

D-1-GN-24-004236

CAUSE NO. _____

GREGORY S. MILLIGAN, in his capacity as	§	IN THE DISTRICT COURT
the court-appointed receiver for PRIDE OF	§	
AUSTIN HIGH YIELD FUND I, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CCG CAPITAL GROUP, LLC,	§	
CCG DEVELOPMENT, LLC, AND	§	
ROBERT BUCHANAN,	§	419TH, DISTRICT COURT
	§	
Defendants.	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND
EMERGENCY APPLICATION FOR APPOINTMENT OF RECEIVER

TO THE HONORABLE DISTRICT COURT:

Gregory S. Milligan, in his capacity as the court-appointed receiver (the “***Receiver***” or “***Plaintiff***”) for Pride of Austin High Yield Fund I, LLC (the “***Fund***”), files this Plaintiff’s Original Petition on behalf of the Fund against CCG Capital Group, LLC (“***CCG Capital***”), CCG Development, LLC (“***CCGD***”), and Robert Buchanan (“***Buchanan***”). Plaintiff also seeks appointment of a receiver over CCG Capital and CCGD on an emergency basis. In support, Plaintiff would respectfully show the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 and will submit a discovery control plan for approval by the Court. *See* Tex. R. Civ. P. 190.4.

PARTIES

2. Plaintiff brings this suit as court-appointed Receiver on behalf of the Fund. The Fund is a Texas limited liability company doing business in Travis County. Plaintiff may be contacted through the undersigned counsel.

3. CCG Capital is a Texas limited liability company doing business in Travis County and can be served with process by and through its registered agent, Robert Buchanan, at 3600 N. Capital of Texas Highway, Building B, Suite 120, Austin, Texas, 78746; or 1610 Hether Street, Austin, Texas, 78704; or wherever else he may be found.

4. CCGD is a Texas limited liability company doing business in Travis County and can be served with process by and through its registered agent, Robert Buchanan, at 3600 N. Capital of Texas Highway, Building B, Suite 120, Austin, Texas, 78746; or 1610 Hether Street, Austin, Texas, 78704; or wherever else he may be found.

5. Robert Buchanan is an individual residing in Travis County. He may be served with process at 1610 Hether Street, Austin, Texas, 78704 or wherever else he may be found.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this suit because Plaintiff seeks monetary relief over \$1,000,000.00. *See* Tex. R. Civ. P. 47(c)(5).

7. Venue is proper in Travis County. All or a substantial part of the events or omissions giving rise to the claims in this lawsuit occurred in Travis County, and the residence or principal place of business of all Defendants is located in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(1)–(2).

FACTUAL BACKGROUND

A. The Fund is a mortgage lender that was managed by CCG Capital and funded by member-investors.

8. The Fund is a Texas limited liability company. It is governed by the Limited Liability Operating Agreement of Pride of Austin High Yield Fund I, LLC (the “*Agreement*”). Under the Agreement, the Fund’s purpose was to “engage in business as a mortgage lender for the purpose of making and arranging residential . . . and construction loans to the general public,

acquiring existing loans, and selling loans,” all to be secured by deeds of trust and mortgages on real estate. Agreement § 2.4.

9. Under the Agreement, the Fund is managed by CCG Capital, its sole manager and initial member.¹ CCG Capital is, in turn, controlled by one individual, Buchanan. Thus (at least before the appointment of the Receiver), Buchanan, whether directly or as an agent of CCG Capital, exercised complete control of the Fund. At all times applicable to the instant lawsuit, the Fund was acting through CCG Capital/Buchanan.

