 - *314 S. Harvard DE, LLC
 - *4110 West 3rd Street DE, LLC
- 3) Assisted Living/ Memory Care
- 4) Newport Crossing

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Exhibit E

First Choice LLCs

MOM AS Investco LLC, a Delaware limited liability company.
MOM BS Investco LLC, a Delaware limited liability company.

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EXHIBIT F



TERM SHEET
COMMERCIAL REAL ESTATE INVESTMENT PROGRAM

May 24, 2021 (the "Effective Date")

This term sheet ("Term Sheet") sets forth the principal terms for the non-exclusive business relationship between Continuum Analytics, or its designee ("CONA") and 4G Wireless, Inc./Mohammad Honarkar and/or an affiliate/subsidiaries ("4G") (sometimes, each a Member and collectively, the "Members"). The Members will form a special purpose vehicle organized as a Delaware limited liability company (the "Company" or "Venture") to, directly or indirectly through a wholly owned subsidiary of the Venture, acquire, control, develop, renovate, lease, operate, finance and, eventually, sell hotels, multifamily apartment buildings, and mix-used projects (each individually a "Project" and collectively the "Projects"), as more particularly described in Exhibit A attached hereto. This Term Sheet shall constitute a binding agreement. The parties will negotiate in good faith a definitive limited liability agreement for Venture ("JV Agreement"); however, pending the execution of the JV Agreement, this Term Sheet shall govern the transactions described herein. In addition, 4G will contribute the ownership interests in the entities which own the other real estate assets described on Exhibit C to the Venture (the "Other Assets"). This Term Sheet shall be governed by the laws of the State of California.

The intent is that 4G has already or will source Projects, provide underwriting, create a business plan, and perform Construction Management and that CONA and 4G will execute the business plan, while CONA will provide third party equity and Asset Management services.

GENERAL TERMS:

Members of Venture: The Members

Due Diligence: Upon execution of this Term Sheet CONA will commence its due diligence ("Due Diligence") on the Projects including land use review, review of title, a review of the construction cost and plans, market feasibility and any other due diligence that CONA deems necessary.

Final commitment is subject to satisfactory Due Diligence in CONA's sole discretion.

Entitlements: Some of the Projects are entitled and some are permitted to build, however not all Projects are entitled and permitted as of Effective Date.

Business Plan: 4G will prepare an initial draft of business plans with detailed timelines, budgets, pro-formas, execution strategies, vendors etc., for each Project. CONA in its sole discretion may amend/reject any business plan for each Project. Upon review, the Members will work together to mutually finalize/approve the Business Plan for the specific Project's that will be part of the JV ("Business Plan"). Each Project must be approved by CONA in its sole discretion and will be attached to the JV Agreement.

CONA and 4G are further responsible for the implementation of the Business Plan. On a Project-by-Project basis, the Members shall determine how the construction is handled (i.e. Hard Cost Contingencies, Cost Overruns, etc., if necessary) under the terms of the JV Agreement. The Members will have regular (no less than monthly) business calls to go through implementation of the Project Business Plan. If CONA elects to obtain third-party debt financing for a Project, and any such lender requires environmental indemnities, guaranties (whether full or non-recourse carve-outs) or any other indemnities, CONA will provide the same, but, as between the Members, each Member shall be responsible for paying the portion of the claim on a 50/50 basis for the Project subject to the claim. For clarity, claim herein shall mean claims arising out of/related to debt-financing.

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PLF ☐ DEFT *check*
Exhibit No. 11
Mary K. Medley CSR 9557
Date: 5-17-24
Witness: *Patrick*

HONARKAR-037452

**4G Capital
Contribution:**

4G's capital contribution shall be in the form of ownership interests of each entity which owns the Projects or the Other Assets. If a Project or Other Asset is not held by an entity, then such Project or Other Asset shall be contributed by 4G to an entity and then the ownership interest of such entity shall be contributed to the Company. Each of the foregoing entities will be wholly owned subsidiaries of the Company (each an "SPE"). 4G's Capital Account will include approximately \$20M already invested in Projects and approximately \$15M in sweat equity, with Thirty-Five Million Dollars (\$35,000,000) being the amount of 4G's hypothetical initial capital ("4G Capital Account"). 4G's Capital Account shall not receive any distribution towards its hypothetical capital account and the capital account shall not be returned to 4G, however 4G shall receive distributions from Profits and Losses as outlined below. 4G will either contribute the Projects to the Venture via a contribution agreement or the Venture will acquire the Projects pursuant to the terms of a real estate or membership interest purchase and sale agreement. At CONA's discretion, all of 4G's assets (including the Other Assets) shall be transferred into separate single purpose entities and/or use the existing entities on title which will be subsidiaries of the Venture. Each SPE shall have appropriate verbiage for maintaining so called "bankruptcy remote" status and may require an independent director for such.

CONA Capital:

CONA's initial capital contribution shall be in the form of cash equity to match 4G's Capital Account, with an initial CONA Capital Account of Thirty-Five Million Dollars (\$35,000,000). CONA may invest an additional Fifteen Million Dollars (\$15,000,000) to increase its total Capital Account to Fifty Million Dollars (\$50,000,000). All of CONA's Equity Contribution shall be on an "as and when" basis per the budget and timeline specified in the Business Plan for each individual Project, except as specified in this Term Sheet. CONA shall track separate capital accounts for each SPE. CONA, in its sole discretion, may choose to invest additional equity for each individual Project if such equity is required for a Project. CONA's investment shall be secured with 4G's membership interest in the Venture along with all subsidiary LLC's.

The following is the breakdown of CONA Capital Contribution for the Projects:

Notwithstanding the foregoing, as a part of CONA's capital contribution, CONA shall fund a twenty five million-dollar (\$25,000,000) advance into the SPE holding title to the Hotel Laguna Project (the "HLP \$25M Contribution") upon the execution of the JV Agreement by the Members, subject to CONA Contribution section of this Term Sheet. The HLP \$25M Contribution shall be disbursed by the Venture per Schedule 1 attached hereto. CONA has sole discretion to move five million dollars (\$5,000,000) to any other Project upon the execution of the JV Agreement.

As a part of CONA's capital contribution, CONA shall fund an additional five million dollars (\$5,000,000) into the SPE holding title to the Korea Town Project. Prior to funding this capital, CONA shall receive all due diligence material and shall have thirty (30) days after receipt of all the materials to determine to proceed with the Korea Town Project in CONA's sole discretion.

If CONA transfers five million dollars (\$5,000,000) to another Project as determined by CONA, then prior to funding this capital for another Project, CONA shall receive all due diligence material and shall have thirty (30) days after receipt of all the materials to determine to proceed with the Project in CONA's sole discretion.

The remaining a twenty-million-dollars (\$20,000,000) of CONA capital contributions shall be for the additional Projects under the terms of this Term Sheet.

CONA Contribution:

As a material inducement for 4G to execute this Term Sheet and as a condition precedent to 4G executing the JV Agreement, CONA shall also arrange for refinancing of existing debt in the approximate amount of one hundred and forty million dollars (\$140,000,000) ("LoanCore Refi") cross-secured by the real properties set forth on attached and incorporated Exhibit B (each a "Refi Property" and collectively, the "Refi Properties"). Some of the Refi Properties may become a Project of the Venture. At CONA's sole discretion, CONA may also arrange for refinancing of the loan secured by Palm Dessert Hotels ("Rialto Refi") in the approximate amount of twenty-five million dollars (\$25,000,000). If the LoanCore Refi and/or the Rialto Refi requires environmental indemnities, guaranties (whether full or non-recourse carve-outs) or any other indemnities, CONA will provide the same ("CONA Guaranty"). 4G Member is responsible for paying 100% of the claim arising out of or related to the Refi Properties which are not a Project and so long as such claim was not caused by CONA's intentional misconduct or gross negligence while having managerial control over the SPE with respect to such Refi Property. If such claim was caused by CONA's intentional misconduct or gross negligence, then CONA is 100% responsible for the payment of the same.

For further clarification, 4G's Debt Schedule is attached hereto as Exhibit E and 4G is not permitted to incur additional debt without CONA's explicit approval, and such approval can be withheld by CONA in its sole discretion, in writing.

CONA's overall debt/equity investment shall be governed by the JV Agreement, however each Project may be owned/operated under separate LLC's.

CONA's investment, meaning its 20% IRR (defined below) and any payment by CONA under a guaranty to a lender for a default under a loan for a property that is not a Project of the Venture and such default was not caused by a default under the CONA Guaranty, shall be secured by a pledge of all of 4G's membership interest in the Venture, a personal guaranty from Mohammad Honarkar, and by a pledge of all assets ("CONA Security") in which 4G has a membership interest ("4G Assets"), more particularly described in Exhibit C. To perfect such security interest, 4G agrees to sign and execute any and all instruments at CONA's sole discretion. In addition, CONA will require 4G Assets to be transferred into new special purpose entities or use existing entities which will be subsidiaries of the Venture. CONA shall not have a profit interest in these entities but this will serve as collateral for CONA's investment.

If the total payoff for the LoanCore Refi is equal to or less than \$136M ("Original Payoff"), then the HLP \$25M Contribution shall be contributed at the execution of the JV Agreement. However if the payoff amount is in excess of the Original Payoff and/or the SPE's are encumbered with unsecured debt, then CONA shall only fund \$2M out of the HLP \$25M Contribution upon execution of JV Agreement. The total of: (i) the actual LoanCore payoff amount in excess of the Original Payoff, and (ii) the unsecured debt of any SPE in the aggregate shall be defined as the "Excess Payoff Amount". The funding of the remaining \$23M of the HLP \$25M Contribution shall occur on the later of: (y) 90 days after the date of this Term Sheet; or (z) the closing of a bank refinance (or refinancings) of any Project or the Other Assets which, in aggregate, satisfies the Excess Payoff Amount. The parties agree to work diligently and in good-faith to effectuate such refinancing(s) as soon as possible.

Capital Percentages:

The term "Equity Contribution" shall mean, (i) with respect to 4G, the total amount of 4G's Capital Account (ii) with respect to CONA, the total amount of CONA's capital contribution except for certain properties described in Exhibit D that are subject to a loan from First Choice Bank but are not a Project ("FCB Properties"). For all FCB Properties, the Capital Percentage of CONA shall be 80.1% and the Capital Percentage of 4G shall be 19.9%. Immediately prior to the sale of an FCB Property or a refinance of an FCB Property with a lender other than First Choice Bank, 4G shall have an option to purchase from

CONA a 80.1% Capital Percentage with respect to such FC Property for \$1. With respect to the FCB Properties, CONA shall receive zero distributions, all of which shall be deposited into the bank account for such FCB Property. Except for the FCB Properties, CONA shall have a 0% Capital Percentage in any of the Other Assets that are not a Project, subject to the CONA Intercept below. The Members shall establish their Capital Percentages, which shall be the percentage of such Member's Equity Contribution on a Project-by-Project Basis.

Capital Percentages shall be subject to adjustment, from time to time, pursuant to the provisions of the JV Agreement.

Distributions::

Distribution for Initial Capital

A) Projects:

The Venture shall pay CONA a twenty percent (20%) preferred return on all of CONA's capital contributions (compounded annually) (the "IRR") from cash flow or sale or refinance proceeds as set forth below.

All net cash flow (after repayment of all debt obligations including any Member loan, payment of all operating expenses, and funding reserves that are to be further define in the JV), from the Projects, whether from operating or capital events such as refinance or sale, ("Profits and Losses") shall be distributed as follows:

First, to CONA until it has received a twenty percent (20%) IRR on CONA's Equity Contribution (which will include all the cash distributions received by CONA from operations, refinance, and sale events) (the "IRR Threshold"). IRR will be calculated at the Venture level, not individual Projects, except for the Hotel Laguna Project which shall earn a 20% IRR minimum. If the Projects do not return to CONA the IRR Threshold, distributions shall be deducted from 4G's distributions until CONA receives the IRR Threshold, including unpaid IRR.

Second, CONA's cash Equity Contribution will be returned to CONA. 4G acknowledges that it is only participating in the Profit and Losses.

Thereafter, 4G shall receive 50% ("4G Distribution %") of the Profit and Losses and CONA shall receive 50% (CONA Distribution %) of the Profit and Losses assuming CONA has achieved the IRR Threshold on CONA's Equity Contribution. The distribution percentages herein are subject to change based on Additional Capital Contributions. Since the parties intend to hold the Projects for a minimum 5-year period, if annual distributions are insufficient to achieve the IRR Threshold, then such shortfall shall accrue until the earlier of: (i) such time as the distributions are sufficient to satisfy the accrued IRR to meet the IRR Threshold; or (ii) the end of the 5-year period. However, if the 20% IRR (and/or the IRR for the Hotel Laguna Project individually) is not achieved after year three (3), CONA may take 4G's share of distributions from Other Assets and/or Project until it achieves and maintains 20% IRR ("CONA Intercept").

For example, in the event CONA's share of the distribution exceeds the IRR Threshold and 4G has not received a 50% share in the overall net Profits, then CONA will make a catch-up distribution to 4G which will result in 4G achieving a 50% share in the Profits. On the other hand, in the event CONA's distribution is below the IRR Threshold, then 4G will make a catch-up distribution to CONA until it achieves the IRR Threshold.

Notwithstanding anything to the contrary contained in this Term Sheet, the parties agree that so long as CONA achieves the IRR Threshold, CONA Distribution % of the Profits and Losses will be reduced by the amount previously received by CONA. Using the Hotel

Laguna Project as an example with a \$25M Equity Contribution by CONA, a three (3) year hold period with zero distributions to CONA during such time and a \$30M debt payoff, the parties agree that the following waterfalls correctly reflect how distributions will be handled under a scenario in which the IRR Threshold is achieved and in which it is not achieved.

Example #1

\$125M Sale Price (forget closing costs, etc.)
less \$30M debt

\$95M remaining
\$25M to CONA return of Capital (IRR Threshold is \$18.2M)

\$70M remaining

\$35M Interest to CONA (this amount achieved the IRR Threshold)
\$35M Interest to 4G

Example #2

\$65M Sale Price (forget closing costs, etc.)
less \$30M debt

\$35M remaining
\$25M to CONA return of Capital (IRR Threshold is \$18.2M)

\$10M remaining
\$18.2M interest to CONA

NOT enough to achieve the IRR Threshold. Thus, 4G receives nothing and has to pay \$8.2M to CONA for the IRR Threshold short fall.

Distributions for Additional Capital Contributions:

If there are no Additional Capital Contributions, Distributions shall be governed by percentages provided in the paragraph titled Distribution for Initial Capital.

If there are Additional Capital Contributions, Distributions shall be adjusted on a pro-rata basis.

For example, if: (i) the initial capital account for a particular Project for both members is \$10M each (\$20M total); (ii) additional capital of \$10M is required; and (iii) both Members contribute \$5M each, then Distributions shall be governed by percentages provided in the paragraph titled Distribution for Initial Capital

However, if CONA contributes an additional \$9M and 4G contributes an additional \$1M, then percentages shall be adjusted as follows:

CONA Distribution % = $19M/30M = 63.33\%$
4G Distribution % = $11M/30M = 36.67\%$

B) Other Assets:

All net cash flow (after repayment of all debt obligations (including any Member loan), payment of all operating expenses, and funding reserves (to be further define in the JV), from the Other Assets (whether from operating or capital events such as refinance or sale) shall be distributed as follows:

First to CONA Intercept, if any, and then remaining to 4G. If there is no CONA Intercept then 100% to 4G.

- Pre-Development Costs:** All pre-development costs for the Projects (a budget of which shall be agreed upon by Members in advance) shall be paid 50/50 by the Members; provided, however, if CONA does not invest in a Project, then 4G shall be responsible for all costs associated with such Project.
- Construction Management Fee:** An affiliate of 4G ("Construction Manager") will serve as the Construction Manager for each Project and the SPE which owns such Project will pay a construction management fee ("Construction Management Fee") equal to 4% of total Project costs (other than costs for the Construction Management Fee, or such lesser amount as an unaffiliated lender approves) as subject to termination as set forth herein. The Construction Management Fee shall be paid per a schedule under the terms of the JV Agreement. The Construction Manager shall oversee the administration of the Construction Contract, subject to the Major Decisions. All details will be more particularly described in the JV Agreement and associated Venture documents.
- General Contractor:** The Members' unanimous approval shall be required, subject to good faith negotiation, for the selection of the General Contractor for any of the individual Projects, and the form of guaranteed maximum price construction contract (the "General Contract") by which the Venture will retain such General Contractor (including the market-rate compensation to be paid to such general contractor for its services).
- Architecture:** The Member's unanimous approval shall be required, subject to good faith negotiation, for the selection of the architect for each Project.
- Asset Management:** CONA (or its designee) will provide asset management services to the Venture and CONA (or its designee) shall receive a fee in amount of: (i) 1% of total equity raised for the Projects, with this being a one-time fee that shall accrue until such time as the Venture has sufficient cash-flow to pay the same; (ii) 1% of the gross revenue of the Projects for which CONA has made a cash capital contribution – not just arranging for financing and/or providing a loan guaranty), payable in monthly installments in arrears. This fee shall accrue until such time as the Venture has sufficient cash-flow to pay the same; and (iii) 1% of the gross sale and/or refinance proceeds for each Project (it being understood that neither the LoanCore Refi nor the Rialto Refi earn any such fee) (the "Capital Event Fee") if such event shall occur. In addition, the total aggregate Capital Event Fee paid to CONA shall not exceed the amount of the debt arranged by CONA to effectuate the LoanCore Refi and Rialto Refi (if such Rialto Refi is completed).
- The Venture and CONA (or its affiliate) will enter into a Project Asset Management agreement. The obligations under the Project Asset Management will include, but not be limited to, day-to-day follow up of the Project, overseeing property manager, tenants, and the execution of the Business Plan.
- CONA and 4G will execute the capital expenditure plan (including tenant improvements) per the Business Plan.

In the event that CONA, based upon agreed-to performance test standards relative to reaching the goals in the Business Plan which shall be attached to the JV Agreement reasonably determines that 4G is not performing Construction Management per the Business Plan, CONA shall have the right to terminate the Construction Manager upon thirty (30) days' written notice. In such a situation 4G will not lose its capital account in the Venture or right to distributions from the Venture.

Property Management: The Venture will hire a property management company satisfactory to CONA to manage the developed Projects.

Additional Capital Contributions: The JV Agreement shall provide that if, at any time after the completion of construction and opening of the any one of the Projects to the public, Member(s) with a majority capital account (or any Member if a force majeure event occurs) in its good faith business judgment determines that additional funds are required to: (i) implement the provisions of the Business Plan; and/or (ii) meet existing contractual obligations or liabilities of the Venture, other than with respect to the Other Assets (each referred to herein as a "Mandatory Additional Capital Contribution"), then that Member may provide written notice calling for Mandatory Additional Capital Contribution.

Mandatory Additional Capital Contributions shall be funded by the Members pro rata based upon their respective Capital Percentages. If one Member makes a Mandatory Additional Capital Contribution and the other Member fails to do so (the "Failing Member"), then the funding Member may elect to either: (i) not fund its share; or (ii) cover the Failing Member's share which shall be treated as a loan which is recourse to the Failing Member and is payable from, but not limited to, any distributions from the Venture to the Failing Member. Such loan will be for a 12-month term, accrue interest at 12% per annum and be prepayable, in whole or part, at anytime by the Failing Member. In addition, such a loan may have equity warrants (meaning admitting a new member to the Venture) subject to Minority Protection (defined below).

Other than amounts in respect of each Member's Mandatory Additional Capital Contribution or as set forth under "Pre-Development Costs" herein, no Member shall have any obligation to fund any additional capital contribution, except to the extent that the Members agree in writing to fund such additional capital contribution.

Member(s) with majority capital may call for Mandatory Additional Capital so long as any decision does not create additional liabilities or obligations with respect to only 4G (and as long as it does create such additional liabilities or obligations with respect to all Members in proportion to their Capital Percentages – meaning any dilution to the Members would be in proportion to their Capital Percentages) ("Minority Protection").

Legal: CONA to decide on use of legal counsel for contracts, loan documents, leases and all other legal work.

Financing: CONA will provide financing options to 4G to replace 4G's existing financing for the Projects.

CONA will manage the loan disbursement draw process with lenders.

It is understood that CONA will be responsible for any recourse or Guaranty on the Financing.

Reporting: Initial Budget(s) and Business Plan shall be prepared by 4G and agreed upon by the Members prior to execution of the JV Agreement. Subsequent year Budgets and Annual Business Plans will be prepared jointly by the Members. If no agreement is reached on the current year Business Plan, the prior year Business Plan shall remain in full force and

effect. Members will have monthly telephonic meetings to discuss financial results and operations within 25 days of month end. CONA will distribute monthly financial statements, balance sheets and cash flow statements and other operating statistic reports for upcoming months prior to each meeting, provided the unaffiliated property management company provides to the CONA member the appropriate information for CONA to prepare the reporting. Members shall meet quarterly unless the Members decide otherwise.

Financial Audit: Members agree that CONA can hire a financial auditor to audit the Venture's books on an annual basis at the expense of the Venture.

Tax Accountant: CONA will hire the tax accountant.

Managers: Management Exclusively by the Managers.

The Venture initially shall have one Managing Member. The initial Managing Member shall be determined by CONA (the "CONA Manager"). 4G will be an Administrative Member (the "Administrative Member"). Subject to the provisions below, Administrative Member shall have authority to conduct the day-to-day operations of the Venture provided, that any major decisions shall require approval by the CONA Manager. Major Decisions where CONA has sole decision power to be further determined.

For the SPE's that are Other Assets but not a Project ("Mo SPE's"), the Administrative Member shall have a right to sell and/or refinance the Mo SPE's subject to the following:

The Administrative Member shall require explicit approval from the CONA Manager and such approval shall be given provided the sale or refinance will not adversely impact CONA's Security in the Venture. For example, if the sale of an asset reduces the 2020 EBITDA as defined in Exhibit C or if it reduces 4G equity, then CONA Manager can reject such sale or refinance.

Managers of the subsidiary LLC's for each Project shall be determined by CONA in its sole discretion, provided that any such Manager must be either CONA or 4G or an entity controlled by either of them.

Subject to the provisions below, Administrative Member shall have authority to conduct the day-to-day operations of the Venture, provided that any Major Decisions shall require approval by CONA Manager.

Major Decisions: Other Major Decisions of the Venture (e.g. Major Decisions, buy-sell, tag-along, drag-along and transfers) will be as set forth in the JV Agreement.