10. The Agreement provides that, as sole manager, CCG Capital has full power and authority to manage and direct the Fund’s business, affairs, and properties. Agreement § 5.3(a). CCG Capital also owes fiduciary duties to the Fund, including for the “safekeeping and use of all funds and assets of the [Fund], whether or not in [CCG Capital’s] possession or control.” *Id.* § 5.5(a). Pursuant to those duties, CCG Capital is not permitted to employ “*or permit another to employ*” the Fund’s funds or assets “*in any manner except for the exclusive benefit of the Fund.*” *Id.* (emphases added). If CCG Capital breaches these fiduciary duties or engages in other acts that are grossly negligent, intentional misconduct, or a knowing violation of the law, CCG Capital is liable to the Fund for harm caused by these breaches and other acts. *See id.* §§ 5.5(b)(1).

11. CCG Capital is compensated for its management of the Fund and other services rendered to the Fund. For managing the Fund, CCG Capital is paid an Asset Management Fee equal to one (1) percent annually of the Fund’s aggregate capital. *Id.* § 5.7(h). As for services, among other things, CCG Capital supervises the servicing of loans owned by the Fund, including billing and collecting loans. *Id.* § 5.7(d). For this service, CCG Capital collects one (1) percent

¹ As set forth in more detail below, the Fund is now under the full control of the Receiver. However, for clarity, Plaintiff refers to CCG Capital’s duties and responsibilities regarding the management of the Fund in the present.

annually of the principal amount of each of the Fund's loans. *Id.* § 5.7(d)(i). The fee is collected monthly from the payments received by the Fund from its borrowers. *Id.*

12. The Agreement also provides that the Fund is to be financed by member-investors, who gain membership interests by contributing to the Fund through subscription funds. *Id.* § 4.1(b). CCG Capital is responsible for distributing the Fund's net profits to the member-investors. The member-investors can elect to receive quarterly cash distributions in the amount of that member's share of the Fund's net profits or to reinvest that member's distribution. *Id.* § 4.5.

13. The Agreement is signed by Buchanan on behalf of CCG Capital.

B. CCG Capital, acting through Buchanan, caused the Fund to perpetuate a fraud against member-investors, leading to the appointment of the Receiver over the Fund.

14. In 2023, the Fund (controlled by CCG Capital, which is controlled by Buchanan) began receiving complaints and inquiries from investors when CCG Capital/Buchanan failed to process distributions for the second quarter of 2023. Although CCG Capital/Buchanan promised distributions would soon be paid, that did not occur. CCG Capital/Buchanan also did not give member-investors access to books and records, as required under the Agreement. *See id.* § 6.1(b).

15. CCG Capital/Buchanan's actions and the investors' concern over the status of the Fund led many investors to file lawsuits against the Fund, CCG Capital, and Buchanan individually. Over 35 such lawsuits were filed.

16. At the recommendation of the Fund's counsel, the Fund retained HMP Advisory Holdings, LLC d/b/a/ Harney Partners ("**Harney**") on March 1, 2024 for the purposes of analyzing the books, records, and operations of the Fund. After approximately a month of not receiving information necessary to complete the scope of its engagement, Harney Partners finally received most, but still not all, of the information requested from Buchanan. On April 15, 2024, Harney Partners issued its Preliminary Report (the "**Report**") to all investors of the Fund. The Report

unearthed significant issues concerning the operations of the Fund, including a Ponzi scheme type fraud and numerous breaches of fiduciary duty. Shortly after the dissemination of the Report to the Fund's investors, the Fund agreed to the appointment of the Receiver.

i. Issues uncovered by the Report

17. As a mortgage lender, the Fund was supposed to generate revenue from fees and interest charged to borrowers. The Fund paid a management fee to CCG and was responsible for certain expenses associated with tax preparation and regulatory audits. Pursuant to the Agreement, the Fund's manager (CCG) was required to distribute "Net Profits" to the members for each quarter if cash was available to distribute and the distribution would not impact ongoing operations of the Fund. By the end of each fiscal year, CCG was required to distribute to each member its pro rata share of the "Net Profits" less reasonable reserves for loan losses.