Cooperation: Both Members agree that they will cooperate and work in the best intent to maximize the value of the Projects.

Exclusivity: 4G understands that CONA will commit substantial resources after execution of this Term Sheet. For a period of 90 days after the date hereof, 4G shall not, and shall cause its Advisors (as hereinafter defined) not to, (1) negotiate, solicit, initiate or engage in any discussions or proposals or enter into any agreement or understanding from or with any other person or entity relating to an acquisition, financing, transfer, recapitalization or other direct or indirect strategic transaction of or involving any of the Projects or any of the Other Assets (whether by sale of ownership interests, sale of assets, merger or otherwise) and (2) disclose any material, non-public information relating to the Projects and/or Other Assets, or provide access to the properties, books and records of any of the Projects or any of the Other Assets to any other person or entity that may be considering a transaction described in the foregoing clause (1). In addition, 4G agrees to immediately terminate any such

acquisition, recapitalization or strategic transaction discussions, proposals, agreements or understandings with any other person or entity that exists as of the date hereof.

- Non-circumvent:** 4G will sign a non-circumvention agreement (to-be negotiated) for any investors or lenders first introduced by CONA in any CONA deal, including any investor or lender that did not end up investing in the deal.
- Confidentiality:** Members agree to keep the contents of this Term Sheet confidential. The Members agree to treat, and to cause their respective directors, officers, employees, agents, investors, representatives, attorneys and other advisors ("Advisors") to treat, the terms contained herein as confidential, provided that the terms hereof may be disclosed to such Advisors who agree to keep the terms hereof confidential, except that disclosure shall be permitted as required by law or legal process, or in connection with litigation; provided, however, that the parties may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structures of the transactions entered into pursuant to this Term Sheet and all materials of any kind that are provided to them and their affiliates relating to such tax treatment and any such tax structures; and further provided that this paragraph shall not be applicable to any information which is already public knowledge. Additionally, CONA shall be permitted to disclose, to the extent reasonably necessary, the terms contained herein to actual and potential sources of third-party debt and equity financing for the Projects as part of the capital raising process for the Projects.
- Counterparts:** This Term Sheet may be executed in one or more counterparts. All such counterparts, when taken together, shall comprise the fully executed Term Sheet. However, this Term Sheet shall not be effective unless and until all counterpart signatures have been obtained. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg or similar attachment to an electronic mail message or signed electronically using DocuSign or other similar software, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version of this Term Sheet, delivered in person. The parties agree that this Term Sheet may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on such parties as if it were physically executed and each party to this Term Sheet hereby consents to the use of any third party electronic signature capture service providers as may be chosen by the other party.
- Expenses:** Each party shall be responsible for all fees and expenses incurred by or on behalf of such party in connection with the negotiation and execution of this Term Sheet and the JV Agreement and the transfer of the assets to the Venture.
- 4G shall pay all expenses associated with the LoanCore Refi and the Rialto Refi, including without limitation, any expenses with the due diligence and any legal, tax, financial, technical or other advisory fees. Notwithstanding the foregoing, 4G has provided \$100,000 to CONA (the "Deposit") to cover third party costs with respect to the Loan Core Refi and due diligence being completed by CONA. If this Term Sheet is terminated, CONA shall reimburse to 4G the unused portion of the Deposit.
- Litigation:** 4G shall indemnify CONA for all damages, losses, claims, expenses or liabilities incurred by CONA with respect to any pending litigation with respect to a Project. 4G shall pay all costs and expenses of defending such litigation. If CONA and 4G have elected to include a Project as part of the Venture that is subject to pending litigation and CONA has funded its required capital for the same, then CONA shall be entitled to settle any such litigation in its sole discretion; provided, that 4G can block such determination by electing to purchase from CONA all of CONA's Capital Percentage and CONA's Distribution % of

Profits and Losses in such Project based upon the appraised "as-built" value as determined by an appraiser mutually agreed to by the parties.

Miscellaneous:

CONA may terminate this Term Sheet at any time by delivery of written notice to 4G. No amendment of this Term Sheet shall be effective unless made in writing by the parties hereto. No waiver of any provision hereof shall be effective unless made in writing by the waiving party. Neither this Term Sheet nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party, which consent may be withheld in the sole and absolute discretion of either party. Any term or provision of this Term Sheet that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining rights of the person intended to be benefited by such provision or any other provisions of this Term Sheet. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Term Sheet. This Term Sheet supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting the subject matter hereof.

Default; Arbitration:

In the event either of CONA or 4G breaches the terms of this Term Sheet, the non-breaching party shall have all rights and remedies available at law (for actual damages) and/or in equity; provided that no party shall be liable for consequential, punitive or special damages. Any dispute, controversy or claim arising out of or relating to this Term Sheet (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (including whether the claims asserted are arbitrable), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or such other rules as the parties may agree upon. Such arbitration shall be conducted by a single independent arbitrator. The parties to the arbitration shall within five (5) business days mutually agree on a single independent arbitrator. If they are unable to agree on an independent person within such five (5) business day period, the arbitrator shall be appointed by JAMS in accordance with its rules. Any arbitrator shall be either (A) a retired judge or (B) an attorney with at least twenty (20) years of litigation experience. The place of arbitration shall be Irvine, California. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives and judgment may be entered thereon in any court of competent jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator, and may award attorneys' fees and costs to the prevailing party. Discovery in accordance with California law shall be permitted. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the parties.

Notice:

Any notice, communication, request, reply or advice provided for or permitted by this Term Sheet to be made or accepted by any party must be in writing. Notice may, unless otherwise provided herein, be given or served by: (i) delivering the same to such party in person or by commercial courier or personal messenger; (ii) electronic delivery via E-mail (which may include a .pdf, .tif, .gif, .jpeg or similar attachment to the electronic mail message); or (iii) depositing the same into custody of a nationally recognized overnight delivery service such as Federal Express or UPS. Notice given in any of the foregoing manners shall be effective only if and when delivered to (or refusal to accept delivery by) the party to be notified, or in the case of electronic mail, upon the entrance of such electronic mail into the information processing system designated by the recipient's e-mail address provided that the date of transmission is a business day (and the transmission is transmitted prior to the close of business) and further provided that: (i) an overnight delivery is forwarded to the party being noticed on the same day as the electronic transmission; or (ii) there is a confirmed receipt of delivery by the sender's server; or (iii) the recipient sends a reply email acknowledging receipt. The parties shall have the right from time to time to change

their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least one (1) business day prior written notice to the other party. For the purposes of notice, the addresses of 4G and CONA shall, until changed, be as follows:

If to 4G:

4G Wireless, Inc.
8871 Research Dr.
Irvine, CA 92610
Attention: Mohammad Honarkar
Email: mhonarkar@4g-ventures.com

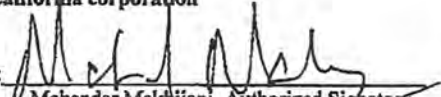
Copies to:

Much Shelist, P.C.
660 Newport Center Drive, Suite 900
Newport Beach, CA 92660
Attention: Glenn D. Taxman
Email: gtaxman@muchlaw.com

If to CONA:

Continuum Analytics
520 Newport Center Drive, Suite 480
Newport Beach, CA 92660
Attention: Mahender Makhijani
Email: mahender@continuumanalytics.com

The undersigned have executed this Term Sheet as of the Effective Date

CONTINUUM ANALYTICS, a California corporation By:  Mahender Makhijani, Authorized Signatory	4G WIRELESS, INC., a California corporation By: _____ Mohammad Honarkar, Authorized Signatory
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their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least one (1) business day prior written notice to the other party. For the purposes of notice, the addresses of 4G and CONA shall, until changed, be as follows:

If to 4G:

4G Wireless, Inc.
8871 Research Dr.
Irvine, CA 92610
Attention: Mohammad Honarkar
Email: mhonarkar@4g-ventures.com

Copies to:

Much Shelist, P.C.
660 Newport Center Drive, Suite 900
Newport Beach, CA 92660
Attention: Glenn D. Taxman
Email: gtaxman@muchlaw.com

If to CONA:

Continuum Analytics
520 Newport Center Drive, Suite 480
Newport Beach, CA 92660
Attention: Mahender Makhijani
Email: mahender@continuumanalytics.com

The undersigned have executed this Term Sheet as of the Effective Date

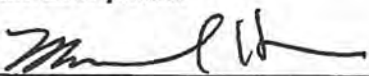
<p>CONTINUUM ANALYTICS, a California corporation</p> <p>By: _____ Mahender Makhijani, Authorized Signatory</p>	<p>4G WIRELESS, INC., a California corporation</p> <p>By:  _____ Mohammad Honarkar, Authorized Signatory</p>
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EXHIBIT AList of the Projects

1	Hotel Laguna Project	Hotel Laguna, LLC	Ground Lease
		Cliff Village, LLC	Ground Lease
2	Cleo Hotel Project	Holiday Inn	Fee Simple
		14 West	Fee Simple
3	Hotel Museum	7 parcels 305-397 North Coast Hwy	Fee Simple
4	Assisted Living/ Memory Care	Planning stage for Senior care	Ground lease control and purchase agreement to inquire land
5	Korea Town Project	Entitled hotel project	Fee Simple
		Vacant adjusted land	
6	Newport Crossings	Entitled project for 350 apartments	Currently in litigation

Exhibit B

List of the Refi Properties

LoanCore Refi	Property	Address	City
	Laguna canyon (4 LLCs)	775-793 Laguna Canyon Rd, 777 Laguna Canyon Rd, 805-859 Laguna Canyon Rd, 891 Laguna Canyon Rd	Laguna Beach
	Tesoro Redlands, LLC	106 W Pennsylvania Ave	Redlands
	The Masters Building, LLC	2711 Pacific Coast Hwy	Corona Del Mar
	689 S Coast Hwy, LLC	689 S Coast Hwy	Laguna Beach
	837 Park Ave, LLC	837 Park Ave	Laguna Beach
	Laguna HI, LLC	696 S Coast Hwy	Laguna Beach
	Laguna HW, LLC	688-690 S Coast Hwy	Laguna Beach
	K Town Property	314 Harvard Blvd & 4110 W 3rd St	Los Angeles
	Heisler Laguna, LLC	Multiple	Laguna Beach
	694 NCH Apartments, LLC	694 N Coast Hwy	Laguna Beach
	Retreat at Laguna Villas, LLC	749 Gaviota	Laguna Beach
	Sunset Cove Villas, LLC	683 Sleepy Hollow Ln	Laguna Beach
	Duplex at Sleepy Hollow	689 Sleepy Hollow Ln	Laguna Beach
	Cliff Drive Properties, LLC	150-154 Cliff Dr	Laguna Beach
Rialto Refi	Property	Address	City
	Palm Desert Collective (RI)	38305 Cook St	Palm Desert
	Palm Desert Collective (CY)	74895 Frank Sinatra Dr	Palm Desert

Exhibit C**Other Assets**

<u>Property</u>	<u>City</u>	<u>Address</u>
Palm Desert Collective (RI)	Palm Desert	38305 Cook St
Palm Desert Collective (CY)	Palm Desert	74895 Frank Sinatra Dr
8871 Research Dr, LLC	Irvine	8871 Research Dr
Tustin Retail Properties, LLC	Tustin	18410 Irvine Blvd
Hotel Laguna	Laguna Beach	421 S Coast Hwy
Cliff Village	Laguna Beach	421 S Coast Hwy
Retreat at Laguna Villas, LLC	Laguna Beach	749 Gaviota (729 Ocean Front)
Sunset Cove Villas, LLC	Laguna Beach	683 Sleepy Hollow Ln
Duplex at Sleepy Hollow	Laguna Beach	689 Sleepy Hollow Ln
Cliff Drive Properties, LLC	Laguna Beach	150-154 Cliff Dr
Tesoro Reedlands, LLC	Redlands	106 W Pennsylvania Ave 2711 Pacific Coast Hwy (2713 w Coast Hwy)
The Masters Building, LLC	Corona Del Mar	
694 NCH Apartments, LLC	Laguna Beach	694 N Coast Hwy
689 S Coast Hwy, LLC	Laguna Beach	689 S Coast Hwy
837 Park Ave, LLC	Laguna Beach	837 Park Ave
Laguna Festival Center, LLC	Laguna Beach	805-859 Laguna Canyon Rd
891 Laguna Canyon Road, LLC	Laguna Beach	891 Laguna Canyon Rd
777 at Laguna, LLC	Laguna Beach	777 Laguna Canyon Rd
Laguna HI, LLC	Laguna Beach	696 S Coast Hwy
Laguna HW, LLC	Laguna Beach	688-690 S Coast Hwy
Helster Laguna, LLC	Laguna Beach	Multiple
Laguna Art District Complex, LLC	Laguna Beach	775-793 Laguna Canyon Rd
K Town Property	Los Angeles	314 Harvard Blvd & 4110 W 3rd St 308 S Harvard Blvd
113 Canyon Acres, LLC	Laguna Beach	113 Canyon Acres Dr
424 Marguerite	Corona Del Mar	424 Marguerite
424 Marguerite	Corona Del Mar	424.5 Marguerite Ave.
424 Marguerite	Corona Del Mar	600 Acacia Ave.
Terra Laguna Beach	Laguna Beach	650 Laguna Canyon Rd.

Exhibit D**FCB Properties**

FCB Properties	Property	Address	City
	777 at Laguna, LLC	777 Laguna Canyon Rd	Laguna Beach
	891 Laguna Canyon Road, LLC	891 Laguna Canyon Rd	Laguna Beach
	Laguna Art District Complex, LLC	775-793 Laguna Canyon Rd	Laguna Beach
	Laguna Festival Center, LLC	805-859 Laguna Canyon Rd	Laguna Beach
	Heisler Laguna, LLC	(see below)	Laguna Beach
	694 NCH Apartments, LLC	694 N Coast Hwy	Laguna Beach
	Retreat at Laguna Villas, LLC	749 Gaviota	Laguna Beach
	Sunset Cove Villas, LLC	683 Sleepy Hollow Ln	Laguna Beach
	Duplex at Sleepy Hollow	689 Sleepy Hollow Ln	Laguna Beach
	Cliff Drive Properties, LLC	150-154 Cliff Dr	Laguna Beach

Heisler Laguna LLC Breakdown

	397 N Coast Hwy	Laguna Beach
	385 N Coast Hwy	Laguna Beach
	369 N Coast Hwy	Laguna Beach
	353 N Coast Hwy	Laguna Beach
	345 N Coast Hwy	Laguna Beach
	331 N Coast Hwy	Laguna Beach
	305 N Coast Hwy	Laguna Beach

Exhibit E

4G Debt Schedule

Business Debt Schedule**Mortgage & Business Loans**

Company	Lender Name	Current Balance	Maturity Date	Note
Mohammad Honarkar / 424 Marguerite	Bank of California	\$ 2,303,451.78	10/1/45	Acacia Property. This loan is on forbearance until Sept 1, 2020.
424 Marguerite Ave	Bank of California	\$ 1,200,858.59	10/1/45	424 Marguerite Property
5871 Research Drive	Citizens Business Bank	\$ 1,983,839.76	7/31/24	This loan is deferred to July 31, 2020
5871 Research Drive	RG Financing	\$ 500,000.00	7/1/23	2nd Loan
Short term	Mahbob	\$ 300,000.00	5/31/22	11 Tivoli, Aliso Viejo
Mohammad Honarkar/Brookline Nino Veyo	PIH Mortgage	\$ 590,621.45		La Brea Property
Tustin Retail	FCI Lender Services	\$ 875,000.00	9/15/20	
Cliff Village	Nano Banc	\$ 7,850,000.00		
Hotel Laguna	CONA	\$ 5,500,000.00		Hotel Laguna first loan
Line of Credit	PH National Bank	\$ 4,199,708.33	7/22/21	
Perishing23	Chemical Bank	\$ 3,612,374.88	11/3/25	Mohammad Honarkar / 424 Marguerite
Line of Credit	Nano Banc	\$ 13,340,860.78		Hotel Laguna/Palm Desert Collective Resorts/HG Ventures
Walto	Midland Loan Services	\$ 22,117,067.60		Palm Desert Collective Resorts
LoanCore	Stus Asset Management	\$ 318,961,677.61	4/9/21	Hotel Laguna/Tesoro/Laguna Beach Properties/4110 W. 3rd St
	Total	\$ 196,577,513.08		

AR Loans

Lender	Current Balance
West Coast/Tollowstone	\$ 462,266.68
BMF Capital	\$ 355,655.00
Funderz LLC	\$ 783,934.00
Cedar	\$ 266,271.00
Grand Capital	\$ 181,534.99
RDH Capital	\$ 105,840.00
Total	\$ 1,955,501.67

EIDL-SBA Loans

Company Name	Amount Received
4G Wireless	\$149,900
T Star Trade-In	\$149,900
777 at Laguna	\$149,900
Cliff Village	\$10,000
Heider Laguna	\$149,900
Hotel Laguna	\$159,900
Laguna Art District	\$149,900
Laguna Beach Company	\$159,900
Laguna Festival Center	\$149,900
Laguna HI	\$149,900
Laguna MW	\$152,900
MJA	\$159,900
MS Hosh	\$149,900
Racres	\$152,900
Seven Degrees Laguna	\$159,900
Terra Laguna Beach	\$159,900
The Fulrest	\$149,900
Total	\$2,468,400

Total Loan Balances Including Business Loans, AR Loans, Mortgage & EIDLs

\$208,597,412.75**PPP-SBA Loan**

Company Name	Amount Received
Sunset Cove Villas, LLC	\$22,200.00
Refinery at Laguna Villas, LLC	\$16,400.00
Laguna MW, LLC	\$35,500.00
Tesoro Redlands DE, LLC	\$61,900.00
MS Hosh, LLC	\$85,000.00
Laguna Beach Company	\$135,200.00
Terra Laguna Beach, Inc.	\$175,300.00
Laguna HI	\$184,200.00
Seven Degrees Laguna, Inc.	\$274,000.00
Palm Desert Collective Resorts, LLC	\$388,400.00
4G Wireless	\$615,600.00
MJA	\$730,500.00
The Fulrest, LLC	\$76,000.00
TOTAL	\$2,839,200.00

Schedule 1**Allocation/Disbursement of the HLP \$25M Contribution**

EXHIBIT G

ARBITRATION AGREEMENT BY AND BETWEEN MOHAMMAD HONARKAR, 4G WIRELESS, INC., NANO FINANCIAL HOLDINGS, INC., AND NANO BANC

Section 1 – Definitions

The following terms have the meanings described to therein in this Agreement:

- (a) “Claimants” means Mohammad Honarkar and 4G Wireless, Inc. both individual and derivatively on behalf of MOM AS Investco, LLC, MOM BS Investco, LLC, and MOM CA Investco, LLC (collectively the “MOM Entities”).
- (b) “Nano Banc” means Nano Financial Holdings, Inc. and Nano Banc
- (c) “Parties” means Claimants and Nano Banc.
- (d) “Dispute” means Claimants’ claims against Nano Banc arising out of or related to the MOM Entities, as well as any defenses to such claims asserted by Nano Banc.
- (e) “Pending Arbitration” means the arbitration pending before JAMS entitled *Honarkar, Mohammad vs. Makhijani, Mahender, et al.* - JAMS Ref No. 5220003126.

Section 2 – Agreement to Arbitrate

The Parties agree that the Dispute shall be submitted to and finally determined by binding arbitration in accordance with the Comprehensive Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. (“JAMS”), including the Expedited Procedures set forth therein. The Parties agree that they shall attempt to consolidate the arbitration of the Dispute with the Pending Arbitration, in which Arbitrator Justice David Thompson is presiding. In the event that consolidation does not occur, then this agreement is null and void. Any award rendered as to the Dispute shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. Discovery in accordance with California law shall be permitted in the arbitration, so long as consistent with the limitations set forth in JAMS’s Comprehensive Rules and the Expedited Procedures therein.

Claimants shall pay 50% of the fees and costs charged by JAMS and/or the Arbitrator (“Arbitration Costs”), and the other 50% shall be divided among the Respondents. If Nano Banc is dismissed or a judgment is entered as to Nano Banc, it shall have no continuing payment obligations in regards to the Arbitration Costs. The Arbitrator may, in the Final Award, allocate all or part of the Arbitration Costs, irrespective of which party paid those Arbitration Costs. Additionally, the Arbitrator may award attorneys’ fees and other costs of litigation to the prevailing party.

In the event the Arbitrator determines that all of the claims alleged against the Respondents in the Pending Arbitration are not arbitrable, any Party may elect, in its sole discretion, within fourteen (14) days of the entry of the order, to terminate the Pending Arbitration without prejudice to Claimants pursuing their claims against Nano Banc in court. If either Party terminates the Pending Arbitration, the Parties agree that the statute of limitations for all claims relating to the Dispute are tolled from the time of the signing of this Agreement to the date of the termination (“Tolling Period”) and Nano Banc agrees to not assert, and hereby waives, any defense,

argument, and claim it may have relating to the passage of time for the Tolling Period including but not limited to statute of limitations and laches.

MOHAMMAD HONARKAR



Mohammad Honarkar

Dated: 10-11-2023

4G WIRELESS, INC.



Mohammad Honarkar for 4G Wireless, Inc.

Dated: 10-11-2023

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

NANO FINANCIAL HOLDINGS, INC.



Bill Wilson for Nano Financial Holdings, Inc.

Dated: __October 11, 2023____

NANO BANC



Bill Wilson for Nano Banc

Dated: _____October 11, 2023_____

EXHIBIT H

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 09/25/2023

TIME: 02:00:00 PM

DEPT: C23

JUDICIAL OFFICER PRESIDING: David J. Hesseltine

CLERK: N. Seguin, B. Crabtree

REPORTER/ERM: Linda Lee CSR# 13568

BAILIFF/COURT ATTENDANT: D. Muldoon, L. Diaz

CASE NO: **30-2023-01322886-CU-OR-CJC** CASE INIT.DATE: 05/03/2023

CASE TITLE: **MOM CA Investco LLC vs. Honarkar**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 74082750

EVENT TYPE: Motion to Quash Discovery Subpoena

MOVING PARTY: MOM CA Investor Group LLC, MOM CA Investco LLC

CAUSAL DOCUMENT/DATE FILED: Motion to Quash Subpoena, 05/26/2023

EVENT ID/DOCUMENT ID: 74068517

EVENT TYPE: Motion to Compel Arbitration

APPEARANCES

Michael R. Farrell, from Allen Matkins Leck Gamble Mallory & Natsis LLP, present for Appellant, Plaintiff(s).

Joseph J. Ybarra and Thomas Rubinsky, from Halpern May Ybarra Gelberg LLP, present for Appellant, Defendant(s).

Hearing held, participants appearing remotely and in person.

Privately retained Court Reporter is present remotely via Zoom.

Tentative Ruling posted on the Internet.

The Court hears oral arguments.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now confirms the tentative ruling as follows:

On calendar are the following two motions: (1) motion by defendant Mohammad Honarkar (Honarkar) to compel arbitration of the claims, other than for injunctive relief, alleged in the First Amended Complaint (FAC) of plaintiffs MOM CA Investco LLC, MOM AS Investco LLC, MOM BS Investco LLC, MOM CA Investor Group LLC, MOM AS Investor Group LLC, and MOM BS Investor Group LLC (collectively, MOM Entities), and Michael Kluchin (Kluchin) [Kluchin and MOM Entities shall be collectively referred to as Plaintiffs) and to stay the court proceedings, and (2) motion of plaintiffs MOM CA Investco LLC and MOM CA Investor Group LLC to quash the business records subpoena Honarkar served on third party Nano Banc.

Motion No. 1: Compel Arbitration and Stay Court Proceedings

As more fully explained below, the motion is **GRANTED**.

A petition to compel arbitration must allege both (1) a “written agreement to arbitrate” the controversy, and (2) that a party to that agreement “refuses to arbitrate” the controversy. (Code Civ. Proc., § 1281.2.) The court shall grant the petition unless the petitioner waived the right to compel arbitration, or other grounds exist for rescission of the agreement. (*Ibid.*)

“Normally, the court decides the scope and validity of an arbitration agreement, including whether it is unconscionable. [Citation.] When the parties ‘clearly and unmistakably’ delegate issues of arbitrability to the arbitrator, [however,] the arbitrator, not the court, decides such issues as the scope of the arbitration agreement.” (*Chin v. Advanced Fresh Concepts Franchise Corp.* (2011) 194 Cal.App.4th 704, 709; *Rodriguez v. Am. Techs., Inc.* (2006) 136 Cal. App. 4th 1110, 1123 [“Although the scope of an arbitration clause is generally a question for judicial determination, the parties may, by clear and unmistakable agreement, elect to have the arbitrator, rather than the court, decide which grievances are arbitrable”].)

California courts of appeal have held a court may decline to enforce an agreement delegating questions of arbitrability to an arbitrator if it concludes the claim of arbitrability is “wholly groundless.” (See *Dream Theater, Inc. v. Dream Theater* (2004) 124 Cal.App.4th 547, 553 [“unless a claim of arbitrability is wholly groundless, the court should stay proceedings pending the arbitrator’s determination of his or her own jurisdiction”]; *Smythe v. Uber Technologies, Inc.* (2018) 24 Cal.App.5th 327, 332-333.) The U.S. Supreme Court abrogated the legal principle underlying these decisions by holding, when a court is required by a valid delegation clause to refer disputes about arbitrability to an arbitrator, it has no power to decide such issues even if it believes the motion for arbitration is “wholly groundless.” (*Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 139 S.Ct. 524, 528.) Based on this authority, it is unclear whether California courts will continue to apply the “wholly groundless” exception to an otherwise valid delegation clause.

Here, the agreement to arbitrate is found in the three Operating Agreements attached to Honarkar’s declaration. The agreements have the same arbitration provision and include a delegation clause. Specifically, the agreements state, “Any dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (**including whether the claims asserted are arbitrable**), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) or such other rules as the parties may agree upon.” (Honarkar Dec., Exhs. A, B, C at ¶ 19.10., emphasis added; see also Asset Contribution Agreement, Honarkar Dec., Exh. D at ¶ 6(g)(ii).)

In opposition to the motion, Plaintiffs argue arbitration should be denied because (1) Kluchin’s assault and battery claims are not subject to arbitration because he is not a party to the Operating Agreements and his claims do not relate to or arise from the Operating Agreements; (2) Honarkar waived any right to compel arbitration by availing himself of the benefit of discovery in the judicial forum; and (3) the claims in the related case should be consolidated with the claims in this case and tried in court. There also is a dispute as to whether Plaintiffs’ declaratory relief claim should be ordered to arbitration. (The parties agree the injunctive relief claims should not be sent to arbitration under the terms of the arbitration agreement.)

The issue Plaintiffs fail to address, however, is who should decide these issues challenging the enforceability and scope of the arbitration provision. Indeed, the motion specifically raises the delegation provision and argues it is for the arbitrator to decide the enforceability of the arbitration agreement and its scope. Plaintiffs do not dispute the existence of the delegation clause or its applicability to the challenges Plaintiffs raise. Likewise, Plaintiff do not raise the “wholly groundless” exception to delegation to the

extent that exception remains viable. As more fully explained below, the court concludes the delegation clause requires all issues Plaintiffs raise in opposition to the motion to compel arbitration to be submitted to the arbitrator for final determination.

Kluchin argues his claims for assault and battery are “completely unrelated to the Operating Agreements” and therefore cannot be ordered to arbitration because he was not a signatory to the Operating Agreements and his position as an employee of Continuum Analytics, Inc. does not make him subject to the arbitration provision. The two causes of action alleged by Kluchin arise out of the incident that took place on May 2, 2023, at Hotel Laguna and Laguna Holiday Inn. Kluchin alleges Honarkar threatened him as he was attempting to enter the property and then made harmful contact with him to remove him from the property. (FAC at ¶¶84 and 88.) Kluchin asserts he was rightfully on the premises because the MOM Entities had rightful possession. (FAC at ¶40.) Honarkar disputes this claim and contends resolution of the right to possession issues, and Honarkar’s right to eject Kluchin, likely will involve resolution of the ownership/management issues that are the subject of dispute between the MOM Entities and Honarkar. Honarkar also argues Kluchin was acting as the MOM Entities agent and within the scope of that agency.

Whether Kluchin’s claims are covered by the arbitration agreement is an issue for the arbitrator to decide pursuant to the delegation provision. Indeed, delegation provisions delegate to the arbitrator all issues regarding the scope of the arbitration, including who is subject to arbitration. To the extent the “wholly groundless” exception remains viable, there exists a colorable, good faith argument Kluchin’s role with the MOM Entities subjects the claims he alleges to arbitration. The court does not express any opinion regarding that ultimate issue, but rather, simply concludes that issue should be decided by the arbitrator pursuant to the delegation provision.

Moreover, assuming *arguendo* Kluchin’s claims are not subject to the delegation provision, the court nonetheless determines it would be appropriate to stay his claims pending the outcome of the arbitration between Honarkar and the MOM Entities because there is a possibility of conflicting rulings on a common issue of law or fact. Code of Civil Procedure section 1281.2(d) provides in pertinent part as follows: “If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court . . . (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding.”

Plaintiffs argue the arbitration agreement should not be enforced because Honarkar waived his right to arbitration. This is another issue that must be submitted to the arbitrator pursuant to the delegation provision and Plaintiffs failed to provide any argument to the contrary.

Nonetheless, assuming *arguendo* the waiver issue should be decided by the court, the court finds there has been no waiver. The leading case on whether the right to arbitrate has been waived is *Saint Agnes Medical Center. v. PacifiCare of California* (2003) 31 Cal.4th 1187 (*Saint Agnes*). “The law favors arbitration, and waiver will not be ‘lightly inferred.’ The party claiming the other waived the right to arbitrate ‘bears a heavy burden of proof.’” (*Saint Agnes, supra*, 31 Cal.4th at p. 1195.)

While there is no single test for establishing waiver, the relevant factors include: (1) “whether the party’s actions are inconsistent with the right to arbitrate”; (2) “whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate”; (3) “whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay”; (4) “whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings”; (5) “whether important intervening steps (e.g., taking advantage of judicial discovery procedures not available in arbitration) had taken place”; and (6) “whether the delay affected, misled, or prejudiced the opposing party.” (*Saint Agnes, supra*, 31 Cal.4th at p. 1196.) “No one of these factors predominates and each

case must be examined in context.’ . . . The question of prejudice, however, ‘is critical in waiver determinations.’” (*Quach v. California Commerce Club, Inc.* (2022) 78 Cal.App.5th 470, 477–478.)

There has been little to no delay in this action other than that arising from the impacted nature of the court’s calendar. Honarkar filed this motion six weeks after the Plaintiff filed the complaint. The only reason Honarkar delayed that long is that Honarkar opened an arbitration proceeding before Plaintiff even filed this case and Plaintiff’s were cooperating and proceeding with the arbitration up until May 30, 2023. Once Plaintiffs changed their mind and communicated they no longer were willing to participate in arbitration Honarkar filed this motion within 2 weeks. As such, the court does not find any delay on Honarkar’s part. Similarly, this motion is not made close to the trial date in that it was filed shortly after the case was commenced and no trial date has been set.

Plaintiffs’ primary argument is Honarkar invoked the litigation machinery by engaging in discovery such that he has waived his right to arbitrate. (Opp. at 13:21.) Based on a review of the history of this litigation, however, the court finds the discovery was related to the injunctive relief claims.

The MOM entities attach written discovery served by Honarkar on May 8, 2023, which they assert constitutes 450 discovery requests. The discovery is form interrogatories and requests for production to Kluchin and form interrogatories, requests for admissions, and document requests to two of the MOM Entities, for a total of eight sets of discovery.

It is not surprising Honarkar propounded discovery because one of the central issues in this case has been the right of the parties to injunctive relief. The MOM entities have twice filed motions for preliminary injunction and Honarkar has filed his own motion for a preliminary injunction. (And, of course, there were multiple ex parte hearings on requests for temporary restraining orders.)

One of the issues central to obtaining a preliminary injunction is establishing a likelihood of success on the merits. (*Smith v. Adventist Health Sys./W.* (2010) 182 Cal.App.4th 729, 749.) In the extensive briefs Honarkar submitted on the injunctive relief issues there has been the repeated argument the MOM Entities cannot establish a likelihood of success on the merits. For example, Honarkar has argued the MOM Entities cannot sue to enforce the contracts because they did not perform their obligations under the contracts. As an additional example, Honarkar repeatedly has argued the MOM Entities are liable for fraud in the inducement.

Further, Honarkar’s discovery was in response to the MOM Entities’ actions. For example, the MOM Entities sought injunctive relief immediately upon filing the complaint and then sought a second order further enjoining Honarkar. To respond to these claims, it would be natural to expect Honarkar to conduct discovery. This discovery would not only include written discovery to the parties but would also include the subpoena to Nano Bank which Honarkar issued. This discovery naturally overlaps with other causes of action.

Plaintiffs also point to Honarkar taking Kluchin’s deposition. This too is not surprising because in the FAC the Plaintiffs state Kluchin was an agent for the MOM Entities (FAC at ¶120), he submitted declarations in support of the requests for injunctive relief, and he appears to have had knowledge of facts regarding the “likelihood of success on the merits” issue.

Plaintiffs further argue Honarkar filing eight motions to quash constitutes invoking the litigation machinery. The subpoenas Honarkar seeks to quash, however, are allegedly seeking improper information in which Honarkar has an interest. The fact Honarkar has a pending motion to compel arbitration does not mean that he cannot take necessary actions to prevent improper disclosure of information.

Finally, Plaintiffs fail to acknowledge the arbitration agreement between the parties specifically allows

discovery: "Discovery in accordance with California law shall be permitted."

The only prejudice Plaintiffs assert as justification for finding a waiver is the money expended conducting discovery. Given the substantial property and assets involved in this litigation, and the numerous motions filed related to attempts to obtain injunctive relief, the amount of money spent on the discovery appears quite small. Nonetheless, as the discovery was related to injunctive relief issues raised by plaintiffs, and it was authorized by the arbitration agreement, there is no prejudice to Plaintiffs in having to respond to discovery relating thereto.

Accordingly, the court concludes, based on the *Saint Agnes* factors, and applicable case law, as well as the parties' briefs, Honarkar has not acted inconsistently with its right to compel arbitration and there has been no prejudice to Plaintiffs. No waiver occurred.

As for Plaintiffs' suggestion the court should consolidate all claims in this case with the claims asserted in the related case. That request may not properly be asserted in an opposition brief, and Plaintiffs fail to cite any authority supporting the denial of this motion based on that request.

Finally, as to the parties' dispute regarding whether Plaintiffs' declaratory relief claim should be submitted to arbitration, that is another question that is clearly for the arbitrator to decide pursuant to the delegation provision.

Based on the foregoing, the motion is **GRANTED** and the parties are ordered to submit all claims (except for the injunctive relief claims) to arbitration for the arbitrator to determine which issues must be decided by arbitration, and then for the arbitrator to decide those issues. The case is hereby **STAYED** pending resolution of the arbitration (and that stay extends to Kluchin's claims to the extent they are not subject to arbitration as stated above).

Motion No. 2: Quash Subpoena

Based on the above ruling, the hearings on the motion to quash the Nano Bank subpoena, as well as the eight motions to quash filed by Defendant, are vacated and the parties are directed to schedule the hearing with the Arbitrator pursuant to the Arbitrator's rules and procedures.

Further, the Case Management Conference set for 12/1/2023 at 9:30 AM in Department C23 is vacated, as is the Motion for Order to Stay Proceedings set for 2/26/2024 at 2:00 PM in Department C23.

The Status Conference re: ADR is scheduled for 03/29/2024 at 09:30 AM in Department C23.

Honarkar's counsel is ordered to give notice of this ruling.

EXHIBIT I

**JAMS ARBITRATION
No. 5220003126**

**MOHAMMAD HONARKAR AND 4G WIRELESS, INC.,
INDIVIDUALLY AND ON BEHALF OF MOM AS INVESTCO, LLC,
MOM BS INVESTCO, LLC, AND MOM CA INVESTCO, LLC,**

Claimants,

**MAHENDER MAKHIJANI; CONTINUUM ANALYTICS, INC.;
MOM AS INVESTOR GROUP, LLC; MOM BS INVESTOR GROUP,
LLC; MOM CA INVESTOR GROUP, LLC; MOM CA MANAGER,
LLC; MOM BS MANAGER, LLC; MOM AS MANAGER, LLC; AND
NANO BANC,**

Respondents,

and

**MOM AS INVESTCO, LLC; MOM BS INVESTCO, LLC; AND MOM
CA INVESTCO, LLC,**

Nominal Respondents.

RULINGS ON MOTIONS CONTESTING ARBITRABILITY

INTRODUCTION

The parties to this arbitration are: Claimants (“Claimants”) Mohammad Honarkar (“Honarkar”) and 4G Wireless, Inc. (“4G”), individually and on behalf of nominal respondents MOM AS Investco, LLC, MOM BS Investco, LLC, and MOM CA Investco, LLC; Respondents MOM AS Investor Group, LLC, MOM BS Investor Group, LLC, MOM CA Investor Group, LLC, (the “MOM Members”); Respondents MOM AS Manager, LLC, MOM BS Manager, LLC, and MOM CA Manager, LLC, (the “MOM Managers”); Nominal Respondents MOM AS Investco, LLC, MOM BS Investco, LLC, and MOM CA Investco, LLC (the “MOM JV LLCs”); Respondents Mahender Makhijani (“Makhijani”) and Continuum Analytics, Inc., (“Continuum” and with Makhijani, the “Makhijani Respondents”); and Respondent Nano Banc (“Nano”).

On November 29, 2023, the MOM Members, the MOM Managers, and the MOM JVLLC's (the "MOM Respondents") filed a "Motion Contesting Arbitrability and Jurisdiction" (the "MOM Motion"), and the Makhijani Respondents filed a separate "Motion Contesting Arbitrability and Jurisdiction" (the "Makhijani Motion").

On January 2, 2024, a virtual hearing was held on the MOM Motion and the Makhijani Motion (collectively, the "Motions"). Joseph Ybarra, Esq. and Sam Maralan, Esq., appeared on behalf of Claimants. Michael Farrell, Esq., appeared on behalf of the MOM Respondents. Marc Cohen, Esq. appeared on behalf of the Makhijani Respondents. Hakop Stepanyan, Esq. appeared on behalf of Nano.

Arbitrator, having carefully considered the pleadings and papers on file herein, along with the arguments of counsel at the Hearing, hereby DENIES the Motions, for the reasons explained below.

FACTS AND PROCEDURAL HISTORY

At its core, this is a joint venture dispute between Claimants, on one hand, and the MOM Respondents and the Makhijani Respondents on the other, regarding the parties' rights to own, control and operate several joint venture properties and businesses.

Honarkar is a real estate developer and entrepreneur based in Laguna Beach. Prior to the business relationships at issue here, Honarkar, through various companies, owned, controlled, and operated multiple properties and businesses, including hotels and rental units, throughout Southern California.

In Spring 2021, Honarkar was facing a cash crunch and sought an infusion of capital into his real estate portfolio. Honarkar attempted to secure a loan from Nano, a bank in Irvine with which Honarkar had done business. Nano referred Honarkar to Makhijani and his company Continuum, which invests in distressed real estate assets.

Honarkar and Makhijani, through their respective corporate entities, 4G and Continuum, agreed to form a new joint venture. The terms of the deal, memorialized in a binding term sheet (the "Term Sheet"), required Honarkar to contribute his ownership interests in the various companies that held title to his real estate assets. Continuum, in turn, was required to make certain capital and other financial contributions.

Honarkar and Makhijani finalized their joint venture through Operating Agreements (the "Operating Agreements") for each of the MOM JV LLCs – all newly formed LLCs. Honarkar, the MOM Members, and the MOM Managers are all signatories to the Operating Agreements. Honarkar and the MOM Members are the members of the MOM JV LLCs. The MOM Managers are the "Managers" of the MOM JV LLCs, and Honarkar was originally the "Administrative Manager" but has since been removed.

The Operating Agreements for the MOM JV LLCs, are similar, and each contains an identical arbitration clause (the "OA Arbitration Clause") that states in part as follows:

“19.10 Arbitration. In the event a Member or Manager breaches the terms of this Agreement, the non-breaching party shall have all rights and remedies available at law (for actual damages) and/or in equity; provided that no party shall be liable for consequential, punitive or special damages. Any dispute, controversy or claim arising out of or relating to this Agreement (other than claims for injunctive or equitable relief), including, but not limited to, the interpretation, breach or termination thereof (including whether the claims asserted are arbitrable), shall be referred to and finally determined by arbitration in accordance with the expedited arbitration rules of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) or such other rules as the parties may agree upon. ... Discovery in accordance with California law shall be permitted.”¹

In Spring 2023, a dispute arose between the parties concerning their rights and obligations under the Term Sheet and the Operating Agreements, and the management and operation of the properties then owned by the MOM JV LLCs. On April 25, 2023, Honarkar initiated this arbitration by filing a Statement of Claim with JAMS, which has now been superseded by a First Amended Statement of Claim (the “Amended Claim”).

The Amended Claim contains the following causes of action: (1) fraudulent inducement of the Operating Agreements - Makhijani Respondents and MOM Members; (2) breach of the Operating Agreements – MOM Members and MOM Managers; (3) breach of the implied covenant in the Operating Agreements - MOM Members and MOM Managers; (4) accounting (Operating Agreements) - MOM Members and MOM Managers; (5) declaratory relief (Operating Agreements) - MOM Members and MOM Managers; (6) conversion - Makhijani Respondents, MOM Members, MOM Managers, and Nano; (7) unjust enrichment - Makhijani Respondents, MOM Members, and MOM Managers; (8) violation of Penal Code section 496 (larceny/receiving stolen property) - Makhijani Respondents, MOM Members, MOM Managers, and Nano; (9) violation of Code of Civil Procedure (“CCP”) section 1159 (forcible entry) - Makhijani Respondents, MOM Members, and MOM Managers; (10) violation of CCP 1160 (forcible detainer) - Makhijani Respondents, MOM Members, and MOM Managers; (11) conspiracy (fraudulent inducement) – Nano only; (12) aiding and abetting (fraudulent inducement) – Nano only; and (13) breach of contract (Nano Loan Agreement) – Nano only.

The Amended Claim seeks, among other things: (1) compensatory damages; (2) rescission of the Operating Agreements, on account of the Makhijani Respondents’ fraud in the inducement; (3) in the alternative, the appointment of a receiver over the MOM JV LLCs; (4) punitive damages; (5) treble damages; (6) an accounting of the Makhijani Respondents’ management of the MOM JV LLCs; (7) a declaratory judgment providing, inter alia, that under the Operating Agreements the Makhijani Respondents are not entitled to transfer, alienate, or encumber certain other assets; (8) a declaratory judgment that the Makhijani Respondents committed unlawful forcible entry and forcible detainer of the 4G corporate offices and that possession must be immediately returned to Claimants; and (9) an injunction requiring the Makhijani Respondents to reinstate Honarkar as Administrative Manager of the MOM JV LLCs and to refrain from taking any action to interfere with Honarkar’s membership interests in the MOM JV LLCs.

¹ The Term Sheet contains an identical arbitration clause (the “Term Sheet Arbitration Clause”).

On May 3, 2023, Claimants filed a complaint against Respondents in OCSC Case No. 30-2023-01323759 (the “Honarkar Action”), seeking, *inter alia*, the appointment of a receiver over the MOM JV LLCs, and injunctive relief. At the same time, Claimants sought a stay of all other proceedings in the Honarkar Action in favor of this arbitration, pursuant to CCP section 1281.8(d). Claimants’ requests for appointment of a receiver and injunctive relief were ultimately denied and the Honarkar Action is now stayed.

Also on May 3, 2023, the MOM CA Respondents and their representative, Michael Kluchin, filed a complaint against Honarkar in OCSC Case No. 30-2023-01322886 (the “MOM Action”), seeking, among other things, injunctive relief against Honarkar. The MOM CA Respondents’ request for injunctive relief was granted in part, and Claimants motion to compel arbitration was granted (except as to injunctive relief). The MOM Action is now stayed and is the subject of a separate JAMS arbitration.

ANALYSIS OF MOM MOTION

The MOM Motion asserts the Amended Claim is not arbitrable, and should “be transferred back to state superior court for resolution” because (1) Claimants’ declaratory relief and for accounting claims cannot be arbitrated, and (2) Claimants have waived their right to arbitration. I will discuss these arguments in turn.

1. Declaratory Relief and Accounting Claims

The Mom Respondents argue that because the OA Arbitration Clause specifically excludes claims for equitable relief, Claimants’ claims for declaratory relief and for an accounting cannot be heard by Arbitrator. (MOM Motion, pp. 10-11.) I disagree.