18. The Report unearthed numerous issues involving failure to comply with the terms of the Agreement and fraudulent activity within the Fund. First, the Fund had materially overstated its assets. Second, the Fund was paying its members fictitious returns which were not generated from profits made by the Fund. Third, the Fund was involved in business that it was not authorized to be involved in pursuant to the Agreement. Specifically, the Fund was using member investments to invest in Buchanan-affiliated entities named CCG Equity Fund 1, CCG Equity Fund 2, and Pride of Austin Opportunity Fund 1 (the "*Affiliated Funds*"). Finally, the Fund was making loans to CCGD, a Buchanan-controlled entity, on more favorable terms than to third-party borrowers. Importantly, the CCGD loans were not always paid back, and Buchanan did not cause the Fund to attempt to collect them or exercise remedies when they were not, such as foreclosing on the collateral securing the loans.

a. The overstated assets

19. At the time Harney began its investigation, the Fund’s accounting system reflected the following:

	as of 3/19/24
Cash on hand	\$ 2,710,963.74
Active loans	13,614,650.24
Investments in Affiliates	699,250.00
REO Properties	7,690,912.07
Assets to be written off	12,522,857.72
Assets with negative balances	(1,540,091.43)
TOTAL ASSETS PER QB	\$ 35,698,542.34

20. The Fund’s accounting systems, however, did not reflect reality. For example, Buchanan caused the accounting systems to state that the Fund had over \$2.7 million in cash. In reality, it had approximately \$22,000. Additionally, the members of the Fund were not made aware that certain of the loans made by the Fund, totaling over \$12.5 million, needed to be written off due to the collateral being released or sold or the outstanding principal being otherwise uncollectible.

b. The Fund’s cash flows and distributions to its members

21. The Fund paid its members fictitious distributions in an effort to hide the Fund’s poor performance. As an example, between Q1 2022 and Q1 2023, the Fund distributed more than \$1.6 million per quarter to its members. The distributions to members were not limited to “Net Profits” as required by the Operating Agreement, however. Between Q1 2022 and Q1 2023, loan payoffs of \$9.3 million (which includes principal and interest), inflows from related parties of \$6.9 million, and new capital contributions of \$1.8 million were used to fund the cash component of quarterly distributions of \$4.5 million and redemption requests of \$7.6 million. In other words,

Buchanan was causing the Fund to make payments in the form of quarterly distributions that he represented were reflective of profits made by the Fund, but were not. He also caused the Fund to redeem membership interests for the full face value of the membership interests when, in fact, those membership interests were worth much less. The motive to do so, of course, was to conceal the fraud.

c. Transactions with the CCGD

22. CCG Capital/Buchanan also caused the Fund to divert approximately \$3 million to CCGD, another Buchanan-controlled entity, without any accounting entry to reflect the transfer on the Fund's books. CCGD is a borrower of the Fund, and money should have flowed from CCGD to the Fund, not from the Fund to CCGD; but that is not what happened. In fact, Buchanan caused the Fund to loan CCGD in excess of \$1 million to construct a residence for Buchanan to live (the "***Buchanan Residence***"). Although the Fund executed loan documents and recorded a deed of trust on the Buchanan Residence, CCGD never paid back the loan, and Buchanan/CCG never caused the Fund to collect the amounts owed to the Fund by CCGD. In other words, Buchanan pilfered the Fund to construct a residence for his benefit, without any disclosure to or consent by the Fund's investors.

23. The loan to construct the Buchanan Residence was not the only loan that the Fund made to CCGD. Over the life of the Fund, the Fund made several loans to CCGD. These loans were often made on and/or administered with better economic terms than loans made by Fund to other third-party, non-insider borrowers, including discounted interest rates and Buchanan causing the Fund to not collect interest on certain of the CCGD loans. The loans to CCGD often did not include documentation, formal review of draw requests, or the customary 10% holdback that the Fund required for funding third-party borrowers.

d. Investments in the Affiliated Funds

24. Although not authorized by the Agreement, the Fund made significant investments in the Affiliated Funds. Per the Fund's records, the Fund made over \$10 million in investments into the Affiliated Funds. A significant amount of those funds have been paid back to the Fund. However, Buchanan has failed to provide information related to these investments (*e.g.*, operating agreements, subscription agreements, offering memorandums), and presumably still has some control over the Affiliated Funds, putting the Fund's investments into the Affiliated Funds in peril.