While declaratory relief actions are frequently characterized as being equitable, they are, “in fact, sui generis and may raise either legal or equitable issues.” (*Veale v. Piercy* (1962) 206 Cal.App.2d 557, 560.) The declaratory relief claims here are legal – not equitable – because they relate to the breach of contract claim and depend on the interpretation of the Operating Agreements. (*Kaufman & Broad Building Co. v. City & Suburban Mortgage. Co.* (1970) 10 Cal.App.3d 206, 215-216; see also *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 481 [to the extent a proceeding requires the resolution of claims sounding in law rather than equity, it may be viewed as an action at law]; *Gore v. Bingaman* (1942) 20 Cal. 2d 118, 120 [to classify an action for declaratory relief as legal or equitable, the determination depends on the issues involved in the particular action]; and *Entin v. Superior Court* (2012) 208 Cal. App. 4th 770, 777 [the proper inquiry is whether the issues raised in the action are legal or equitable in nature]. None of the cases cited by the MOM Respondents support a contrary conclusion.

The MOM Respondents contend the accounting claim in this case is also equitable (MOM Motion, p. 10), but they offer no reasoned argument and cite no authorities in support of this contention. Therefore, it is waived. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1215 [Contentions are waived when a party fails to support them with reasoned argument and citations to authority.]

In any event, as the MOM Respondents elsewhere recognize the accounting claim here is not equitable. (MOM Motion, p. 8, lines 8-10.) This is so, because the accounting claim, like the declaratory relief claims, is related to the breach of contract claim. (*Hafiz v. Greenpoint Mortg. Funding, Inc.* (N.D. Cal. 2009) 652 F. Supp. 2d 1039, 1043; *Duggall v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 95; *Janis v. California State Lottery Commission* (1998) 68 Cal.App.4th 824, 833–834.)

So, the declaratory relief and accounting claims are arbitrable.

2. Waiver

The Mom Respondents argue Claimants have waived any right to arbitration by engaging in significant motion practice and taking substantial discovery in the MOM Action and the Honarkar Action. (MOM Motion, pp. 11-13.) I am not persuaded.

The Mom Respondents asserted essentially the same arguments in opposition to the motion to compel arbitration in the MOM Action. Judge Hesselstine analyzed these arguments. (Exhibit L to Ybarra Declaration - OCSC September 25, 2023, Minute Order, pp. 3-5.) I find his analysis persuasive and therefore adopt it as my own.

Plus, even if the Mom Respondents could demonstrate some prejudice due to the discovery taken by Claimants in the MOM Action or the Honarkar Action, that prejudice could be remedied by varying the JAMS Rule 16.2 discovery limits in this arbitration.

For these reasons, I find there has been no waiver.

ANALYSIS OF MAKHIJANI MOTION

The Makhijani Motion asserts (1) the issue of whether the Makhijani Respondents can be compelled to arbitrate under the OA Arbitration Clause must be determined by the court, not Arbitrator, since they are not signatories to the Operating Agreements, and (2) the Makhijani Respondents cannot be compelled to arbitrate in any event. I will discuss these arguments in order.

1. Trial Court or Arbitrator Determination and Judicial Estoppel

“Although a nonsignatory can be compelled to arbitrate, California case law is clear that ‘an arbitrator has no power to determine the rights and obligations of one who is not a party to the arbitration agreement. [Citation.] The question of whether a nonsignatory is a party to an arbitration agreement is one for the trial court in the first instance.’” (*Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 469 (*Benaroya*)).

“While the relevant JAMS rule [11(b)] permits an arbitrator to determine whom among signatories to an arbitration agreement are proper parties for the dispute to be arbitrated, the rule cannot (and does not) permit the arbitrator to determine whether a nonsignatory to the arbitration agreement can be compelled to arbitrate.” (*Id.* at p. 467.)

Even so, Claimants argue the Makhijani Respondents are judicially estopped “from now arguing that the Court, and not the Arbitrator, must determine whether the claims against them are subject to arbitration.” (Opposition, p. 9.) This argument is based on the following representations made and positions taken by the Makhijani Respondents in their limited opposition to Claimants’ motion to stay the Honarkar Action:

“During a September 28, 2023 status hearing in the Honarkar Arbitration, the arbitrator, the Hon. David A. Thompson (Ret.) was made aware of the Court’s September 25th ruling and stated that he would first resolve all issues of arbitrability in the Honarkar Arbitration. *Id.* ¶ 6. Thus, the question of the arbitrability of the claims in the Honarkar Arbitration has not yet been answered, and they may yet be litigated before this Court.”

“Accordingly, this action should be stayed pending Judge Thompson’s determination of arbitrability, and the order granting the motion to stay should reflect the possible determination of non-arbitrability. To find otherwise would essentially prevent a party from having their nonarbitrable claims heard in this Court until the resolution of the arbitration in its entirety.” (Exhibit J to Ybarra Declaration, pp. 3-4, emphasis added.)

Claimants also note Judge Hesseltine, in granting the motion to stay, relied on these representations made and positions taken, reasoning the Makhijani Respondents “do[] not dispute the propriety of a stay but request[] the stay only last ‘until such time that an arbitrator determines these claims are not arbitrable, or a resolution of the claims in arbitration, whichever comes first.’” (Exhibit M to Ybarra Declaration - OCSC October 30, 2023, Tentative Ruling [which became the final ruling].)

“Judicial estoppel is an equitable doctrine with some vagueness in its application. [Citation.] It is a doctrine invoked by courts in their discretion. [Citation.] However, ‘the doctrine should apply when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. [Citations.]’ [Citation.]” (*International Engine Parts, Inc. v. Feddersen* (1998) 64 Cal. App. 4th 345, 350.)

Applying these principles to the facts set out above, I conclude all five elements are present and the doctrine of judicial estoppel applies. The Makhijani Respondents arguments for a contrary conclusion miss the point because they pertain to equitable estoppel, not judicial estoppel.² (Reply, p. 12.) The single case they cite is inapposite for the same reason. (*JSM Tuscany, LLC v Superior Court* (2011) 193 Cal.App.4th 1222, 1239 [“We are concerned with the doctrine of equitable estoppel. When a plaintiff brings a claim which relies on contract terms against a defendant, the plaintiff may be equitably estopped from repudiating the arbitration clause contained in that agreement.”].)

² Equitable estoppel may bind a nonsignatory to an arbitration agreement when that party seeks to enforce or otherwise take advantage of any portion of the agreement while at the same seeking to avoid arbitration.

In sum, the Makhijani Respondents are judicially estopped from arguing the court, and not Arbitrator, must determine whether the claims against them are subject to arbitration. The Makhijani Respondents had the opportunity to argue before Judge Hesseltine that Arbitrator has no power to determine whether they can be compelled to arbitrate under the OA Arbitration Clause. But they didn't. They took the opposite position instead—that Arbitrator should decide the issue. Having done so, they cannot reverse course now and insist Judge Hesseltine decide the issue. That they later “conducted further research specifically on these issues” is immaterial. (Reply, p. 9.)

2. Third-Party Beneficiary and Agency

“There are circumstances in which nonsignatories to an agreement containing an arbitration clause can be compelled to arbitrate under that agreement. As one authority has stated, there are six theories by which a nonsignatory may be bound to arbitrate: ‘(a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third-party beneficiary’ [citations].” (*Benaroya, supra*, 23 Cal.App.5th at p. 469.) The theories currently at issue here are third-party beneficiary and agency.

“A third party beneficiary is someone who may enforce a contract because the contract is made expressly for his benefit.” [Citation.] ‘The test for determining whether a contract was made for the benefit of a third person is whether an intent to benefit a third person appears from the terms of the contract.’” (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 301.) Where the issue of whether a third party is an intended beneficiary can be answered by interpreting the contract as a whole in light of the uncontradicted evidence of the circumstances and negotiations of the parties in making the contract, the issue becomes one of law – not fact. (*Ibid.*)

Applying this test, Continuum and its agents are plainly a third-party beneficiaries of the Operating Agreements, despite the Makhijani Respondents’ conclusory arguments to the contrary. By the terms of the Operating Agreements, Continuum is “an affiliate” of the MOM Manager members of the MOM JV LLCs. (Operating Agreements, Recital C, p. 1.) As such, Continuum and Continuum’s agents are “Indemnified Persons” that are indemnified and maybe even insured by the MOM JV LLCs. (Operating Agreements, section 9.8, pp. 18-19.) These express, enforceable Operating Agreement terms evidence an unambiguous intent to benefit Continuum and its agents. Plus, it is not and cannot be disputed that Makhijani is an agent of Continuum.

The Makhijani Respondents can therefore be compelled under the OA Arbitration Clause to arbitrate the legal claims asserted against them in the Amended Claim.

3. Term Sheet Arbitration Clause

The Term Sheet Arbitration Clause provides a separate and sufficient basis for compelling the Makhijani Respondents to arbitrate the fraudulent inducement claim. The Term Sheet Arbitration Clause applies to, “Any dispute, controversy or claim arising out of or relating to this Term Sheet (other than claims for injunctive or equitable relief)”

The Term Sheet remained in effect until it was superseded by the Operating Agreements on June 8, 2021. The fraudulent inducement claim is a dispute arising out of or relating to the Term Sheet, because it is based on alleged wrongdoing by the Makhijani Respondents which occurred before June 8, 2021, while the Term Sheet was in effect.

Continuum is a party and signatory to the Term Sheet and again, Makhijani is an agent of Continuum. Consequently, the Makhijani Respondents can be compelled to arbitrate the fraudulent inducement claim under the Term Sheet Arbitration Clause.

4. Other Arguments

All written or oral arguments not discussed above are either unnecessary to my rulings or have been considered and rejected.

DISPOSITION

The MOM Motion is DENIED, and the MOM Respondents are ordered to arbitrate all claims against them in the Amended Claim (except as to injunctive relief). Likewise, the Makhijani Motion is DENIED, and the Makhijani Respondents are ordered to arbitrate all claims against them in the Amended Claim (except as to injunctive relief). The Case Manager shall serve these rulings on the parties.

Dated: January 3, 2024



Hon. David A Thompson (Ret.)
Arbitrator

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 550 South Hope Street, Suite 2330, Los Angeles, California 90071.

On **June 18, 2025**, I served the foregoing document described as:

**NOTICE OF PETITION AND PETITION TO CONFIRM ARBITRATION
AWARD AND ENTER JUDGMENT**

on the interested parties in this action as follows:

<p>Scott J. Leipzig, Esq. Michael R. Farrell, Esq. Tim C. Hsu, Esq. Suzanne E. Kenney, Esq. Shauna E. Woods, Esq. Stephanie S. Roberts, Esq. Gabriela S. Perez, Esq. Leilee Ghassemi, Esq. ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 865 South Figueroa Street, Suite 2800 Los Angeles, CA 90017-2543 sleipzig@allenmatkins.com mfarrell@allenmatkins.com thsu@allenmatkins.com skenney@allenmatkins.com swoods@allenmatkins.com stephanieroberts@allenmatkins.com gperez@allenmatkins.com lghassemi@allenmatkins.com</p>	<p><i>Attorneys for Respondents MOM AS INVESTOR GROUP, LLC; MOM BS INVESTOR GROUP, LLC; MOM CA INVESTOR GROUP LLC; MOM CA MANAGER, LLC; MOM BS MANAGER, LLC; AND MOM AS MANAGER, LLC</i></p>
<p>Marc Cohen, Esq. COHEN LAW GROUP, APC 541 S. Spring Street, Suite 1208 Los Angeles, CA 90013 marc@clgapc.com</p>	<p><i>Attorneys for Respondents MAHENDER MAKHJANI and CONTINUUM ANALYTICS, INC.</i></p>
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<p>Sam B. Maralan, Esq. MARALAN LAW, P.C. 3080 Bristol Street, Suite 630 Costa Mesa, CA 92626 sm@maralanlaw.com</p>	<p><i>Attorneys for Plaintiffs MOHAMMAD HONARKAR and 4G WIRELESS, INC.</i></p>

[X] **BY ELECTRONIC MAIL.** I caused a copy of the document to be sent from email address jillian.song@halpernmay.com to the persons at the email addresses listed above.

Executed on **June 18, 2025**, at Chino Hills, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Jillian Song

Exhibit B

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GROUP, LLC; MOM CA MANAGER, LLC; MOM BS
MANAGER, LLC; MOM AS MANAGER, LLC; LAGUNA
HW, LLC; LAGUNA HI, LLC; SUNSET COVE VILLAS,
LLC; RETREAT AT LAGUNA VILLAS, LLC; DUPLEX
AT SLEEPY HOLLOW, LLC; HOTEL LAGUNA, LLC
MOM AS INVESTCO, LLC; MOM BS INVESTCO, LLC;
and MOM CA INVESTCO, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MOHAMMAD HONARKAR and 4G
WIRELESS, INC., individually and on
behalf of MOM AS INVESTCO, LLC,
MOM BS INVESTCO, LLC, and MOM
CA INVESTCO, LLC,

Plaintiffs,

vs.

MAHENDER MAKHIJANI;
CONTINUUM ANALYTICS, INC.;
MOM AS INVESTOR GROUP, LLC;
MOM BS INVESTOR GROUP, LLC;
MOM CA INVESTOR GROUP, LLC;
MOM CA MANAGER, LLC; MOM BS
MANAGER, LLC; MOM AS
MANAGER, LLC; LAGUNA HW, LLC;
LAGUNA HI, LLC; SUNSET COVE

Case No. 30-2023-01323759-CU-OR-CJC

ASSIGNED FOR ALL PURPOSES TO
Judge Bradley Erdosi, Dept. C-27
Related Case No. 30-2023-01322886-CU-OR-CJC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONERS' PETITION TO VACATE
PARTIAL FINAL ARBITRATION AWARD**

Date: December 22, 2025
Time: 2:00 p.m.
Dept: C27
Reservation No.: 74590248

Action Filed: May 3, 2023
Trial Date: None

1 VILLAS, LLC; RETREAT AT LAGUNA
2 VILLAS, LLC; DUPLEX AT SLEEPY
3 HOLLOW, LLC; HOTEL LAGUNA,
4 LLC; and DOES 1-100, inclusive,

5 Defendants.

6 and

7 MOM AS INVESTCO, LLC, a Delaware
8 limited liability company; MOM BS
9 INVESTCO, LLC, a Delaware limited
10 liability company; MOM CA INVESTCO,
11 LLC, a Delaware limited liability
12 company;
13 and DOES 101-110, inclusive,,

14 Nominal Defendants.

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1 **I. INTRODUCTION.**

2 Mohammad Honarkar (“Honarkar”) owned a business empire built on house of cards and saddled
 3 with debt. This all came crashing down in 2021 when Honarkar found himself out of money and out of
 4 time, as he owed his ex-wife millions in payments and was further facing imminent foreclosure. In June
 5 2021, foreclosure was scheduled to begin in a few days’ time and Honarkar was thus in desperate need of
 6 a financial lifeline as no lenders would extend \$145 million in credit. It was at this time that Honarkar
 7 convinced Makhijani and investors to invest in his businesses, agreeing to contribute his assets to a joint
 8 venture so long as these investors could leverage their good credit and financial connections to refinance
 9 the defaulted loans. The investors did exactly that saving Honarkar from foreclosure and, in addition,
 10 contributed another \$30 million in capital via cash and commitments and later infused more than \$100
 11 million in additional funding to prop up Honarkar’s highly-leveraged businesses.

12 This good deed was repaid in malice when Honarkar sought to re-trade on deal terms and
 13 ultimately resorted to litigation to rescind what he claimed was a deal induced by fraud. No such fraud
 14 exists but, following a highly irregular arbitration, Honarkar and his operating entity, 4G Wireless, Inc.
 15 (“4G,” and collectively, the “Honarkar Parties”) secured an absurd award allowing him to “rescind” the
 16 entire venture notwithstanding the substantial benefits he received and with no evidence he could ever
 17 repay the funds invested or put Honarkar back into the situation he was in before, facing imminent
 18 foreclosure.

19 Following years of litigation, the Honarkar Parties now have an arbitration award which they hope
 20 to leverage for unjustified relief. This award should be vacated in its entirety. As explained herein, the
 21 entire arbitration proceeding was tainted with unprecedented procedural irregularity, including the refusal
 22 to hear key evidence, intimidation of witnesses and counsel, and blatant bias which has now resulted in an
 23 award not founded on facts but apparently crafted to achieve an agenda regardless of means. As it turns
 24 out, the Arbitrator’s decision may have been prompted by bias as he failed to disclose a prior relationship
 25 with Honarkar’s counsel, which failure mandates the award be vacated in its entirety. The Arbitrator
 26 further berated several key witnesses during the midst of their testimony to impact their testimony,
 27 including by telling certain witnesses on the stand that their testimony (which had not been completed)
 28 was “just not credible” and calling one witness a “liar” to his face.

Not surprisingly, this all resulted in an one-sided “Partial Final Award” in Honarkar’s favor, granting Honarkar the option to rescind all aspects of the joint venture - even as it relates to an initial term sheet - which relief was not only never sought in his pleadings, it had been expressly disavowed by Honarkar’s counsel. Indeed, the core of the dispute centered around claims of fraud, yet the Arbitrator relied almost exclusively on credibility, and not the language of the contracts, to allow wholesale rescission—ignoring evidence to the contrary. This improper behavior by a purported neutral trier of fact merits vacatur on its own, particularly when viewed in light of the prejudicial results reflected in the ruling, which go well beyond his authority and are founded upon the exclusion of evidence only after the Arbitrator failed to disclose a critical relationship.

For the reasons stated herein, Petitioners Mahender Makhijani; Continuum Analytics, Inc. (“Continuum”); MOM AS Investor Group LLC; MOM BS Investor Group LLC; MOM CA Investor Group LLC; MOM AS Manager LLC; MOM BS Manager LLC; and MOM CA Manager LLC (collectively, “Petitioners”) request an order issue to vacate the Partial Final Award in its entirety as the Arbitrator (1) failed to provide adequate disclosures; (2) exceeded the scope of his powers; (3) refused to allow discovery into the Honarkar Parties’ financial records (despite Petitioners’ claim of financial mismanagement); and (4) exercised jurisdiction over Makhijani, who is not a party to any arbitration agreement that would bring him under this Arbitrator’s jurisdiction.

II. RELEVANT FACTUAL BACKGROUND.

A. Honarkar’s Failing Enterprise.

In mid-2020 and early 2021, Honarkar desperately needed cash as his assets were locked in multiple receiverships brought about first by his contentious divorce and later because he had defaulted on a \$195 million loan. [Declaration of Michael Farrell (“Farrell Decl.”), Ex. 12 at 3905.042-050.] Honarkar’s divorce wrapped up by way of an agreement to pay \$17.5 million to his ex-wife, but his default on the significant loan remained a critical problem as his then-lender, DIG PFSS LBCP Holding Company, LLC (“DIG”), aggressively sought to foreclose on Honarkar’s assets. (*Id.*, at Ex. 13.) Thus, in early 2021, Honarkar found himself in desperate need of financing to the tune of \$144 million for DIG, another \$17.5 million for his ex-wife, and many millions more to finance ongoing operations. (*Id.*, Ex. 1, Hearing Tr., 6/25/24, at 283:13-284:5; Ex. 14, at 2045.003.)

Against this background, Honarkar sought financing to help resolve his issues—and failed. But he was introduced to Makhijani in early 2021 as a source of potential funding. Makhijani’s group of investors quickly made a \$5.5 million loan to Honarkar on one of his projects. (*Id.*, Ex. 15 at 5530.023.) Thereafter, following weeks of heavy negotiations, Honarkar and Continuum (acting for the investors) signed a *binding* Term Sheet on May 24, 2021 to form a joint venture (“Term Sheet”). As shown in the Term Sheet, the parties originally agreed that Continuum would be responsible for arranging approximately \$140 million of refinancing, guaranteed by investors, to stave off foreclosure, and separately contribute up to \$35 million in “cash equity” which amount of contribution would be reduced if it cost more to pay off the DIG loan. (*Id.*, Ex. 16.) In turn, the Term Sheet obligated Honarkar to contribute all of his assets into the joint venture and entitled the investors to receive an ownership interest and rights to distributions. (*Id.*)

Ultimately, Honarkar’s various assets were contributed into three separate joint venture entities (*i.e.*, MOM CA, MOM AS, and MOM BS), formed through Operating Agreements. Given the scope of the joint venture, these venture agreements were heavily negotiated. (*See, e.g., id.*, Exs. 17–33; *accord* Ex. 6 Hearing Tr., 7/5/24 at 2383:13-2384:18.) The definitive final joint venture agreements were finalized by the parties on June 8, 2021, and pursuant to the Operating Agreements, Honarkar was appointed as Administrative Manager. (*See id.* Exs. 54–56.)

B. Honarkar Stole Joint Venture Funds and Caused Operational Chaos.

Following formation, the joint ventures were operated in accordance with the agreements. But Honarkar breached the Operating Agreements by pocketing venture funds to pay personal expenses, filing lawsuits on behalf of the joint venture entities without notice or approval, signing agreements on behalf of the entities without approval, and opening shadow bank accounts to siphon funds without any written approval (just as he did to evade oversight of the two receivers). (*Id.*, Exs. 34, 35.) This conduct led to Honarkar’s removal as Administrative Manager on March 29, 2023 pursuant to Section 9.1(c) of the Operating Agreements. (*Id.*) Despite this, Honarkar continued to hold himself out as Administrative Manager and attempted to cause as much chaos as possible. Indeed, on May 2, 2023, Honarkar and an entourage of agents and armed guards stormed Hotel Laguna and the 14 West hotel in the early morning hours. (*See id.*, Ex. 4, Hearing Tr., 6/28/24 at 1356:12-1370:10.) This led the Hon. David J. Hesseltine to issue a temporary restraining order and preliminary injunction against Honarkar. (*Id.*, Ex. 57.)

C. The Arbitration Hearing.

The parties filed competing lawsuits, which were compelled to arbitration by this Court. In the arbitration, the Honarkar Parties claimed that Petitioners, along with Nano Banc, defrauded Honarkar as the Petitioners were allegedly required to contribute \$30 million but failed to do so. (Farrell Decl., Ex. 40 ¶¶ 36, 48.) According to the Honarkar Parties, the Operating Agreements required the contribution of a full \$30 million in cash. (*Id.*) Thus, notwithstanding that the Petitioners made a contribution by way of a \$10 million cash infusion along with another \$20 million provided through a loan from Nano Banc (the “Nano Loan”), the Honarkar Parties claimed they were entitled to damages and rescission as those contributions did not meet the requirements of the Operating Agreements. (*Id.* ¶ 51.) Based on this, and other claims that the Petitioners converted funds and committed forcible entry, the Honarkar Parties sought damages or, alternatively, “rescission of the MOM LLC Operating Agreements.” (*Id.*)

The final arbitration hearing took place from June 24, 2024 through July 12, 2024. (Farrell Decl. ¶ 2.) A Partial Final Award was issued on May 23, 2025 finding, among other things, that the Honarkar Parties had proved their claims for fraudulent inducement, breach of contract, and conversion. Based on those findings, the Partial Final Award awarded the Honarkar Parties the right to elect damages or rescission after an accounting is completed, followed by a “final” award with a determination of damages, including punitive damages. The Partial Final Award further authorizes rescission of not just the Operating Agreements, but also the original binding Term Sheet which the Honarkar Parties never requested.

III. THE AWARD SHOULD BE VACATED.

The court may vacate an award when (1) the arbitrator “exceeded” his powers and “the award cannot be corrected without affecting the merits of the decision upon the controversy submitted”; (2) the rights of a party were “substantially prejudiced by the arbitrators’ refusal... to hear evidence material to the controversy....”; (3) the award was “procured by corruption, fraud or other undue means”; and (4) the rights of the party were “substantially prejudiced by misconduct of a neutral arbitrator.” (C.C.P. § 1286.2; 10 Del C. § 5714(a); 9 U.S.C. § 10(a).) The Partial Final Award should be vacated here because: (1) the Arbitrator failed to make required disclosures; (2) the Arbitrator exceeded his authority; (2) Petitioners were prejudiced by the Arbitrator’s refusal to hear key evidence; (3) the Award was procured through undue means; and (4) Petitioners were prejudiced by the Arbitrator’s conduct.

1 **A. The Arbitrator Failed to Disclose a Critical Prior Relationship With Counsel.**

2 Our system of private arbitration rests upon the ability of parties to obtain prompt adjudication of
3 issues in a fair and impartial manner. Accordingly, California law and the rules of arbitration both impose
4 broad disclosure requirements to ensure impartiality is maintained. Section 1281.9 of the California Code
5 of Civil Procedure requires arbitrators to affirmatively disclose not just prior or pending matters involving
6 the parties or their counsel, but also “[a]ny professional or significant personal relationship the proposed
7 neutral arbitrator ... has or has had with any party to the arbitrator proceeding or lawyer for a party.”
8 (C.C.P. § 1281.9(a)(6).) JAMS Rules likewise impose the same disclosure obligations specifying that
9 “[t]he obligation of the Arbitrator...to make all required disclosures continues throughout the Arbitration
10 process.” (JAMS Rule 15(h).)

11 This fundamental requirement is further detailed in the Ethical Standards for Neutral Arbitrators
12 in Contractual Arbitration, Standard 7, which provides that “[a] proposed arbitrator or arbitrator *must*
13 disclose all matters that *could cause* a person aware of the facts to reasonably entertain a doubt that the
14 arbitrator would be able to be impartial, including, but not limited to ... (9) [a]ny other professional
15 relationship not already disclosed ... that the arbitrator ... has or has had with a party or lawyer for a party[,
16 and] ... (15) [a]ny other matter that: (A) *Might cause* a person aware of the facts to reasonable entertain
17 a doubt that the arbitrator would be able to be impartial...” (Standard 7(d) (emphasis added); *see also*,
18 C.C.P. § 1281.9(a) [requiring disclosure of “all matters that could cause a person aware of the facts to
19 reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial...”].) JAMS
20 Arbitrator Ethics Guidelines similarly “strongly encourages Arbitrators to address ethical issues that may
21 arise in their cases as soon as an issue becomes apparent...” (See JAMS Arbitrator Guidelines.)

22 Following the inexplicably hostile final hearing and issuance of a wholly one-sided ruling
23 contradicted by evidence, Petitioners discovered that there exists a disconcerting prior undisclosed
24 relationship between the Arbitrator and counsel for Honarkar. Specifically, Edward Susolik of Callahan
25 and Blaine represented Honarkar in both his divorce proceedings as well as in a separate (and still pending)
26 matter concerning the “Newport Crossings” property, a substantial asset of the joint venture formed
27 between Honarkar and Petitioners. (Farrell Decl. Ex. 6, Hearing Tr., 7/5/24 at 2429:10-18; Leipzig Decl.,
28 Exs. C, D.) In that matter, Mr. Susolik and his firm jointly represented Honarkar and another venture

1 partner in connection with the acquisition of Newport Crossings, where it was alleged that Honarkar
 2 engaged a different attorney to defraud Honarkar's venture partner and deprive him of the opportunity to
 3 purchase the property. (*Id.*)

4 As it turns out, the Arbitrator had a pre-existing relationship with the Callahan and Blaine firm
 5 and, specifically, Mr. Susolik. The Arbitrator had presented with Mr. Susolik in seminars. Their
 6 relationship was such that both attorneys attended a private ceremony attended by the Arbitrator and his
 7 family, celebrating the Arbitrator's appointment to the California Court of Appeal in 2012. (Leipzig Decl.,
 8 Exs. A, B.) Notwithstanding this connection, and despite the repeated reference to Mr. Susolik and his
 9 firm in evidence, at no time did the Arbitrator ever disclose his relationship to Honarkar's counsel from
 10 Callahan and Blaine. No such relationship was identified in the Arbitrator's written disclosures, nor did
 11 the Arbitrator make any mention of such a relationship during the final hearing. (*Id.* Exs. E-I.)

12 This failure of disclosure is emblematic of the prejudicial bias experienced by Petitioners in this
 13 proceeding and likely caused or contributed to the entirely one-sided Partial Final Award.¹ While it
 14 remains unclear whether the Arbitrator's relationship to Honarkar's counsel actually tainted his views, the
 15 very fact of this failure of disclosure is deeply troubling and undermines the legitimacy of the entire Partial
 16 Final Award. Indeed, disqualification of an arbitrator does not rest upon a showing of actual bias, as the
 17 mere *appearance* of impartiality gives parties a right to challenge the appointment. (*Wechsler v. Superior*
 18 *Court* (2014) 224 Cal.App.4th 384, 390 ["A party moving for disqualification need not show actual bias
 19 because the Legislature sought to guarantee not only fairness to individual litigants, but also to ensure
 20 public confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before
 21 a judge who *appears* to be tainted. A party has the right to an objective decision maker and to a decision
 22 maker who appears to be fair and impartial."]; *Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler &*
 23
 24

25 ¹ The heart of Honarkar's claim of fraud rests entirely on avowed lack of knowledge concerning the
 26 Nano Loan, as the signed agreements unequivocally allow Petitioners' contribution to be made in
 27 ways other than cash. Despite this, the Arbitrator gave no weight to Honarkar's own emails and text,
 28 referencing the amount of loans and thus demonstrating his awareness of the Nano Loan. Rather,
 these facts were summarily dismissed as "not persuasive," deferring to Honarkar's self-serving
 testimony, provided using a cheat-sheet on the stand. (Farrell Decl., Ex. 50 at 23-24.) When called
 out for this evidentiary violation, Petitioners' objections were ignored. Regardless, such thin support
 for the ultimate findings only serves to underscore the irregular nature of the proceedings.

1 *Mitchell, LLP* (2013) 219 Cal.4th 1299, 1310-1313 [finding it error to deny petition to vacate where “an
2 objective observer aware of the facts could reasonably [] entertain such a doubt” regarding impartiality].)

3 On its face, the Arbitrator’s close relationship to Honarkar’s counsel would objectively cause a
4 reasonable person to doubt his impartiality in the case. Honarkar, by his own admissions, built his business
5 in Orange County and has strong ties to the local community. His counsel at Callahan and Blaine are
6 friends with the Arbitrator, having not just served together on speaking panels, but also having attended a
7 close-gathering to celebrate the Arbitrator’s elevation to the Court of Appeals. This relation has existed
8 for over 10 years and it does not require any leap of logic to surmise the Arbitrator’s cozy relations to
9 counsel would have impacted his impartiality and resulted in a biased proceeding. Indeed, had it been
10 disclosed, Petitioners would have objected to the Arbitrator’s appointment. (Leipzig Decl. ¶ 18.)
11 Moreover, the Arbitrator also suggested, during an off the record discussion, that he knew the aunt of one
12 of Honarkar’s witnesses, Dan Niazi, and may have attended high school with her. (*Id.* ¶ 17.)

13 Petitioners also had no reasonable way to discover this pre-existing relationship. Rather, the
14 disclosure obligation, naturally, rests squarely on the Arbitrator. Yet this Arbitrator made no such
15 disclosures and this blatant failure to make a critical disclosure mandates vacation of the Partial Final
16 Award as even the appearance of a conflict must be disclosed.² (C.C.P. § 1286.2(a)(2), (6).) Any other
17 result leaves Petitioners with no recourse as they never had any opportunity to object to the Arbitrator’s
18 undisclosed relations and the confirmation of such an award tainted with nondisclosure **must** be vacated.
19 (*Ovitz v. Schulman* (2005) 133 Cal.App.4th 830, 844-845 [“On its face, the statute leaves no room for
20 discretion. If a statutory ground for vacating the award exists, the trial court must vacate the award.”].)

21 **B. The Arbitrator Exceeded His Powers.**

22 When an arbitrator exceeds his authority under the parties’ arbitration agreement, vacatur is
23 mandatory: “[T]he court **shall** vacate the award if the court determines...the arbitrator[] exceeded [his]
24 powers and the award cannot be corrected without affecting the merits of the decision upon the controversy
25 submitted.” (C.C.P. § 1286.2(a)(4) [emphasis added].) “The powers of an arbitrator derive from, and are
26

27 _____
28 ² The rules were consistently followed when it benefited Honarkar, including imposing procedural
hurdles on separate bankruptcy counsel for the JV before they were even heard. The rules must be
equally applied, especially for disclosure obligations foundational to an impartial proceeding.

1 limited by, the agreement to arbitrate.” (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362,
2 375 (*Advanced Micro*).)

3 1. The Arbitrator Exceeded His Authority by Rescinding the Term Sheet.

4 The Arbitrator exceeded the scope of his authority by going beyond even what the Honarkar
5 Parties requested and providing rescission of the Term Sheet. (See Ex. 48, § N(1).) This overreach of
6 authority is egregious as the arbitration provision incorporated JAMS’ “expedited arbitration rules.” (See
7 Farrell Decl., Exs. 54–56, § 19.10.) The Arbitrator’s powers were thus limited to those authorized by the
8 JAMS Rules. (*Emerald Aero, LLC v. Kaplan* (2017) 9 Cal.App.5th 1125, 1140; see *Advanced Micro*,
9 *supra*, 9 Cal.4th at 367; see also, JAMS Rule 9(a) [“no claim, remedy, counterclaim or affirmative defense
10 will be considered by the Arbitrator in the absence of such prior notice to the other Parties”].)

11 Here, Petitioners did not have “prior notice” that the Term Sheet would be rescinded under Rule
12 9(a). In his Demand, Honarkar only sought “rescission of the MOM LLC Operating Agreements.”
13 (Farrell Decl., Ex. 40 at ¶ 68, Prayer ¶ 2.) Indeed, in a motion hearing a few months prior to the final
14 hearing, Honarkar’s counsel confirmed that he sought rescission only as to the operating agreements and
15 stated that if they were rescinded “[t]hen I believe the term sheet would be the binding contract that was in
16 place.” (Farrell Decl., Ex. 42 Hearing. Tr., 1/2/24 at 28:14-22.) Also, in their pre-hearing brief, the
17 Honarkar Parties claimed they were “entitled to rescission of the joint venture agreements (the Operating
18 Agreements for the MOM LLCs, as amended, and the Asset Contribution Agreement),” but not the Term
19 Sheet. (Farrell Decl., Ex. 43, Pre-Hearing Br. at 49.) It was not until their Post-Hearing brief where the
20 Honarkar Parties claimed **for the first time** that they were entitled to rescission of “the joint venture
21 agreements (the Operating Agreements of the MOM Investco LLCs,...Asset Contribution
22 Agreement...**and the May 24, 2021 Term Sheet between the parties**).” (Farrell Decl., Ex. 44 at 61.)

23 Given that Petitioners did not have prior notice and no opportunity to respond, the rescission of the
24 Term Sheet is not a remedy properly submitted pursuant to rule 9(a) of the JAMS Rules and the Arbitrator
25 had no authority to award such relief.³ *Pacific Crown Distributors v. Brotherhood of Teamsters* (1986)

27 _____
28 ³ When this was raised to the Arbitrator, his response was to ignore the procedural error because the
request to rescind the Term Sheet was mentioned in the Honarkar Parties’ Post-Hearing briefs,
without any regard to the prejudice to Petitioners. (See Farrell Decl., Ex. 41 at 2.)

1 183 Cal.App.3d 1138, 1146 (“By asserting the [“right to work” provision] for the first time in its post-
 2 hearing brief, [employee] intentionally and fraudulently deprived [employer] of its opportunity to present
 3 evidence in arbitration concerning,” the inapplicability of that provision.”).

4 Critically, the terms of the Term Sheet demonstrate the magnitude of overreach here warranting
 5 vacatur. As Honarkar’s core claim is that he was defrauded because Petitioners did not contribute \$30
 6 million in cash, he did not seek rescission of the Term Sheet because he knew it does not include such a
 7 requirement. (Farrell Decl., Ex. 16.) Rather, the Term Sheet only requires a minimal initial contribution
 8 of \$2 million, which was indisputably provided. While the Arbitrator seemingly understood this, he
 9 nevertheless granted rescission of the Term Sheet as he likely understood that is the only way Honarkar
 10 could show damages essential to his claims; as the bulk of the claimed damages rests entirely on alleged
 11 lost value associated with Honarkar’s loss of management control once the venture was formed. This is a
 12 blatant instance of overreach engineered to achieve the ultimate goal to benefit the Honarkar Parties, which
 13 is contrary to law and undermines the legitimacy and validity of the entire proceeding.

14 2. The Arbitrator Exceeded the Scope by Awarding Punitive Damages.

15 “The scope of an arbitrator’s authority is not so broad as to include an award of remedies expressly
 16 forbidden by the arbitration agreement or submission.” (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th
 17 1179, 1185 (cleaned up).) If a limitation on relief is set out “explicitly and unambiguously” in the parties’
 18 agreement, and the arbitrator exceeds his authority in awarding relief beyond the limitation, then the court
 19 is empowered to vacate or correct the award. (*See Advanced Micro, supra*, 9 Cal.4th at 383.)

20 The Award provides for punitive damages. (*See* Ex. 50 at 43.) But section 19.10 of the Operating
 21 Agreements expressly prohibited the award of punitive damages. (*See* Exs. 54–56 § 19.10 [“Provided that
 22 no party shall be liable for consequential, punitive, or special damages.”].) The Arbitrator thus
 23 “disregarded specific provisions of the plain text...Such an award is irrational.” (*Aspic Engineering &*
 24 *Constr. Co. v. ECC Centcom Constructors, LLC* (9th Cir. 2019) 913 F.3d 1162, 1168.)

25 When challenged on this by way of a request for correction, the Arbitrator denied the request but
 26 provided little grounds for the denial, commenting that the argument “**may** have been waived,” or the
 27 provision is “**likely** unlawful” citing to Civil Code § 1668’s general prohibition against excepting parties
 28 from responsibility for their intentional torts. (Farrell Decl., Ex. 41, Correction at 2.) However, contrary

to this uncertain statement, punitive damages waivers in arbitration provisions **are** enforceable. (*Mastrobuono v. Shearson Lehman Hutton, Inc.* (1995) 514 U.S. 52, 56-57 [“[I]f the contract says ‘no punitive damages,’ that is the end of the matter, for courts are bound to interpret contracts in accordance with the expressed intentions of the parties—even if the effect of those intentions is to limit arbitration.”].) The punitive damages waiver here is merely a “remedy limitation” that does not go so far as to “exempt [a defendant] from responsibility,” (*James River Holdings Corp. v. Anton & Chia LLP* (C.D. Cal. Jan. 17, 2014) 2014 WL 12696367, at *7). Thus, Civ. Code § 1668 has no application here, and none of the *Tunkl* factors weigh in favor of finding unenforceability. (*Tunkl v. Regents of Univ. of Cal.* (1963) 60 Cal. 2d 92.) Further, nothing Petitioners did could amount to a waiver. (*J. Alexander Secs., Inc. v. Mendez* (1993) 17 Cal.App.4th 1083, 1093–94 [holding a waiver requires a “voluntary and intentional relinquishment of a known right”].) Thus, the punitive damages limitation applies and the Arbitrator’s issuance of this relief beyond the plain limitations of his authority warrants vacating the Award. (*See Cal. Fac. Association v. Sup. Ct.* (1998) 63 Cal.App.4th 935, 953 [“[I]t is difficult to see how the violation of an express and explicit restriction on the arbitrator’s powers could be considered ‘rationally related’ to a plausible interpretation of the agreement”].)

C. The Arbitrator Refused to Hear Relevant Evidence.

An arbitration award must also be vacated as the arbitrator has refused to hear material evidence, and Petitioners have been substantially prejudiced. (C.C.P. § 1286.2(a)(5); *Burlage v. Sup. Ct.* (2009) 178 Cal.App.4th 524, 529.) Petitioners need not prove that the arbitrator would have reached a different result had he heard the withheld evidence. (*Hall v. Sup. Ct.* (1993) 18 Cal.App.4th 427, 438-39.). Rather, it is sufficient “that the arbitrator might well have made a different award had the evidence been allowed.” (*Id.*)

1. The Arbitrator Refused to Order the Production of 4G’s Books.

The Arbitrator ruled against Petitioners’ request that the Honarkar Parties be ordered to produce 4G’s books and records. Petitioners requested that the Honarkar Parties “be ordered to produce complete Quickbooks data for 4G,” but the Arbitrator denied the request. (Farrell Decl., Ex. 56 at p. 2.) The Quickbooks files were particularly important to Petitioner’s claims. The evidence showed that Honarkar then asked tenants to pay rent to him directly. (*See* Exs. 36–39, Farrell Decl., Ex. 5, Hearing Tr., 7/1/24 at 1401:17-1402:18; *see also* Farrell Decl., Ex. 1, Hearing Tr., 6/25/24 at 423:17; 425:10-426:25.) Honarkar

1 also admitted tenants paid him rent directly into the 4G bank account. (Farrell Decl., Ex. 1, Hearing Tr.,
 2 6/25/24 at 452:4-453:4.) That money was then transferred to Honarkar's secret bank accounts. (*Id.* at
 3 454:25-455:10; Ex. 45.) Petitioners' expert, Joe Pohlot, testified that approximately \$5,972,882 was
 4 diverted, without the benefit of 4G's Quickbooks. (*See* Ex. 46 at 10; *see also* Ex. 47 at 2; Farrell Decl.,
 5 Ex. 8, Hearing Tr., 7/10/24 at 3346:13-3348:21.) Petitioners also asserted that Honarkar had breached
 6 representations and warranties in the Operating Agreement by misstating his financial condition. (*Id.*, Ex.
 7 48 at 33-34.) The Quickbook files would have revealed the extent of Honarkar's wrongdoing, and without
 8 such documents, Petitioners' rights were substantially prejudiced.

9 2. The Arbitrator Ignored Unethical Conduct by Honarkar's Counsel.

10 The Honarkar Parties' core contention is that they were not informed that \$20 million of
 11 Petitioners' initial contribution would be sourced from a loan from Nano Banc. Thus, what Honarkar
 12 knew or didn't know about the loan is critical. On this point, Nano Banc's then-Chief Interim Officer
 13 (Anthony Gressak) was called to testify, but his ability to provide testimony was directly impacted as the
 14 Honarkar Parties' counsel failed to disclose a prior attorney-client relationship with Mr. Gressak.

15 On the stand, Honarkar's counsel, Aaron May, cross-examined Gressak for four hours. (Farrell
 16 Decl., Ex. 8, Hearing Tr., 7/10/24 at 3346:13-3348:21.) Two days later, Gressak's counsel sent
 17 correspondence reporting: Gressak consulted May—while this action was pending—to retain May to
 18 represent him in a dispute regarding his departure from Nano Banc. (*See id.*) Gressak alleges that he
 19 disclosed confidential information about Nano Banc to May during that consultation, which he believed
 20 was privileged. (*See id.*) Gressak's counsel asserts that such information was used against him by May
 21 during cross-examination. (*See id.*) Gressak cited examples. (*See id.*) Gressak did not know May
 22 represented Honarkar, did not waive the privilege, or otherwise consent to May using the confidential
 23 information against him or any other parties. (*See id.*)

24 May's use of purportedly privileged information he learned from Gressak had an unmistakable
 25 prejudicial effect on Gressak's testimony. For instance, May's questioning led Gressak to assert that
 26 certain responses would impermissibly require him to disclose Confidential Supervisory Information
 27 ("CSI") under 12 CFR §261.20(b)(1). Gressak contends he was confused while testifying as he did not
 28 know how May knew of such confidential information. (*See id.*) Indeed, Gressak's demeanor while

1 testifying changed when ambushed by May's use of confidential information. (Farrell Decl., Ex. 8,
 2 Hearing Tr., 7/10/24 at 3364:18-3370:23; *id.*, Ex. 9, Hearing Tr., 7/11/24 at 3433:1-3438:25; 3541:24-
 3 3557:19; *id.*, Ex. 10, Hearing Tr., 7/12/24 at 3617:5-3634:21.) Gressak believes the Arbitrator interpreted
 4 his confusion as evasiveness. (See Farrell Decl., Ex. 11, p. 2.)

5 Knowing that this issue impugned Gressak's credibility, Nano Banc and Petitioners immediately
 6 requested the appointment of an independent arbitrator to conduct discovery to assess the scope and impact
 7 of the disclosure of potentially privileged information. But this request was flatly denied by the Arbitrator
 8 who indicated "Respondents have not shown any factual or legal basis for the Request," without any
 9 explanation why May's behavior and the impact on Gressak should be ignored. (Farrell Decl., Ex. 49.)
 10 This led the Arbitrator ultimately determining that Gressak was "just not credible," discrediting his
 11 testimony in its entirety. (*Id.*, Ex. 50 at 18.) Given Gressak's contentions (and the Arbitrator's hostile
 12 behavior as described below), he had every reason to be confused on the stand which reflected negatively
 13 on his credibility. This impact on key testimony going to the very heart of the dispute is yet another
 14 example of the Arbitrator's refusal to allow anyone other than the Honarkar Parties to have a fair shot at
 15 presenting evidence, and such irregularity requires vacatur.