CAUSES OF ACTION

A. CCG Capital

i. Breach of Operating Agreement

18. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

19. The foregoing conduct of CCG Capital constitutes a breach of the Agreement. The Agreement is a valid and enforceable contract between the Fund, its investor-members, and CCG Capital. Under the Agreement, CCG Capital was required to act in good faith to promote the best interests of the Fund and to not engage in acts or omissions constituting gross negligence, intentional misconduct, or a knowing violation of the law. CCG Capital was also forbidden from employing and permitting another to employ the Fund's assets in *any* manner except for the *exclusive* benefit of the Fund. CCG Capital was also required to supervise the servicing of the Fund's loans, including by billing and collecting loans owned by the Fund.

20. CCG Capital, acting through Buchanan, breached the Agreement by failing to act in good faith, failing to promote the best interests of the Fund, and engaging in acts or omissions constituting gross negligence, intentional misconduct, or a knowing violation of the law by engaging in the conduct described above, including misuse of investor funds by running a Ponzi

scheme. CCG Capital, acting through Buchanan, also breached the Agreement by employing or allowing Buchanan to employ the Fund's assets for the sole benefit of Buchanan, rather than for the Fund's exclusive benefit. Lastly, CCG Capital, acting through Buchanan, failed to collect on loans owned by the Fund. Upon information and belief, other breaches of the Agreement are likely to exist.

21. As a proximate result of CCG Capital's breach of the Agreement, the Fund and its investors suffered substantial injury and damages.

ii. Breach of Fiduciary Duties

22. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

23. As manager of the fund, CCG Capital owed fiduciary duties to the Fund and the Fund's investor-members, including the duty to act in good faith. CCG Capital, acting through Buchanan, breached its fiduciary duties by engaging in the conduct described above, which was grossly negligent, intentional misconduct, and/or a knowing violation of the law. Namely, CCG Capital, acting through Buchanan, caused the Fund to perpetuate a fraud against its investors including by misrepresenting the nature of the Fund; diverting funds to CCGD, a Buchanan-controlled entity, for no value; misusing investor funds to pay fictitious profits and redeem interests at inaccurate values; and otherwise employing the Fund's assets in ways that were not exclusively beneficial to the Fund and its members. Additionally, upon information and belief, CCG Capital, acting through Buchanan, accepted compensation for its management of the Fund and purported services while knowing that, through its management, it was causing the Fund to perpetuate a fraud.

24. CCG Capital's breach of its fiduciary duties resulted in a benefit to CCG Capital and proximately caused injury to the Fund and its members. As a result of CCG Capital's breach of its fiduciary duties, Plaintiff is entitled to actual and exemplary damages.

iii. Money Had and Received

25. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

26. Upon information and belief, CCG Capital holds money in the form of compensation received for managing the Fund and servicing the Fund's loans. CCG Capital has been unjustly enriched by this money. The money, in equity and good conscience, belongs to the Fund and its members because CCG Capital's management of the Fund caused the Fund to perpetuate a fraud against the investors.

27. Plaintiff is entitled to actual damages in the amount wrongfully held by CCG Capital. Plaintiff is also entitled to exemplary damages because CCG Capital engaged in fraud to hold the money belonging to the Fund and its investors.

iv. Common Law Fraud

28. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

29. By engaging in the above conduct, CCG Capital also committed fraud. CCG Capital, through Buchanan, represented to the Fund and member-investors that it would manage the Fund for the exclusive benefit of the Fund and its investors. The representation was material and caused the Fund to compensate CCG Capital for its management and caused the member-investors to purchase membership interests in the Fund. The representation was false, and CCG Capital, through Buchanan, made the representation while knowing it was false and with the intent that the Fund and its investors rely on the statement. The Fund and its investors justifiably relied

on the statement when the Fund compensated CCG Capital for its management and when the investors purchased membership interests in the Fund.

30. As a proximate result of CCG Capital's fraudulent conduct, the Fund and its investors suffered injury, and Plaintiff is entitled to actual and exemplary damages.

v. *Civil Conspiracy*

31. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

32. Buchanan, CCG Capital, and CCGD conspired and agreed to commit fraud by making false misrepresentations to the Fund and its investors. In furtherance of that conspiracy and agreement, CCG Capital committed several overt acts, including breaching its fiduciary duties, fraudulently transferring funds to CCGD (which Buchanan and CCGD participated in), and otherwise causing the Fund to perpetuate a fraud on member-investors.

33. As a proximate result of Defendants' wrongful conduct underlying the conspiracy, the Fund and its members suffered damages.

B. CCGD

i. *Money Had and Received*

34. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

35. Upon information and belief, CCGD holds money in the form of approximately \$3 million, which CCG Capital, acting through Buchanan, transferred from the Fund to CCGD, another Buchanan-controlled entity. In other words, Buchanan transferred approximately \$3 million of the Fund's assets to himself. Through holding this money, CCGD (and therefore Buchanan) has been unjustly enriched. This is because the money, in equity and good conscience, belongs to the Fund and its members. There was no proper basis for the transfers. The transfers

were done for no consideration, and the Fund (and therefore its members) received no value for the transfers.

36. Plaintiff is entitled to actual damages in the amount wrongfully held by CCGD. Plaintiff is also entitled to exemplary damages because CCGD engaged in fraud to hold the money belonging to the Fund and its member-investors.

ii. Civil Conspiracy

37. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

38. Buchanan, CCG Capital, and CCGD conspired and agreed to commit fraud by making false misrepresentations to the Fund and its investors. In furtherance of that conspiracy and agreement, CCG Capital committed several overt acts, including breaching its fiduciary duties, fraudulently transferring funds to CCGD (which Buchanan and CCGD participated in), and otherwise causing the Fund to perpetuate a fraud on member-investors.

39. As a proximate result of Defendants' wrongful conduct underlying the conspiracy, Plaintiff suffered damages.

C. Robert Buchanan

i. Common Law Fraud

40. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

41. As set forth above, Buchanan knowingly participated in and, indeed, caused CCG Capital to engage in the fraudulent conduct described above. As a proximate result of Buchanan causing CCG Capital's fraudulent conduct, the Fund and its member-investors suffered injury, and Plaintiff is entitled to actual and exemplary damages.

ii. Civil Conspiracy

42. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

43. Buchanan, CCG Capital, and CCGD conspired and agreed to commit fraud by making false misrepresentations to the Fund and its investors. In furtherance of that conspiracy and agreement, CCG Capital committed several overt acts, including breaching its fiduciary duties, fraudulently transferring funds to CCGD (which Buchanan and CCGD participated in), and otherwise causing the Fund to perpetuate a fraud on member-investors.

44. In engaging in this conspiracy and the other acts described above, Buchanan was ultimately acting in his individual capacity because he was acting primarily for his own personal benefit and gain.

45. As a proximate result of Defendants' wrongful conduct underlying the conspiracy, the Fund and its investor-members suffered damages.

JOINT AND SEVERAL LIABILITY

46. Defendants are jointly and severally liable for the damages Plaintiff seeks in this lawsuit because Defendants jointly engaged in the commission of the tortious conduct set forth above.

APPLICATION FOR APPOINTMENT OF RECEIVER

47. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as though fully alleged herein.