16 **D. The Award Was Procured Through Undue Means.**

17 Vacatur is appropriate if the "award was procured by corruption, fraud, or undue means." (C.C.P.
 18 § 1286.2(a).) This applies both to issues perpetrated by the arbitrator or by a party. (*Pacific Crown*
 19 *Distributors v. Brotherhood of Teamsters & Auto Truck Drivers, Loc. 70* (1986) 183 Cal.App.3d 1138,
 20 1147.) "Undue means" consists of conduct that is "immoral, if not illegal... something wrong, according
 21 to the standards of morals which the law enforces." (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 372-
 22 375; see *National Cas. Co. v. First State Ins. Grp.* (1st Cir. 2005) 430 F.3d 492, 499.) To vacate an award
 23 because of undue means, Petitioners must show the undue means (i) were not discoverable before the
 24 award was made and (ii) caused the award to be given. (*A.G. Edwards & Sons, Inc. v. McCollough* (9th
 25 Cir. 1992) 967 F.2d 1401, 1403-1404.)

26 It should go without saying but witness tampering constitutes undue means. (See *NuVasive, Inc.*
 27 *v. Absolute Med., LLC* (11th Cir. 2023) 71 F.4th 861, 866, 875-78 (*NuVasive*).) This is exactly what
 28 occurred here as evidenced by May and the Arbitrator's conduct concerning Gressak. May's use of

1 privileged information (without consent) is the textbook definition of “undue means,” as it violates the
 2 rules of Professional Conduct. While Gressak did not retain May as counsel, it is shocking that May never
 3 informed Gressak of his concurrent representation of the Honarkar Parties and that he never thought it
 4 relevant to disclose to the parties in arbitration. By statute, May is required to “maintain inviolate the
 5 confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” (Cal. Bus.
 6 & Prof. Code § 6068(e)(1); Cal. R. Prof. Conduct R. 1.1.8(b).) But May did not just fail to maintain
 7 confidence, he actively used information relayed to him by Gressak to advocate for other clients, the
 8 Honarkar Parties. At a minimum, Gressak’s allegations create the appearance of impropriety and has
 9 resulted in irreparable prejudice, precisely what the rules of professional conduct are designed to protect
 10 against. (*See Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1204 [“The paramount concern must be
 11 to preserve public trust in the scrupulous administration of justice and the integrity of the bar.”].)

12 In addition, Honarkar also brought a notepad to the witness stand and consulted it throughout his
 13 testimony. (Farrell Decl., Ex. 2, Hearing Tr. 6/26/24 at 691:4-16 [“[T]he witness, I believe, is looking at
 14 notes on his pad...”]; Ex. 3, Hearing Tr. 6/27/24 at 835:22-842:22 [Arbitrator holding that “the notes that
 15 were being used shall be produced, if at all possible, and the further order is going to be that I’m going to
 16 allow opposing counsel to voir dire him about those notes if he so desires”]; 1032:1-7; *see* Ex. 51
 17 [purported copy of his notes].) Influencing a witness’s testimony—through the use of notes—is further
 18 grounds for vacatur. (*See NuVasive*, 71 F.4th at 878–79.)

19 **E. Petitioners Were Also Prejudiced by the Arbitrator’s Misconduct.**

20 Vacatur is also proper when “[t]he rights of the party were substantially prejudiced by misconduct
 21 of a neutral arbitrator.” (C.C.P. § 1286.2(a)(3).) “For the claimed departure from the usual procedure to
 22 amount to misconduct of the arbitrators sufficient to vacate the award, it must be shown that it prejudiced
 23 the rights of one of the parties.” (*Turner v. Cox* (1961) 196 Cal.App.2d 596, 603; *Moncharsh v. Heily &*
 24 *Blase* (1992) 3 Cal.4th 1, 13.

25 Here, the Arbitrator’s misconduct permeated every aspect of the arbitration proceeding. His
 26 behavior throughout the proceedings, taken in full, amounts to serious misconduct which requires vacatur.
 27 As examples, the Arbitrator fell asleep (Leipzig Decl. ¶ 4); and berated witnesses during the midst of their
 28 testimony. (*Id.*, ¶¶ 7-13 Farrell Decl., Ex. 5 Hearing Tr., 7/1/24, at 1571:12-1572:19 [while witness was

1 testifying, “I’m judging the credibility of this witness. He’s not looking super credible right now.”];
 2 1575:2-1576:18 [“I was suggesting that his demeanor is, to me, giving the appearance of untruthfulness.”];
 3 Ex. 7, Hearing Tr., 7/8/24, at 2676-1-3 [“It looks to me like you’re playing games here...This is not a
 4 game.”].) He also held hearings at times when he knew one of the attorneys to the case was on a religious
 5 pilgrimage in Israel. (Leipzig Decl. ¶ 26.) The Arbitrator also repeatedly berated counsel, going so far as
 6 to shout at counsel to “quit whining.” (Ex. 1, Hearing Tr., 6/25/24, at 258:4-15; Ex. 4, Hearing Tr., 6/28/24,
 7 at 1162:12-17; Ex. 3, Hearing Tr. 6/27/24, at 890:1-891:3.)

8 All of this had obvious negative effects on witnesses favorable to Petitioners, including a key
 9 witness, Mr. Kluchin, who was not inclined to finish testifying because the Arbitrator berated him on the
 10 stand. (Leipzig Decl. ¶ 8.) This was egregious behavior and a side bar was held. But while the Arbitrator
 11 seemingly conceded the impropriety of his behavior, he doubled down using threats to intimidate counsel
 12 into submission. (*Id.*) Days later, the Arbitrator did the same to yet another crucial witness, Mr. Gressak,
 13 where he went so far as to tell Mr. Gressak in raised tone that he was playing “games,” and called Mr.
 14 Gressak a “***straight-out liar about everything across the board.***” When counsel objected to this
 15 unbecoming behavior, the only response was “but this is my rodeo.” While the Arbitrator may fashion
 16 himself a cowboy with unfettered authority, that is not the case as his gross misconduct has irrevocably
 17 poisoned the proceedings and the extreme and prejudicial outcome here cries out for vacatur.

18 **IV. THE ARBITRATOR DID NOT HAVE JURISDICTION OVER MAKHIJANI.**

19 The Partial Final Award must also be vacated as it relates to Makhijani as the Arbitrator had no
 20 jurisdiction to determine claims against a non-party to the arbitration agreement. Makhijani did not sign
 21 the Operating Agreements that contained the arbitration provisions. Rather, he signed the Term Sheet as
 22 an “Authorized Signatory” of Continuum Analytics. (See Farrell Decl., Ex. 16.) In deciding a Motion
 23 to Compel Arbitration, the Court held that the issue of arbitrability was “an issue for the arbitrator
 24 to decide.” (Farrell Decl., Ex. 52 at ¶ 3.)

25 The “right to trial by jury is a basic and fundamental part of our system of jurisprudence. As such,
 26 it should be zealously guarded by the courts. In case of doubt, therefore, the issue should be resolved in
 27 favor of preserving a litigant’s right to trial by jury.” (*Byram v. Sup. Ct.* (1977) 74 Cal.App.3d 648, 654
 28 [citations omitted]; *Benasra v. Marciano* (2001) 92 Cal.App.4th 987, 990 (policy in favor of arbitration

1 does not extend to those who did not sign the arbitration agreement.) The right to litigate in court is a
 2 “substantial right and one not likely to be deemed waived.” (*Marsh v. Williams* (1994) 23 Cal.App.4th
 3 250, 254 (cleaned up).) Rather, the parties must **unequivocally** agree to arbitrate. (*Id.* (citations omitted).)

4 Here, Makhijani is not a third-party beneficiary of the Operating Agreements and cannot be bound.
 5 “[A] third-party beneficiary is someone who may enforce a contract because the contract is made expressly
 6 for his benefit.” (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 301.) There are also no
 7 provisions in any of the agreements that identify Makhijani as a beneficiary, nor any evidence that he
 8 obtained any benefit. “[T]he case law in fact requires that the third party **claim** benefits or rights under the
 9 contract before he or she will be bound to arbitrate” which Makhijani has not done. (*McArthur v. McArthur*
 10 (2014) 224 Cal.App.4th 651, 662-63 [emphasis added]; *see also Young Seok Suh v. Sup. Ct.* (2010) 181
 11 Cal.App.4th 1504, 1513 (holding plaintiffs not bound to arbitrate as third-party beneficiaries of contract
 12 where there was no evidence the plaintiffs benefitted); *Benasra, supra*, 92 Cal.App.4th at 991.)

13 Moreover, there is no “preexisting relationship” between Makhijani and any party, such that it
 14 would be “equitable” to force him to arbitrate. The only “preexisting relationship” at issue is Makhijani’s
 15 role at Continuum Analytics. That is insufficient. (*Benasra, supra*, 92 Cal.App.4th at 990-93 (finding a
 16 corporate representative signing a license agreement did not make him a party); *see also Epitech, Inc. v.*
 17 *Kann* (2012) 204 Cal.App.4th 1365, 1371-1372.)

18 **V. THE AWARD SHOULD BE CORRECTED.**

19 The court may correct an award if it determines: (a) that there was an evident miscalculation or
 20 misidentification; (b) that the award was imperfect as to form; or (c) that the arbitrators exceeded their
 21 powers, and the award may be corrected **without** affecting the merits of the decision. (C.C.P. § 1286.6.)
 22 If the court declines to vacate any portion of the award, Petitioners respectfully request that the Award
 23 instead be corrected to remove the award of punitive damages and the award of rescinding the Term Sheet.

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1 **VI. CONCLUSION.**

2 For the above reasons, the Award must be vacated, or alternatively, corrected.

3
4 Dated: June 18, 2025

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
MICHAEL R. FARRELL
SCOTT J. LEIPZIG
TIM C. HSU

7
8 By: /s/ Tim C. Hsu

TIM C. HSU
Attorneys for Defendants and Nominal
Defendants
MAHENDER MAKHIJANI; CONTINUUM
ANALYTICS, INC.; MOM AS INVESTOR
GROUP LLC; MOM BS INVESTOR
GROUP LLC; MOM CA INVESTOR
GROUP LLC; MOM CA MANAGER LLC;
MOM BS MANAGER LLC; MOM AS
MANAGER LLC; LAGUNA HW, LLC;
LAGUNA HI, LLC; SUNSET COVE
VILLAS, LLC; RETREAT AT LAGUNA
VILLAS, LLC; DUPLEX AT SLEEPY
HOLLOW, LLC; HOTEL LAGUNA, LLC;
MOM AS INVESTCO, LLC; MOM BS
INVESTCO, LLC; and MOM CA
INVESTCO, LLC

Exhibit C

From: [Tony Bisconti](#)
To: [Sam Maralan](#); mfarrell@allenmatkins.com; sleipzig@allenmatkins.com; [Hsu, Tim](#); marc@dgapc.com; gprybylo@splawllp.com; csauvageau@splawllp.com; fseynia@splawllp.com; Aaron.May@halpernmay.com; Joseph.Ybarra@halpernmay.com; Thomas.Rubinsky@halpernmay.com; jfelton@gbllawllp.com
Cc: [Elizabeth Garcia](#)
Subject: Notice of Ex Parte Application - MOM Investco LLC v. 247 Hotels Beverage et al
Date: Wednesday, June 25, 2025 8:53:47 AM
Attachments: [image001.png](#)

Counsel,

This email shall serve as notice that MOM CA Investco, LLC (“Debtor”), Plaintiff and Cross-Defendant in the above-referenced action (Case No. 30-2023-01325570-CU-BC-WJC pending in the Superior Court of the State of California, County of Orange), intends on moving *ex parte* on June 26, 2025 at 1:30 p.m. in Department C27, to request a 60 day continuance of the trial scheduled to commence June 30, 2025. In summary, the basis for the requested relief is that Cross-Complainant Palm Desert Collective Resorts, LLC (“PDCR”) appears to have refinanced its existing secured debt, which under the Asset Contribution Agreement (and as acknowledged in the Cross-Complaint) would result in the automatic contribution of PDCR to the Debtor.

We will provide you with moving papers once they are ready.

Please let us know if your client(s) intend to oppose.



Tony Bisconti | Partner
Bienert Katzman Littrell Williams LLP
(949) 369-3700 | [Website](#) | [vCard](#) | [Profile](#)

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Exhibit D

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Special Counsel for Debtor
MOM CA Investco LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MOM CA INVESTCO, LLC, a Delaware
limited liability company,

Plaintiff

vs.

247 HOTELS BEVERAGE, LLC, a California
limited liability company; MOHAMMAD
HONARKAR, an individual; and DOES 1
through 10, inclusive,

Defendants

MOHAMMAD HONARKAR, an individual;
4G WIRELESS, INC, a California corporation;
PALM DESERT COLLECTIVE RESORTS,
LLC, a Delaware limited liability company,

Cross-Complainants,

vs.

MOM CA INVESTCO, LLC, a Delaware
limited liability company; MOM CA
INVESTOR GROUP, LLC, a Delaware
limited liability company; CANTOR GROUP
IV, LLC, a Delaware limited liability
company; and DOES 1 through 20, inclusive,

Cross-Defendants.

Case No.: 30-2023-01325570-CU-BC-WJC

Assigned For All Purposes To: Hon. Bradley Erdosi

**MOM CA INVESTCO LLC'S *EX PARTE*
APPLICATION FOR ORDER CONTINUING
JUNE 30, 2025 COURT TRIAL FOR
APPROXIMATELY 60 DAYS; MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATIONS OF ANTHONY R.
BISCONTI AND R. STEPHEN MCNEILL;
[PROPOSED] ORDER**

Ex Parte Hearing Information:

Date: June 26, 2025

Time: 1:30 p.m.

Dept: C27

Trial Date: June 30, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 26, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department C27 of the above-captioned Court located at 700 Civic Center Drive, Santa Ana, California 92701, Plaintiff and Cross-Defendant MOM CA Investco LLC (the “Debtor”) will, and hereby does, move for an Order continuing the current court trial date of June 30, 2025, for approximately sixty (60) days, to on or after September 2, 2025 (the “Application”).

Pursuant to California Rules of Court, Rule 3.1202(a), provided below are the names, addresses, and telephone numbers of all other counsel in this matter:

Sam Maralan MARALAN LAW, P.C. 3080 Bristol Street, Ste. 630 Costa Mesa, CA 92626 Telephone: (714) 641-0506 Facsimile: (714) 641-3604 Email: sm@maralanlaw.com	<i>Counsel to Defendant and Cross-Complainants Mohammad Honarkar, 4G Wireless, Inc. and Palm Desert Collective Resorts, LLC</i>
Michael R. Farrell Scott J. Leipzig Tim C. Hsu ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 865 South Figueroa Street, Suite 2800 Los Angeles, California 90017-2543 Telephone: (213) 622-5555 Facsimile: (213) 620-8816 Email: mfarrell@allenmatkins.com sleipzig@allenmatkins.com thsu@allenmatkins.com	<i>Counsel for Cross-Defendant MOM CA Investor Group, LLC</i>
Marc Cohen COHEN LAW GROUP, APC 541 South Spring Street, Suite 1208 Los Angeles, California 90013 Phone: (213) 223-7707; Facsimile: (877) 334-3138 E-Mail: marc@clgapc.com	<i>Counsel for Cross-Defendant MOM CA Investor Group, LLC</i>

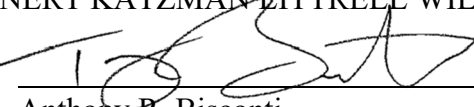
1 2 3 4 5 6	Garrett N. Prybylo Carley Sauvageau Farzad Seyfnia SEYFNIA & PRYBYLO, LLP 633 W. 5th Street, Ste. 2600 Los Angeles, CA 90071 Telephone: (213) 770-4529 Email: gprybylo@splawllp.com csauvageau@splawllp.com fseyfnia@splawllp.com	<i>Counsel for Defendants Twenty4seven Hotels Corporation and David Wani</i>
7 8 9 10 11 12 13	Aaron M. May Joseph Ybarra Thomas Rubinsky Halpern May Ybarra Gelberg LLP 550 South Hope Street, Suite 2330 Los Angeles, California 90071-2604 Telephone: (213) 402-1900 Emails: Aaron.May@halpernmay.com Joseph.Ybarra@halpernmay.com Thomas.Rubinsky@halpernmay.com	<i>Counsel for Defendant Mohammad Honarkar</i>
14 15 16 17	James R. Felton G&B LAW, LLP 16000 Ventura Boulevard, Suite 1000 Encino, California 91436 Telephone: (818) 382-6200 Email: jfelton@gblawllp.com	<i>Counsel for Cross-Defendant Cantor Group IV, LLC</i>

1 As detailed in the concurrently filed declaration of Anthony R. Bisconti ("Bisconti Decl."), the
2 undersigned has provided sufficient notice of this Application. On June 25, 2025 at approximately 8:53
3 a.m., Debtor's undersigned counsel provided notice of this *ex parte* Application to counsel for the parties
4 identified in the chart above via email, pursuant to California Rules of Court 3.1203(a), advising of
5 Debtor's intent to appear *ex parte* on June 26, 2025 at 1:30 p.m. to obtain a continuance of the June 30,
6 2025 Court trial. Bisconti Decl. ¶ 7 and Ex. B. Counsel for PDCR advised that PDCR opposes requested
7 relief. As of the filing of this Application, counsel for the other parties have not advised whether they
8 oppose the requested relief.

9 The Application is based upon this notice of *Ex Parte* Application, the attached Memorandum of
10 Points and Authorities, the concurrently filed declarations of Anthony R. Bisconti and R. Stephen McNeill,
11 the papers on file with the Court, those matters of which this Court may take judicial notice, and upon such
12 arguments as may be made at the hearing.

13 Dated: June 25, 2025

BIENERT KATZMAN LITTRELL WILLIAMS LLP

14 By: 

15 Anthony R. Bisconti
16 Olivia Weber
17 Special Counsel for Debtor
18 MOM CA Investco LLC
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff and Cross-Defendant MOM CA Investco LLC (the “Debtor”) seeks a brief continuance of the Court trial currently scheduled to commence June 30, 2025, for approximately 60 days. As set forth below, good cause exists to grant this request.

I. PRELIMINARY STATEMENT

The Debtor has learned that in April 2025, Cross-Complainant Palm Desert Collective Resorts, LLC (“PDCR”) apparently completed a refinance of the existing secured debt it owed. Under the operative documents and consistent with PDCR’s own allegations in its Cross-Complaint, the completion of such refinancing would result in the automatic contribution of PDCR to the Debtor, as the Debtor’s wholly owned subsidiary. Under those circumstances, PDCR would be subject to the control and direction of the Debtor’s independent management;¹ the Debtor, through Ms. Itkin, would be the managing member of PDCR and Mohammad Honarkar (“Honarkar”) (and anyone other than Ms. Itkin) lack corporate authority to cause PDCR to act. Ms. Itkin would need to review all material decisions of the enterprise, including litigation decisions.

Additionally, the automatic stay in effect due to the Debtor’s pending chapter 11 bankruptcy proceedings in Delaware would preclude Honarkar, or anyone other than the Debtor, from exercising control of PDCR, including by prosecuting this litigation. The Debtor requests a continuance of the trial so that it can complete its discovery efforts to confirm PDCR’s refinancing, including by obtaining any necessary orders from the Bankruptcy Court, since Honarkar has stonewalled the Debtor’s discovery efforts thus far. Failure to continue the trial so this determination can be made risks resulting in a trial and resulting ruling (or judgment) that will be void for violating the automatic stay, among other grounds upon which it may be challenged.

¹ On February 26, 2025, the Debtor (and related debtors) entered an engagement with Mark Shinderman, Senior Managing Director at FTI Consulting designating Mr. Shinderman as the Debtor’s Chief Restructuring Officer, which engagement has been approved by order of the Bankruptcy Court. Additionally, on March 4, 2025, the Debtor entered an independent management agreement with Robbin Itkin, under which managerial authority of the Debtor was delegated to Ms. Itkin. Bisconti Decl. ¶ 6. Accordingly, current management of the Debtor is independent from the pre-bankruptcy management.

II. RELEVANT FACTUAL HISTORY

As the Court is aware, on February 28, 2025, the Debtor filed a voluntary chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtor’s bankruptcy case is being jointly administered with related cases under lead Case No. 25-10321 (BLS) (the “Bankruptcy Case”). *See* ROA#339 (Notice of Bankruptcy Petition and Automatic Stay). Upon the filing of the Debtor’s bankruptcy petition, the automatic stay went into effect. *See* 11 U.S.C. § 362. Accordingly, this action is stayed as to the Debtor.

On June 18, 2025, the Court entered a minute order providing that “[t]he Court Trial as to the first cause of action in the cross-complaint is restored to the date of 06/30/2025 at 9:00 a.m. in Department C27.” ROA#356. The first cause of action in the cross-complaint (the “Cross-Complaint”) is a claim asserted on behalf of Cross-Complainant PDCR against Cross-Defendant Cantor Group IV LLC for cancellation of a written instrument. *See* ROA#27 at 8.

As alleged in the Cross-Complaint, in June of 2021, Honarkar and 4G Wireless, Inc. (“4G”) agreed to form a new business venture with Mahender Makhijani (“Makhijani”) and his company Continuum Analytics, Inc. *Id.* ¶ 19; *see also* Bisconti Decl. ¶ 4. The basic terms of the deal required Honarkar to contribute to the newly formed entities his membership interests in various limited liability companies that owned title to real estate assets, in exchange for capital contributions from Makhijani. ROA#27 ¶ 19; Bisconti Decl. ¶ 4. As specifically alleged in the Cross-Complaint:

On June 8, 2021, Honarkar and 4G entered into the Asset Contribution Agreement (“ACA”) to effectuate the contribution to [Debtor]. The ACA is attached as Exhibit “B”. As relevant to this Cross-Complaint, the Held-Back LLCs were subject to the following express provision under Paragraph 2(a)(ii) the ACA:

With respect to each Held-back LLC, on the earlier of the date on which the lender to a Held-back LLC consents to the transfer of the ownership thereof to [Debtor] or the date on which a refinancing of the current secured debt owed by such Held-back LLC is completed, the following shall be deemed to have occurred without any further action on the part of any party hereto: (a) direct and indirect ownership of such Held-back LLC shall be restructured pursuant to the Restructure Agreement so that the sole owner of all of the membership interests in such Held-back LLC is [Honarkar] and (b) immediately after such restructure, [Honarkar] shall contribute the membership interests in such Held-back LLC to [Debtor].

1 ROA#27 ¶ 23; Bisconti Decl. ¶ 4. Under the operative agreements, PDCR was a “Held-back LLC.” *See*
 2 ROA#27 at exhibit B (ACA), at exhibit E thereto (Held-back LLCs); *see also* Bisconti Decl. ¶ 4.

3 PDCR is the owner of two real properties located at 38305 Cook Street, Palm Desert, CA 92211
 4 and 74895 Frank Sinatra Drive, Palm Desert CA 92211 (the “Properties”). *See* ROA#27 ¶ 11; Bisconti
 5 Decl. ¶ 5. As set forth in the Cross-Complaint, at the time the Cross-Complaint was filed there existed
 6 outstanding secured debt on the Properties owed to Rialto Capital Advisors, LLC in the principal amount
 7 of \$24.5 million (the “Rialto Loan”). *Id.* ¶¶ 11-12.

8 Apparently, in April 2025, the Rialto Loan was refinanced through a new loan of approximately
 9 \$35 million from an entity named Peachtree Group (“Peachtree”). *See* Declaration of R. Stephen McNeill
 10 (“McNeill Decl.”) Ex. 1 (Article). As acknowledged in the Cross-Complaint and accompanying exhibits,
 11 pursuant to the ACA, upon the refinancing of the existing secured debt owed by PDCR, PDCR would be
 12 automatically contributed to and become a wholly owned subsidiary of the Debtor.

13 The Debtor, through its independent management, has gone to great lengths to try to get to the
 14 bottom of PDCR’s refinance transaction with Peachtree but has been stonewalled by Honarkar and 4G for
 15 more than a month, necessitating this Application.

16 Specifically, after learning of the Peachtree refinance, on May 20, 2025, the Debtor sent a written
 17 demand to Honarkar and 4G demanding production of the Peachtree loan documentation. *See* McNeill
 18 Decl. ¶ 4. On May 20, 2025, having received no response, the Debtor repeated its request for copies of the
 19 loan documents. *Id.* On May 30, 2025, Honarkar and 4G produced copies of two deed of trust assignments
 20 recorded April 7, 2025 but still did not produce the underlying loan documents. *Id.* ¶ 5. Consequently, on
 21 June 2, 2025, pursuant to the applicable rules in the Bankruptcy Case, the Debtor sent Honarkar and 4G
 22 draft requests for production of documents pursuant to Federal Rule of Bankruptcy Procedure 2004,
 23 including documents related to PDCR and Peachtree, and requested to meet and confer. *Id.* ¶ 6.

24 On June 6, 2025, the Debtor and Honarkar/4G met and conferred through their respective
 25 bankruptcy counsel. *Id.* ¶ 7. On June 10, 2025, the Debtor reiterated its continued need for the PDCR
 26 related loan documents, even though the parties were discussing an agreement to stay other discovery. *Id.*
 27 ¶ 8. On June 19, 2025, the Debtor again made a written demand to Honarkar and 4G that they produce the
 28 PDCR documents. *Id.* ¶ 9. On June 20, 2025, the Debtor and Honarkar/4G again met and conferred via

1 their respective bankruptcy counsel regarding a variety of issues including the PDCR document production.
 2 *Id.* Despite these extensive efforts, to date, Honarkar and 4G have refused to provide to the Debtor the
 3 loan documents related to the Peachtree transaction. *Id.* ¶ 10.

4 **III. THE COURT SHOULD GRANT THE APPLICATION**

5 **A. The Court has discretion to control its calendar.**

6 The court has the authority to continue the Court trial scheduled to commence June 30, 2025. The
 7 Court has the power to control its own calendar as justice may require and may enter such orders as are
 8 reasonably necessary. *Hays v. Superior Court* (1940) 16 Cal. 2d 260, 264; *see also* Code Civ. Proc. §§ 128,
 9 166. “Such power necessarily exists as one of the inherent powers of the court and such power should be
 10 exercised by the courts in order to insure (sic) the orderly administration of justice.” *Hays v. Superior Court*
 11 (1940) 16 Cal. 2d at 264.

12 “While it is true that a trial judge must have control of the courtroom and its calendar and must have
 13 discretion to deny a request for a continuance when there is no good cause for granting one, it is equally true
 14 that, absent [a lack of diligence or other abusive] circumstances...a request for a continuance supported by a
 15 showing of good cause usually ought to be granted.” *Hernandez v. Superior Court* (2004) 115 Cal. App. 4th
 16 1242, 1246-1247, *quoting Estate of Meeker* (1993) 13 Cal. App. 4th 1099, 1105. Courts must exercise
 17 discretion as to all interests involved in determining whether to grant a continuance, as a refusal may have the
 18 practical effect of denying the applicant a fair hearing. *Oliveros v. County of Los Angeles* (2004) 120 Cal.
 19 App. 4th 1389, 1395, citing *In re Marriage of Hoffmeister* (1984) 161 Cal. App. 3d 1163, 1169.

20 **B. Good cause exists to continue the trial for approximately 60 days.**

21 As set forth above, it appears that PDCR refinanced the Rialto Loan through a new \$35,000,000
 22 loan from Peachtree. While Honarkar and 4G have refused to produce the loan documentation to the
 23 Debtor, publicly available news articles have reported on the refinance disclosing specific aspects of the
 24 deal. McNeill Decl. Ex. 1. Moreover, Honarkar and 4G have acknowledged in filings before this Court
 25 their efforts to refinance the Rialto Loan. *See* ROA#335 at 4 (Joint Status Report stating “PDCR has less
 26 than thirty days to complete the refinancing to pay off the \$20,000,000 Rialto Loan which is contingent
 27 upon clearing title.”). If a refinancing has in fact occurred, then under the ACA, PDCR was automatically
 28 contributed to and became a wholly owned subsidiary of the Debtor.

In that event, PDCR would constitute property of the Debtor's bankruptcy estate. 11 U.S.C. § 541(a). Any action to exercise control over property of the Debtor's estate—such as through the prosecution of litigation purportedly on behalf of PDCR—would constitute a violation of the automatic stay. *See* 11 U.S.C. § 362(a)(3) (the automatic stay applies to “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”). Acts in violation of the automatic stay are void *ab initio*—not merely voidable. *See In Siciliano*, 13 F.3d 748, 750 (3d Cir. 1994); *Raymark Indus., Inc. v. Lai*, 973 F.2d 1125, 1131 (3d Cir. 1992); *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1206 (3d Cir. 1991).

Accordingly, because it appears that PDCR is a wholly owned subsidiary of the Debtor due to the Peachtree refinancing, the currently scheduled trial should not proceed or else risk being void due to the automatic stay. The Debtor requests a brief 60-day continuance of the trial date so that it can complete its investigation and discovery efforts, including by seeking any necessary orders from the Bankruptcy Court compelling Honarkar and 4G to produce the relevant PDCR and Peachtree documents. This brief continuance is necessary so that it can be determined whether in triggering event resulting in the automatic contribution of PDCR to the Debtor has occurred, and so the Debtor's independent management can take the necessary and appropriate steps with respect to PDCR. The requested continuance will also protect against the potential waste of judicial resources given the substantial risk that trial and any resulting ruling will be void *ab initio* due to the automatic stay.

IV. PROPER NOTICE OF THE APPLICATION HAS BEEN PROVIDED

An *ex parte* application requires notice to all parties or counsel by 10:00 a.m. the court day prior to the *ex parte* appearance. Rules of Court, Rule 3.1203. As set forth in the accompanying Declaration of Anthony R. Bisconti, the Debtor provided notice to all parties of this *ex parte* application on June 25, 2025 prior to 10:00 a.m. *See* Bisconti Decl. ¶ 7 and Ex. B.

V. CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that the Court continue the trial in this matter for approximately 60 days, from June 30, 2025 to September 2, 2025 or as soon thereafter as is convenient to the Court and the relevant parties.

1 Dated: June 25, 2025

BIENERT KATZMAN LITRELL WILLIAMS LLP

2 By: 

3 Anthony R. Bisconti

4 Olivia Weber

5 Special Counsel for Debtor

6 MOM CA Investco LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 903 Calle Amanecer, Suite 350, San Clemente, California 92673. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On June 25, 2025, I served the foregoing document described as **MOM CA INVESTCO LLC'S EX PARTE APPLICATION FOR ORDER CONTINUING JUNE 30, 2025 COURT TRIAL FOR APPROXIMATELY 60 DAYS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF ANTHONY R. BISCONTI AND R. STEPHEN MCNEILL; [PROPOSED] ORDER** on all interested parties in this action listed below by the service method indicated:

Sam Maralan MARALAN LAW, P.C. 3080 Bristol Street, Ste. 630 Costa Mesa, CA 92626 Telephone: (714) 641-0506 Facsimile: (714) 641-3604 Email: sm@maralanlaw.com	<i>Counsel to Defendant and Cross-Complainants Mohammad Honarkar, 4G Wireless, Inc. and Palm Desert Collective Resorts, LLC</i>
Michael R. Farrell Scott J. Leipzig Tim C. Hsu ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 865 South Figueroa Street, Suite 2800 Los Angeles, California 90017-2543 Telephone: (213) 622-5555 Facsimile: (213) 620-8816 Email: mfarrell@allenmatkins.com sleipzig@allenmatkins.com thsu@allenmatkins.com	<i>Counsel for Cross-Defendant MOM CA Investor Group, LLC</i>
Marc Cohen COHEN LAW GROUP, APC 541 South Spring Street, Suite 1208 Los Angeles, California 90013 Phone: (213) 223-7707; Facsimile: (877) 334-3138 E-Mail: marc@clgapc.com	<i>Counsel for Cross-Defendant MOM CA Investor Group, LLC</i>

<p>Garrett N. Prybylo Carley Sauvageau Farzad Seyfina SEYFNIA & PRYBYLO, LLP 633 W. 5th Street, Ste. 2600 Los Angeles, CA 90071 Telephone: (213) 770-4529 Email: gprybylo@splawllp.com csauvageau@splawllp.com fseyfnia@splawllp.com</p>	<p><i>Counsel for Defendants Twenty4seven Hotels Corporation and David Wani</i></p>
<p>Aaron M. May Joseph Ybarra Thomas Rubinsky Halpern May Ybarra Gelberg LLP 550 South Hope Street, Suite 2330 Los Angeles, California 90071-2604 Telephone: (213) 402-1900 Emails: Aaron.May@halpernmay.com Joseph.Ybarra@halpernmay.com Thomas.Rubinsky@halpernmay.com</p>	<p><i>Counsel for Defendant Mohammad Honarkar</i></p>
<p>James R. Felton G&B LAW, LLP 16000 Ventura Boulevard, Suite 1000 Encino, California 91436 Telephone: (818) 382-6200 Email: jfelton@gblawllp.com</p>	<p><i>Counsel for Cross-Defendant Cantor Group IV, LLC</i></p>

[X] **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by electronic mail to the party(s) identified above using the e-mail address(es) indicated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 25, 2025, at San Clemente, California.


Elizabeth Garcia

Exhibit E

MARALAN LAW, P.C.

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Attorneys for Defendant and Cross-Complainants
MOHAMMAD HONARKAR, 4G WIRELESS, INC and
PALM DESERT COLLECTIVE RESORTS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MOM CA INVESTCO, LLC, a Delaware limited
liability company,

Plaintiff,

vs.

247 HOTELS BEVERAGE, LLC, a California
limited liability company; MOHAMMAD
HONARKAR, an individual; and DOES 1
through 10, inclusive,

Defendants.

MOHAMMAD HONARKAR, an individual; 4G
WIRELESS, INC, a California corporation;
PALM DESERT COLLECTIVE RESORTS,
LLC, a Delaware limited liability company,

Cross-Complainants,

vs.

MOM CA INVESTCO, LLC, a Delaware limited
liability company; MOM CA INVESTOR
GROUP, LLC, a Delaware limited liability
company; CANTOR GROUP IV, LLC, a
Delaware limited liability company; and DOES 1
through 20, inclusive,

Cross-Defendants.

Case No.: 30-2023-01325570-CU-BC-WJC
Assigned For All Purposes To:
Hon. Bradley Erdosi

**CROSS-COMPLAINANTS
MOHAMMAD HONARKAR AND PALM
DESERT COLLECTIVE RESORTS,
LLC'S OPPOSITION TO *EX PARTE*
APPLICATION**

Filed Concurrently Herewith:

1. Declaration of Sam Maralan

Hearing Date: June 26, 2025
Time: 1:30 p.m.
Dept.: C-27

Trial Date: June 30, 2025

OPPOSITION TO EX PARTE APPLICATION

Cross-Complainants PALM DESERT COLLECTIVE RESORTS, LLC ("PDCR") and MOHAMMAD HONARKAR ("Honarkar") (collectively, "Honarkar") respectfully submit the following Opposition to the ex parte Application to continue the trial against Cross-Defendant CANTOR GROUP IV, LLC ("Cantor") by Plaintiff/Cross-Defendants MOM CA INVESTCO, LLC ("MOM CA"), as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

MOM CA's ex parte application is procedurally improper, factually baseless, and easily dispelled. It hinges entirely on speculative hearsay lifted from a months-old article about a supposed refinance transaction involving PDCR—information that MOM CA has admittedly known about for over two months. (*See McNeil Decl.*, ¶ 3-5). This alone defeats any claim of urgency or justification for ex parte relief.

More fundamentally, MOM CA's theory—that PDCR was somehow “automatically contributed” into the joint venture—is not only unsupported by evidence but has been ***conclusively rejected in a binding arbitration award***. After a full evidentiary hearing, the arbitrator found that the MOM joint venture was procured by fraud and that PDCR was never contributed into the venture. Now, MOM CA continues the same contribution claim under a new disguised theory. **Further, the arbitrator awarded Honarkar with rescission rights against the entire joint venture including all related agreements, including the Asset Contribution Agreement for which the ex parte relies on.** (*Maralan Decl.*, ¶ 2, Exhibit “A”; p. 41; “Award”) [“Claimants are entitled to rescind the Operating Agreements, the Other JV Related Agreements, and the Term Sheet, all on account of Respondents’ fraud in the inducement.”]

On June 24, 2025, Honarkar filed a Petition to Confirm the Arbitration Award in the related action *Honarkar v. Makhijani*, OCSC Case No. 30-2023-01324759 (filed therein as ROA 417). Although the petition is currently set for hearing on the Court's first available date—December 22, 2025—Honarkar intends to seek ex parte relief to advance the hearing. In the meantime, the arbitration award is binding as to both fact and law and operates as res judicata against MOM CA, regardless of formal confirmation. (*Trollope v. Jeffries*, (1976) 55 Cal.App.3d 816, 824)

1 [“Accordingly, we conclude that the principles governing acceptance of the benefits of a judgment,
2 order or decree apply with equal force to an arbitration award.”]

3 Tellingly, MOM CA’s application makes no mention whatsoever of the Award—an
4 omission that is both deliberate and deeply misleading given the Award’s direct relevance and
5 preclusive effect. Instead, MOM CA advances a vague and unsupported narrative that its
6 independent manager might have authority over PDCR, despite clear and binding findings that
7 PDCR was never contributed and that MOM CA has no such authority. In essence, MOM CA acts
8 as if the arbitration never happened—now seeking to improperly assert control over PDCR through
9 the very documents that have already been adjudicated as the product of fraud, all before Honarkar
10 can enforce the Award.

11 There is no emergency. There is no good cause. There is only a desperate attempt to delay
12 a trial that MOM CA and Cantor have long sought to avoid which has been pending since the Court
13 granted Honarkar’s motion for limited relief from stay on January 27, 2025. [ROA 323]. PDCR
14 and Cantor have completed all pre-trial preparations, submitted the joint trial documents pursuant
15 to Local Rule 317, and plan to call ready on June 30, 2025. The application should be denied and
16 the trial should commence as ordered.

17 **II. LEGAL ANALYSIS**

18 **A. MOM CA Fails to Show Any Emergency Qualifying for Ex Parte Relief.**

19 Pursuant to *Cal. Rules of Court*, Rule 3.1202(c), an ex parte applicant “must make an
20 affirmative factual showing in a declaration containing competent testimony based on personal
21 knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief
22 ex parte.” “A court will not grant ex parte relief in any but the plainest and most certain of cases.”
23 (*People ex rel. Allstate Ins. Co. v. Suh*, (2019) 37 Cal.App.5th 253, 257). (*Weil & Brown*, Cal.
24 Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶ 9:346 p. 9(l)-156 [“don’t
25 ask a judge for an ex parte order unless it is clear that such relief is proper”].)

26 The entirety of MOM CA’s claimed “emergency” rests on the fact that it allegedly
27 learned—two months ago—from an online article that PDCR had “apparently completed a
28 refinance,” which, if true, might trigger a contribution under the joint venture documents. (*Ex*

1 *Parte*, p. 1). MOM CA then speculates that, under this hypothetical scenario, PDCR would now
 2 fall under the control of its bankruptcy-appointed manager, Robbin Itkin.

3 Setting aside the fact that the joint venture has been adjudicated as the product of fraud,
 4 MOM CA’s own filings admit that it met and conferred with Honarkar’s counsel and received two
 5 recorded deed of trust assignments. (*McNeill Decl.*, ¶ 4). Critically, those documents—produced
 6 on May 30, 2025—confirm that the Rialto Loan was *assigned* to Peachtree; it was not paid off,
 7 replaced, or refinanced. (*Maralan Decl.*, ¶ 3, Exhibits B–C). This conclusion is consistent with the
 8 definition and use of “refinance” as found under the Truth in Lending Act: “Refinancings. A
 9 refinancing occurs when an existing obligation that was subject to this subpart is satisfied and
 10 replaced by a new obligation undertaken by the same consumer.” (12 C.F.R. § 226.20).

11 Taking it a step further, one must ask: *why* is MOM CA—an entity that has consistently
 12 portrayed itself as separate and distinct from Cantor—now seeking to interfere with a trial where
 13 PDCR stands to benefit from the cancellation of a fraudulent \$5.5 million deed? The answer is
 14 clear: this is simply the latest in a series of delay tactics MOM CA has employed to shield itself
 15 and its affiliates from the consequences of their misconduct.

16 This is not the first time MOM CA has attempted to stall adjudication under the guise of
 17 procedural entanglement. For example, on December 20, 2024—*prior to the issuance of the*
 18 *arbitration award*—MOM CA’s counsel filed a declaration arguing that the dispute over the PDCR
 19 lien should not proceed independently, stating: “the issues pertaining to the parties’ dispute over
 20 the lien are inextricably tied to the larger dispute between the parties over ownership and
 21 management rights for the ‘MOM’ joint venture. As such, I do not believe that expediting the
 22 adjudication of the PDCR lien is prudent as it may be contradicted by factual and legal
 23 determinations made in the MOM/Honarkar arbitration (which award is expected to issue in early
 24 2025), and potentially lead to inconsistent rulings.” [ROA 306]. Now that the Award has been
 25 issued which squarely resolved the very issues MOM CA previously insisted were intertwined,
 26 MOM CA reverses course and seeks to delay trial yet again, this time pretending the Award does
 27 not exist.
 28

In short, MOM CA has verifiable, recorded documents disproving its theory, yet chooses to ignore them in favor of speculation based on a media article. That is not an emergency—it is manufactured theater, unfit for ex parte relief.

B. MOM CA’s Effort to Enforce the Joint Venture Terms is Barred by Res Judicata.

“An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration.” (*Cal. Civ. Proc.* § 1287.6). “Although it is true that an arbitration award is not a judgment having the same force and effect as a judgment in a civil action until it is confirmed [citations] and that until it is confirmed it has only the same force and effect as a contract in writing between the parties to the arbitration [citations], it is, nevertheless, the final and binding decision or judgment of the arbitrator in the exercise of his quasi-judicial function.” (*Trollope v. Jeffries*, (1976) 55 Cal.App.3d 816, 822-823).

“Once a case is in arbitration, litigation of a second case arising out of the same transactional nucleus of facts cannot be permitted. Subject to narrow exceptions not applicable here, once a dispute has been sent to arbitration, the courts may not act on that dispute absent an agreement to withdraw the controversy from arbitration”. (*Bucur v. Ahmad*, (2016) 244 Cal.App.4th 175, 188). “*For purposes of res judicata, an unconfirmed arbitration award is equivalent to a final judgment.*” (*Id.*, at 189) (emphasis added).

Although MOM CA chooses to disregard the Award, there is no dispute that the arbitrator expressly found that:

- (1) PDCR, amongst other entities, “are “Held-Back LLCs” under the ACA and the Operating Agreements and thus, *were never contributed* to the MOM JV Entities”;¹ and
- (2) The MOM Parties “claims against Honarkar *must fail*” because “All of these claims depend on the existence and enforceability of the Operating Agreements and the Other JV related Agreements. But the Arbitrator has found Claimants may rescind these agreements for fraud in the inducement and failure of consideration. In any event, the MOM Parties’

¹ *Maralan Decl.*, Ex. A, p. 40.

1 prior material breach of the Operating Agreements discharged Honarkar from any further
2 duty to perform thereunder.”²

3 The fraud in the inducement finding is fatal to MOM CA’s premise because “when the
4 agreement itself is procured by fraud, none of its provisions have any legal or binding effect...The
5 fraud which was the inducing cause of the execution of the contract renders the whole instrument
6 vulnerable-the clause in question as well as all the other provisions.” (*Vai . Bank of America*
7 *National Trust & Savings Ass’n*, (1961) 56 Cal.2d 329, 344). Further, the customary rules regarding
8 contract formation “provide that a contract induced by fraud renders the entire agreement voidable,
9 permitting the aggrieved party to defend a suit on the contract by objecting to its enforcement
10 because procured or induced by fraud.” (*Filet Menu, Inc. v. C.C.L. & G, Inc.*, (2000) 79 Cal.App.4th
11 852, 862).

12 Equally fatal is the arbitrator’s finding of MOM CA’s prior material breach—an
13 independent ground discharging Honarkar’s duties under the contracts. “When a party’s failure to
14 perform a contractual obligation constitutes a material breach of the contract, the other party may
15 be discharged from its duty to perform under the contract.” (*Brown v. Grimes*, (2011) 192
16 Cal.App.4th 265, 277) [(1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, §§ 813, 814,
17 p. 906 (Witkin) [“Material failure of consideration discharges the other party’s duty”].

18 Despite controlling legal authority and the arbitrator’s express findings, MOM CA now
19 asserts—without any legitimate basis—that it can enforce the very documents that have been
20 adjudicated as fraudulent in a transparent effort to damage Honarkar and take control of his assets.
21 The entire position hinges on the vague and unsupported claim that “it appears that PDCR is a
22 wholly owned subsidiary.” This speculative narrative not only contradicts the Award’s binding
23 conclusions, but MOM CA’s attempt to revive those voidable documents as a means of asserting
24 control is legally indefensible. It amounts to a blatant collateral attack on the final arbitration award
25 and a calculated attempt to derail these proceedings on the eve of trial.