48. Appointing a receiver over both CCG Capital and CCGD is necessary and proper to conserve the property and other assets of CCG Capital and CCGD, which in law and in equity belong to the Fund, and to avoid irreparable harm to the Fund as a result of CCG Capital and CCGD absconding with assets that could be used to satisfy the Fund's claims. Appointing a

receiver is necessary for these purposes because Buchanan, who once controlled the Fund (now controlled by the Receiver because of Buchanan's fraud), still controls CCG Capital and CCGD and has caused them to engage in the misconduct set forth above. Given the nature of the fraud Buchanan perpetrated against the Fund and its investors (including by illegally appropriating or otherwise diverting funds belonging to the Fund and its investors for Buchanan's own personal gain), it is highly probable Buchanan will employ the same tactics when faced with this lawsuit against it and the other Defendants, as he has done in the past. Specifically, prior to the appointment of the Receiver, Buchanan violated a temporary restraining order requiring approval from Harney of any expenditure of the Fund over \$5,000 by diverting \$26,764.30 to CCGD without the required approval. As it was appropriate to place the Fund into a receivership due to Buchanan's fraudulent misconduct, it is likewise proper to place the other Buchanan-controlled entities into a receivership due to Buchanan's same fraudulent conduct. Among other things, appointing a receiver will prevent Buchanan from concealing or moving CCG Capital's and CCGD's assets and thereby from continuing to perpetuate a fraud and damage the Fund and its members.

A. Basis for Appointment of Receiver

49. A district court may appoint a receiver over the property and business of a domestic Texas limited liability company ("**LLC**") for the purpose of rehabilitating the LLC if (1) the appointing district court presides in the county in which the LLC's registered office or principal place of business is located; and (2) one of the following conditions is met: (a) the action is by a creditor of the LLC, and it is established that the LLC is insolvent and has admitted in writing that the claim of the creditor is due and owing; or (b) the action involves a circumstance where courts of equity have traditionally appointed a receiver. *See* Tex. Bus. Orgs. Code § 11.404(a). If these conditions are met, the court may appoint a receiver if circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property and business of the

LLC and avoid damage to interested parties; all other requirements of law are complied with; and the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the LLC, are inadequate. *Id.* § 11.404(b).

50. As an initial matter, the Court has jurisdiction to appoint a receiver over CCG Capital and CCGD because both have their registered office and principal place of business in Travis County. Further, one or more of the above conditions are met for both CCG Capital and CCGD.

51. First, appointing a receiver over CCG Capital is appropriate because this action involves circumstances in which courts of equity have traditionally appointed a receiver. In *Greater Fort Worth v. Mims*, the court explained that this statutory ground – § 11.404(a)(3) – is flexible in nature. *Greater Fort Worth v. Mims*, 574 S.W.2d 870 (Tex. Civ. App. – Fort Worth 1978, writ dismissed). In *Mims*, the court examined the predecessor statute to § 11.404(a)(3) (Tex. Rev. Civ. Stat. Ann., art. 1396-7.05). Nearly identical to § 11.404(b), that predecessor statute stated: “A receiver may be appointed for the assets and business of a corporation . . . [i]n any other actions where receivers have heretofore been appointed by the usages of the court of equity.” The *Mims* opinion construed this statutory language “as invoking the trial court’s common law equity powers and authorizing an appointment under circumstances where the appointment would be proper at common law.” *Id.* at 872. The court explained that:

The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.

Id. (quoting *Meis v. Sanitas Serv. Corp.*, 511 F.2d 655, 658 (5th Cir. 1975)).

52. The court in *Mims* also held that “[t]he propriety of an appointment should not depend on whether another court ha[s] appointed a receiver under the same or similar circumstances.” *Mims*, 574 S.W.2d at 872. The test is simply whether the equitable relief achieves “reconciliation between the public interest and private needs as well as between competing private claims.” *Id.* (citation omitted).

53. In 2008, the Houston court of appeals also recognized that receivership over the assets and business of a corporation may be the proper equitable remedy in certain circumstances. *Benefield v. State*, 266 S.W.3d 25 (Tex. App.-Houston [1st Dist.] 2008, no pet.) (while distinguishing *Mims* as dealing with the appointment of a receiver for a specific purpose and not over all of a corporation’s assets and business affairs, the *Benefield* opinion also recognized that receivership over the assets and business of a corporation may be the proper equitable remedy where injury is threatened or will result without it).

54. As explained throughout this petition, Buchanan operated CCG Capital, which in turn operated the Fund, to engage in fraudulent conduct that harmed the Fund and its member-investors. This fraudulent conduct is likely to continue, which continues the harm suffered by the Fund and its member-investors, absent the appointment of a receiver.

55. Appointing a receiver over CCGD is appropriate because the Fund is a creditor of CCGD; the Fund owns a loan granted to CCGD, and the loan has matured and is due and owing. Moreover, as described above, CCGD owes the Fund approximately \$3 million that CCGD, through Buchanan, appropriated from the Fund. Further, upon information and belief, CCGD is insolvent. Its significant asset, the Buchanan Residence, had tax liens placed on it. Other of its projects have incurred mechanics and materialmen’s liens on them. The Fund’s records, which were kept by Buchanan, indicate that CCGD is a debtor to the Fund, indicating the debtor-creditor

relationship between CCGD and the Fund. Finally, to the extent that CCGD has assets that could be used to satisfy the Fund's claims, Mr. Buchanan is likely to abscond with such assets making any judgment difficult to collect.

56. Appointing a receiver over CCGD is also warranted because this action involves circumstances in which courts of equity have traditionally appointed a receiver. As already stated, courts of equity have traditionally appointed a receiver over an entity that engages in fraud to the harm of the plaintiff and other interested parties. As explained throughout this petition, Buchanan operated CCGD to engage in fraudulent conduct that harmed the Fund and its member-investors. This fraudulent conduct is likely to continue, which continues the harm suffered by the Fund and its member-investors, absent the appointment of a Receiver.

57. All other remedies available at law or in equity are inadequate to protect the assets of CCG Capital and CCGD, including the appointment of a receiver over specific assets of CCG Capital and CCGD, in that it is not possible to identify specific assets of these entities because Plaintiff does not have access to that information. Additionally, considering Buchanan's efforts to conceal this exact information about the Fund from the Plaintiff/Receiver, and his contempt of this Court's receivership order, it is highly likely Buchanan will continue to conceal this information from Plaintiff or otherwise prevent Plaintiff from learning it.

58. In short, without Court intervention, Buchanan will continue to use CCG Capital and CCGD to perpetuate a fraud on the Fund and its members. As set forth above, CCG Capital and CCGD owe a substantial amount to the Fund and its members, and given the nature of Buchanan's prior fraud, it is highly likely that he will continue concealing these assets belonging to the Fund and its members. All other requirements of the law have been satisfied.

59. Plaintiff thus submits that a person that the Court deems qualified should be appointed as receiver over the assets and business of CCG Capital and CCGD with such powers as are provided by laws of general applicability relating to receivers and such other powers deemed appropriate by the Court to accomplish the rehabilitation of CCG Capital and CCGD.

B. Proposed Receiver

57. The Court should appoint Stephen Lemmon as receiver over CCG Capital and CCGD. Mr. Lemmon is a U.S. citizen and a qualified voter in and resident of the State of Texas. Mr. Lemmon is not a party, attorney, or other person interested in this action. Mr. Lemmon has served as a receiver before, and has represented receivers as a lawyer in courts of the State of Texas, and he is well-equipped to serve as a receiver as requested in this Application.

CONDITIONS PRECEDENT

58. All conditions precedent to Plaintiff's claims have been performed or have occurred.

RESERVATION OF RIGHTS

59. In filing this lawsuit, Plaintiff reserves all rights and waives none.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that the Court enter judgment against Defendants, jointly and severally, in an actual damages amount within the jurisdictional limits of this Court, exemplary damages, pre- and post-judgment interest, costs, attorneys' fees, and all other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: /s/ Trip Nix

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