26
27
28 ² *Maralan Decl.*, Ex. A, p. 41.

Based on the foregoing, Honarkar respectfully requests the Court deny the ex parte.

MARALAN LAW, P.C.

Sam M

SAM MARALAN
Attorney for Defendant/Cross-Complainants
MOHAMMAD HONARKAR,
4G WIRELESS, INC and PALM DESERT
COLLECTIVE RESORTS, LLC

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I declare that I am over the age of eighteen (18) and not a party to the within action. My business address is 3080 Bristol Street, Suite 630, Costa Mesa, California 92626. My email service address is sm@maralanlaw.com.

On **June 26, 2025**, I served the foregoing documents described as:

CROSS-COMPLAINANTS MOHAMMAD HONARKAR AND PALM DESERT COLLECTIVE RESORTS, LLC'S OPPOSITION TO *EX PARTE* APPLICATION; DECLARATION OF SAM MARALAN

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as stated on the attached service list.

- ☐ **BY MAIL** - I deposited such envelope in the mail at Costa Mesa, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the United Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and delivery by a well-known overnight delivery service, i.e., Federal Express or Overnight Express with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing packages for overnight delivery by Federal Express and Overnight Express for receipt on the same day in the ordinary course of business.
- ☒ **BY ELECTRONIC TRANSMISSION** - I transmitted a .pdf version of this document by electronic mail to the interested parties at the email addresses identified on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **June 26, 2025**, at Costa Mesa, California.



Sam Maralan

SERVICE LIST

ALLEN MATKINS LECK GAMBLE

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Michael R. Farrell

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tbisconti@bklwlaw.com

Attorneys for Plaintiff and Cross-Defendants

MOM CA INVESTCO, LLC, and MOM CA INVESTOR GROUP, LLC

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4 HALPERN MAY YBARRA GELBERG LLP
5 550 South Hope Street, Suite 2330
6 Los Angeles, California 90071-2604
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8 *Co-Counsel for Cross-Complainants*

9 SEYFNIA & PRYBYLO, LLP
10 Garrett Prybylo
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16 *Attorneys for Defendants*
17 *Twenty4Seven Hotels Corporation and David Wani*

18 JAMES R. FELTON, ESQ.
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21 16000 Ventura Boulevard, Suite 1000
22 Encino, California 91436
Tel: (818) 382-6200
23 Fax: (818) 986-6534

24 *Attorneys for Cross-Defendant*
25 *Cantor Group IV, LLC*
26
27
28

Exhibit F

Anthony R. Bisconti, State Bar No. 269230
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Bienert Katzman Littrell Williams LLP
903 Calle Amanecer, Suite 350
San Clemente, CA 92673
Telephone (949) 369-3700
Facsimile (949) 369-3701

Special Counsel for Debtor
MOM CA Investco LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MOM CA INVESTCO, LLC, a Delaware
limited liability company,

Plaintiff

vs.

247 HOTELS BEVERAGE, LLC, a California
limited liability company; MOHAMMAD
HONARKAR, an individual; and DOES 1
through 10, inclusive,

Defendants

MOHAMMAD HONARKAR, an individual;
4G WIRELESS, INC, a California corporation;
PALM DESERT COLLECTIVE RESORTS,
LLC, a Delaware limited liability company,

Cross-Complainants,

vs.

MOM CA INVESTCO, LLC, a Delaware
limited liability company; MOM CA
INVESTOR GROUP, LLC, a Delaware
limited liability company; CANTOR GROUP
IV, LLC, a Delaware limited liability
company; and DOES 1 through 20, inclusive,

Cross-Defendants.

Case No.: 30-2023-01325570-CU-BC-WJC

Assigned For All Purposes To: Hon. Bradley Erdosi

**MOM CA INVESTCO LLC'S REPLY IN
SUPPORT OF *EX PARTE* APPLICATION FOR
ORDER CONTINUING JUNE 30, 2025 COURT
TRIAL FOR APPROXIMATELY 60 DAYS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
SUPPLEMENTAL DECLARATIONS OF
ANTHONY R. BISCONTI**

Ex Parte Hearing Information:

Date: June 26, 2025

Time: 1:30 p.m.

Dept: C27

Trial Date: June 30, 2025

MOM CA Investco LLC (the “Debtor”)¹ submits this reply in support of its *ex parte* Application filed June 25, 2025, and in response to the opposition (the “Opposition”) to the Application filed by Honarkar (and, purportedly PDCR), as follows:

A. Even if the ACA may be subject to rescission, it has not been rescinded and remains enforceable.

In the Opposition, Honarkar relies heavily on the Final Partial Arbitration Award (the “Award”) in arguing that the ACA is unenforceable because it and related agreements were procured by fraud, and the award is binding *res judicata* that would preclude the contribution of PDCR to the Debtor. This is incorrect and contrary to well established law.

As an initial matter, and to reiterate what is set forth in the Application, the Debtor is managed and controlled by independent management through Mr. Shinderman and Ms. Itkin—who have no ties or connections to any of the parties or the litigation predating the Debtor’s Bankruptcy Case, and whose employment has been authorized by the Bankruptcy Court. Any attempt to tie the Debtor to other parties or alleged “affiliates” is baseless.

Further, there is no dispute that pursuant to the Award, Honarkar and 4G have the option of seeking rescission of the underlying transactional documents, including the ACA. However, the Award provides that alternatively, Honarkar and 4G may seek monetary damages. Regardless, the fact remains that Honarkar and 4G have not elected to exercise the potential remedy of rescission at this time. In fact, they are prevented from doing so by the automatic stay in the Debtor’s Bankruptcy Case. *See* Supplemental Declaration of Anthony R. Bisconti, Ex. C (order of the Bankruptcy Court partially lifting the automatic stay, but providing that “the stay shall not be lifted by this Order, and the Honarkar Parties must return to this Court to seek a further order, to permit the Honarkar Parties to effectuate rescission in connection with the Partial Final Award or Final Award.”).

Because Honarkar/4G have not exercised the remedy of rescission, the underlying documents, including the ACA, remain enforceable. A contract subject to rescission, but which has not been rescinded, is not void, but merely voidable. *Maniar v. Capital Bank of California*, 1993 WL 515880 (N.D. Cal. Dec.

¹ Capitalized terms used in this reply brief have the meaning given to them in the Debtor’s *ex parte* application filed June 25, 2025 [ROA#380] unless otherwise defined herein.

6, 1993) (applying California law), *citing* Civ. Code § 1692 and *Harrison v. Connecticut Mutual Life Ins. Co.*, 771 F. Supp. 1053 (1991). Further,

A party to a contract has two different remedies when it has been injured by a breach of contract or fraud and lacks the ability or desire to keep the contract alive. The party may disaffirm the contract, treating it as rescinded, and recover damages resulting from the rescission. Alternatively, the party may affirm the contract, treating it as repudiated, and recover damages for breach of contract or fraud.

Wong v. Stoler, 237 Cal. App. 4th 1375, 1384 (2015) (internal citations omitted). “Rescission and damages are alternative remedies . . . but [t]he election of one remedy bars recovery under the other.” *Id.* (internal citations and quotations omitted).

Indeed, a pre-requisite to effectuating rescission is that the party seeking rescission must “[r]estore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so.” Civ. Code § 1691(b). It is well-settled in California that rescission cannot be made irrevocable until each party receives back the consideration with which he parted. *Karapetian v. Carolan*, 83 Cal.App.2d 344, 355 (1948). Here, there is no dispute that this has not occurred.

Accordingly, the ACA and related documents remain valid and enforceable. Honarkar does not dispute—and in fact acknowledges in the Cross-Complaint—that as a “Held-back LLC” under the ACA, PDCR would be automatically contributed to Debtor in the event of a refinance of the Rialto Loan.

B. The Opposition fails to provide any evidence that the Rialto Loan was not refinanced.

The Opposition contends that the Rialto Loan was not refinanced but does not provide any evidence to support that assertion. Nor does the Opposition include any explanation as to why Honarkar and 4G have refused to provide any documentation, other than the trust deed assignments, to the Debtor. The trust deed assignments do not establish that no refinance occurred. As the evidence shows, the debt on the property increased substantially—from approximately \$24 million in principal to approximately \$35 million. Assignment of an existing security to a new lender is not evidence that a refinancing did not occur, but rather supports that a refinancing likely *did* occur. If it is as simple as Honarkar would have this Court

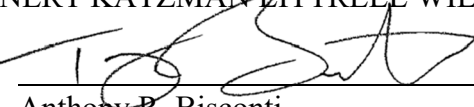
1 believe, then one would expect Honarkar to submit a declaration under penalty of perjury explaining the
2 nature of the Peachtree transaction, or simply provide the necessary documentation to the Debtor as it has
3 been requesting. Honarkar has done neither, nor has he presented any such evidence to the Court.
4 Accordingly, the evidence before the Court shows that a refinance likely did occur here, which supports
5 the requested continuance for the reasons set forth in the Application.

6 **C. Conclusion.**

7 For the foregoing reasons and those set forth in the Application, the Court should grant the
8 Application

9
10 Dated: June 26, 2025

BIENERT KATZMAN LITRELL WILLIAMS LLP

11 By: 

12 Anthony R. Bisconti
13 Olivia Weber
14 Special Counsel for Debtor
15 MOM CA Investco LLC
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SUPPLEMENTAL DECLARATION OF ANTHONY R. BISCONTI

I, Anthony R. Bisconti, declare as follows:

1. I am a partner with the law firm Bienert Katzman Littrell Williams LLP, special litigation counsel for MOM CA Investco LLC (the “Debtor”) and certain affiliated debtors in jointly administered chapter 11 proceedings pending in the United States Bankruptcy Court for the District of Delaware under lead Case No. 25-10321 (BLS). I am an attorney-at-law, duly admitted and in good standing to practice in the State of California.

2. I submit this supplemental declaration in support of the Debtor’s *Ex Parte Application for Order Continuing June 30, 2025 Court Trial for Approximately 60 Days* (the “Application”). Unless otherwise stated in this Declaration, I have personal knowledge of the facts hereinafter set forth. As to those matters in this declaration based upon information and belief, I am informed and believe them to be true. Unless otherwise defined in this Declaration, capitalized terms used in this Declaration have the definitions given to them in the Application.

3. On June 11, 2025, the Bankruptcy Court entered its *Order Granting Motion of Mohammad Honarkar and 4G Wireless, Inc. for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, a true and correct copy of which is attached to this supplemental declaration as Exhibit C.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 26, 2025 at Pasadena, California.


Anthony R. Bisconti

EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MOM CA Investco LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10321 (BLS)

(Jointly Administered)

Re: Docket No. 175

**ORDER GRANTING MOTION OF MOHAMMAD HONARKAR AND 4G WIRELESS,
INC. FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)**

Upon the motion (the “**Motion**”)² of Mohammad Honarkar and 4G Wireless, Inc. (collectively, the “**Honarkar Parties**”) for entry of an order granting the Honarkar Parties relief from the automatic stay pursuant to 11 U.S.C. § 362(d), if the stay applies, to permit the Honarkar Parties to proceed with the Arbitration to a confirmed Partial Final Award and a confirmed Final Award, elect their remedies, and defend against any related appeals, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: MOM CA Investco LLC [6263], MOM AS Investco LLC [6049], MOM BS Investco LLC [6180], Retreat at Laguna Villas, LLC [2046], Sunset Cove Villas, LLC [9178], Duplex at Sleepy Hollow, LLC [9237], Cliff Drive Properties DE, LLC [0893], 694 NCH Apartments, LLC [0318], Heisler Laguna, LLC [4709], Laguna Festival Center, LLC [4073], 891 Laguna Canyon Road, LLC [0647], 777 AT Laguna, LLC [8715], Laguna Art District Complex, LLC [8316], Tesoro Redlands DE, LLC [2764], Aryabhata Group LLC [7332], Hotel Laguna, LLC [9580], 4110 West 3rd Street DE, LLC [8641], 314 S. Harvard DE, LLC [2057], Laguna HI, LLC [6408], Laguna HW, LLC [9470], The Masters Building, LLC [6134], 837 Park Avenue, LLC [3229], and Terra Laguna Beach, Inc. [2344] (interim). The Debtors’ headquarters are located at 520 Newport Center Drive, Suite 480, Newport Beach, CA 92660

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court finding that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein and all of the objections thereto at a hearing before this Court held on April 22, 2025 at 10:30 a.m. (ET) (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the record of the Hearing and all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The automatic stay imposed by section 362(a) of the Bankruptcy Code, if and to the extent applicable, is hereby modified and lifted to permit the Honarkar Parties to proceed with the Arbitration as to all claims therein, seek and obtain confirmation of the Partial Final Award³ and, once issued, the Final Award, and defend any related appeals; *provided, however*, that the stay shall not be lifted by this Order, and the Honarkar Parties must return to this Court to seek a further order, to permit the Honarkar Parties to effectuate rescission in connection with the Partial Final Award or Final Award.
3. The Honarkar Parties and the Debtors are authorized to take all actions necessary to effectuate the relief granted in paragraph 2 of this Order.
4. The terms of this Order are effective and enforceable immediately upon its entry and the 14-day stay imposed pursuant to Bankruptcy Rule 4001(a) is hereby waived.

³ For the avoidance of doubt, the term Partial Final Award as used herein shall mean the *Partial Final Award* issued by the Arbitrator in the Arbitration on May 23, 2025 and as declared final for all purposes pursuant to the *Ruling on Request for Correction* issued by the Arbitrator in the Arbitration on June 6, 2025.

5. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: June 11th, 2025
Wilmington, Delaware



BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 903 Calle Amanecer, Suite 350, San Clemente, California 92673. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On June 26, 2025, I served the foregoing document described as **MOM CA INVESTCO LLC'S REPLY IN SUPPORT OF *EX PARTE* APPLICATION FOR ORDER CONTINUING JUNE 30, 2025 COURT TRIAL FOR APPROXIMATELY 60 DAYS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; SUPPLEMENTAL DECLARATIONS OF ANTHONY R. BISCONTI** on all interested parties in this action listed below by the service method indicated:

Sam Maralan MARALAN LAW, P.C. 3080 Bristol Street, Ste. 630 Costa Mesa, CA 92626 Telephone: (714) 641-0506 Facsimile: (714) 641-3604 Email: sm@maralanlaw.com	<i>Counsel to Defendant and Cross-Complainants Mohammad Honarkar, 4G Wireless, Inc. and Palm Desert Collective Resorts, LLC</i>
Michael R. Farrell Scott J. Leipzig Tim C. Hsu ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP 865 South Figueroa Street, Suite 2800 Los Angeles, California 90017-2543 Telephone: (213) 622-5555 Facsimile: (213) 620-8816 Email: mfarrell@allenmatkins.com sleipzig@allenmatkins.com thsu@allenmatkins.com	<i>Counsel for Cross-Defendant MOM CA Investor Group, LLC</i>
Marc Cohen COHEN LAW GROUP, APC 541 South Spring Street, Suite 1208 Los Angeles, California 90013 Phone: (213) 223-7707; Facsimile: (877) 334-3138 E-Mail: marc@clgapc.com	<i>Counsel for Cross-Defendant MOM CA Investor Group, LLC</i>

<p>Garrett N. Prybylo Carley Sauvageau Farzad Seyfina SEYFNIA & PRYBYLO, LLP 633 W. 5th Street, Ste. 2600 Los Angeles, CA 90071 Telephone: (213) 770-4529 Email: gprybylo@splawllp.com csauvageau@splawllp.com fseyfnia@splawllp.com</p>	<p><i>Counsel for Defendants Twenty4seven Hotels Corporation and David Wani</i></p>
<p>Aaron M. May Joseph Ybarra Thomas Rubinsky Halpern May Ybarra Gelberg LLP 550 South Hope Street, Suite 2330 Los Angeles, California 90071-2604 Telephone: (213) 402-1900 Emails: Aaron.May@halpernmay.com Joseph.Ybarra@halpernmay.com Thomas.Rubinsky@halpernmay.com</p>	<p><i>Counsel for Defendant Mohammad Honarkar</i></p>
<p>James R. Felton G&B LAW, LLP 16000 Ventura Boulevard, Suite 1000 Encino, California 91436 Telephone: (818) 382-6200 Email: jfelton@gblawllp.com</p>	<p><i>Counsel for Cross-Defendant Cantor Group IV, LLC</i></p>

[X] **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by electronic mail to the party(s) identified above using the e-mail address(es) indicated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 26, 2025, at San Clemente, California.


Elizabeth Garcia

Exhibit G

MOM CA INVESTCO LLC, MOM AS INVESTCO LLC, MOM BS INVESTCO LLC
ROBBIN L. ITKIN, INDEPENDENT MANAGER
c/o Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, DE 19801-6108

June 25, 2025

By Electronic Mail

Mohammad Honarkar
Mo@LagunaBeach.com

Re: Demand for Oversight of Operations at Palm Desert Collective Resorts,
LLC ("PDCR")

Mr. Honarkar:

As you are aware, MOM CA Investco LLC ("MOM CA"), MOM AS Investco LLC ("MOM AS"), and MOM BS Investco LLC ("MOM BS") and collectively with MOM CA and MOM AS, the "MOM Investcos") filed bankruptcy petitions under chapter 11 of the United States Bankruptcy Code on February 28, 2025 (the "Petition Date").

Pursuant to Exhibit E of that Certain Asset Contribution Agreement (the "ACA") by and between Mohammad Honarkar ("MH"), 4G Wireless, Inc., and the MOM Investcos, dated June 8, 2021, PDCR was designated as a "Held Back LLC." Pursuant to section 2(a)(ii) of the ACA,

With respect to each Held-back LLC, on the earlier of the date on which the lender to a Held-back LLC consents to the transfer of the ownership thereof to MOM CA or the date on which a refinancing of the current secured debt owed by such Held-back LLC is completed, the following shall be deemed to have occurred without any further action on the part of any party hereto: (a) direct and indirect ownership of such Held-back LLC shall be restructured pursuant to the Restructure Agreement so that the sole owner of all of the membership interests in such Held-back LLC is MH and (b) immediately after such restructure, MH shall contribute the membership interests in such Held-back LLC to MOM CA.

Pursuant to the article attached to this email, the debt at PDCR was refinanced by Peachtree Group on or about May 1, 2025 (the "Peachtree Transaction"). Counsel to the MOM Investcos in their bankruptcy have asked your counsel for copies of these documents multiple times since May 20, 2025 so that they may investigate whether the Peachtree Transaction constitutes a refinancing under the ACA. Despite multiple requests, these documents have yet to be provided.

Given your unwillingness to provide these documents, I can only assume that the Peachtree Transaction resulted in a refinancing and that MOM CA is now the 100% owner of PDCR by

operation of the ACA. As the Independent Manager of the MOM Investcos, and the sole person authorized to manage their assets, I hereby demand that you provide me with notice, in advance, of any transaction occurring at PDCR resulting in (1) any transfer of funds in excess of \$25,000 or (2) any transfer, regardless of amount, made to you, your family, or anyone affiliated with or purporting to work for you or on your behalf. I also demand that you immediately provide me with an operating budget for PDCR, including all rent collections and anticipated expenses on a weekly basis. Finally, I demand you provide me with an accounting of all funds provided by the Peachtree Transaction since the date it closed through the date of this letter.

Failure to comply with these demands by close of business on this Friday, June 27, 2025 will result in further action, including, but not limited to, the termination of your role as purported manager, operator or other position of similar import at PDCR. The MOM Investcos have attempted to work with you consensually to evaluate this situation, but your lack of cooperation has necessitated this letter.

The MOM Investcos reserve all rights with respect to the ACA, the Peachtree Transaction and anything related thereto or arising therefrom, including the right to take further actions described herein.

Please direct all communications and questions regarding this matter to counsel for the MOM Investcos whose address is on the top of the first page hereof, and specifically R. Stephen McNeill, Partner, 302.984.6171, rmcneill@potteranderson.com, and copy me at robbin@robbinitkinsolutions.com.

Best regards,

MOM CA Investco LLC

By: Robbin Itkin, Independent Manager

By: /s/ Robbin Itkin
Robbin Itkin, Independent Manager

MOM AS Investco LLC

By: Robbin Itkin, Independent Manager

By: /s/ Robbin Itkin
Robbin Itkin, Independent Manager

MOM BS Investco LLC

By: Robbin Itkin, Independent Manager

By: /s/ Robbin Itkin
Robbin Itkin, Independent Manager

Exhibit H

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
 700 W. Civic Center Drive
 Santa Ana, CA 92702

SHORT TITLE: Mom CA Investco, LLC vs. 247 Hotels Beverage, LLC

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
 SERVICE**

CASE NUMBER:
30-2023-01325570-CU-BC-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 06/26/25 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 6/26/25. Following standard court practice the mailing will occur at Sacramento, California on 6/27/25.

BUCHALTER, LLP
 1000 WILSHIRE BOULEVARD 1500
 LOS ANGELES, CA 90017-2457

G&B LAW, LLP
 16000 VENTURA BOULEVARD 1000
 ENCINO, CA 91436

Clerk of the Court, by:

H. Bradley

, Deputy

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 06/26/25, was transmitted electronically by an Orange County Superior Court email server on June 26, 2025, at 1:39:03 PM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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Clerk of the Court, by: H. Bradley, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 06/26/2025

TIME: 01:30:00 PM

DEPT: C27

JUDICIAL OFFICER PRESIDING: Bradley Erdosi

CLERK: H. Bradley

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: D. Parsons

CASE NO: **30-2023-01325570-CU-BC-CJC** CASE INIT.DATE: 05/15/2023

CASE TITLE: **Mom CA Investco, LLC vs. 247 Hotels Beverage, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT ID/DOCUMENT ID: 74594868

EVENT TYPE: Ex Parte

MOVING PARTY: Mom CA Investco, LLC

CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 06/25/2025

APPEARANCES

No appearances. Pursuant to California Code of Civil Procedure §166(a)(1), the Court rules on this Ex Parte on the submitted papers, from chambers.

MOM CA Investco LLC's opposed Ex Parte Application For Order Continuing June 30, 2025 Court Trial for Approximately 60 Days is GRANTED. The court trial is continued from June 30, 2025 to September 8, 2025 at 9:00 a.m. in Department C27.

The clerk is ordered to give notice.