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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

DISTINCTIVE DESIGN, LLC, dba PENDLETON DESIGN MANAGEMENT; PENDLETON DESIGN MANAGEMENT, LLC; and STEVEN PENDLETON; Plaintiffs, vs. LAKE CITY CUSTOM HOMES, INC.; LAKE CITY HOMES, LLC; LAKE CITY ENTERPRISES, LLC; LAKE CITY CAPITAL, LLC; LAKE CITY CAPITAL VI, LLC; LAKE CITY CAPITAL VII, LLC; LAKE CITY CAPITAL XI, LLC; LAKE CITY CAPITAL XII, LLC; LAKE CITY CAPITAL XIII, LLC; LAKE CITY CAPITAL XV, LLC; LAKE CITY CAPITAL XVI, LLC; STEEPLECHASE LCCH 59, LLC; BEAUFONTAINE PARTNERS, LLC; MONTREAUX PARTNERS, LLC; DAVID BROWN; and JOHN DOES 1-50; Defendants.	**COMPLAINT** [Tier 3] Civil No. _____ Judge _____

Plaintiffs Distinctive Design, LLC, dba Pendleton Design Management ("Distinctive Design"), Pendleton Design Management, LLC ("Pendleton Design"), and Steven Pendleton ("Pendleton") (collectively, the "Plaintiffs"), by and through their counsel of record, hereby complain against the above-named defendants (collectively, the "Defendants"), and allege as follows:

DESCRIPTION OF THE PARTIES

1. Distinctive Design is a Utah limited liability company with its principal place of business located in Salt Lake County, Utah.

2. Pendleton Design is a Utah limited liability company with its principal place of business located in Salt Lake County, Utah.

3. Pendleton is an individual residing in Salt Lake County, Utah.

4. Upon information and belief, Defendant Lake City Custom Homes, Inc. ("LCCH") is a Utah corporation with its principal place of business located in Salt Lake County, Utah.

5. Upon information and belief, Defendants Lake City Homes, LLC ("Lake City Homes"); Lake City Enterprises, LLC ("Lake City Enterprises") ; Lake City Capital, LLC; Lake City Capital VI, LLC; Lake City Capital VII, LLC; Lake City Capital XI, LLC; Lake City Capital XII, LLC; Lake City Capital XIII, LLC; Lake City Capital XV, LLC; Lake City Capital XVI, LLC; Steeplechase LCCH 59, LLC ("Steeplechase"); Beaufontaine Partners, LLC ("Beaufontaine Partners"); and Montreaux Partners, LLC ("Montreaux Partners") are Utah limited liability companies with their principal places of business located in Salt Lake County, Utah.

6. Upon information and belief, Defendant David Brown ("Brown") is an individual residing in Salt Lake County, Utah.

7. John Does 1-50 are transferees of various properties transferred by Defendants and/or other persons or entities that are liable to Plaintiffs for the damages sought in this lawsuit.

JURISDICTION, VENUE AND TIER

8. This Court has subject matter jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102, among other authorities.

9. This Court has personal jurisdiction over Defendants in that they reside in and do business in the State of Utah.

10. Venue properly lies in this Court pursuant to Utah Code Ann. §§ 78B-3-304, 78B-3-307, and other authorities.

11. This case falls within Tier 3 of Rule 26(c)(3) of the Utah Rules of Civil Procedure.

GENERAL ALLEGATIONS

12. In or around August 2016, Distinctive Design and Pendleton Design (the "Design Parties") entered into an agreement (the "Services Agreement") with LCCH, Lake City Homes, Lake City Enterprises, and Brown (collectively, the "Lake City Parties") pursuant to which the Design Parties agreed to provide and did provide landscaping-related design services, labor, materials and equipment (the "Services") in exchange for the Lake City Parties' promise to pay for the Services.

13. The Design Parties fully and satisfactorily provided the Services according to the terms of the Services Agreement, and they strictly adhered to the direction and authorization provided by the Lake City Parties.

14. The Lake City Parties have failed and refused to pay for the Services.

15. In October 2017, Distinctive Design filed suit in the Third District Court against LCCH and others.

16. On December 14, 2017, Distinctive Design obtained a judgment (the "Judgment") against LCCH.

17. At the time Distinctive Design obtained the Judgment, LCCH owned a parcel of real property commonly known as Lot 319, Fort Herriman Cove Phase 3 Subdivision ("Lot 319").

18. In or about December 2017, Distinctive Design recorded a judgment lien against Lot 319.

19. In January 2018, the Lake City Parties agreed that if Distinctive Design would subordinate its judgment lien to the trust deeds of Actium High Yield Loan Fund II, LLC and Actium High Yield Loan Fund IV, LLC, the Lake City Parties would pay the Plaintiffs the amounts due under the Judgment (the "Payment Agreement").

20. On or about January 24, 2018, Distinctive Design subordinated its judgment lien on Lot 319 to satisfy its obligations under the Payment Agreement, but the Lake City Parties have still not paid the amounts due under the Judgment in violation of the terms of the Payment Agreement.

21. In April 2018, the Lake City Parties and Beaufontaine Partners entered into another agreement with Plaintiffs (the "April Agreement"). Under the April Agreement, the Lake City Parties and Beaufontaine Partners agreed that if Distinctive Design would release its judgment lien from Lot 319, the Lake City Parties and Beaufontaine Partners would (1) pay the Plaintiffs the amounts due under the Judgment, (2) hire the Design Parties to perform construction services valued at $600,000 in connection with the development and construction of the Beaufontaine project located in Heber City, Utah (the "Beaufontaine Project"), (3) pay the Plaintiffs $150,000, which payment would be secured by a trust deed recorded against all of the lots contained in the Beaufontaine Project, and (4) pay the Plaintiffs an additional $100,000 within thirty days, which payment would be secured by a trust deed recorded against Lots 46, 47, 48, 50, 57, 60, and 64 in the Beaufontaine Project (the "Beaufontaine Lots").

22. To further induce Distinctive Design to release its judgment lien from Lot 319, the Lake City Parties and Beaufontaine Partners threatened that if Distinctive Design did not release the judgment lien, the senior lienholder would foreclose Distinctive Design's interest in Lot 319.

23. Induced by and in reliance upon the April Agreement and the representations of the Lake City Parties and Beaufontaine Partners, Distinctive Design released its judgment lien from Lot 319 on April 19, 2018.

24. The Lake City Parties and Beaufontaine Partners refused to pay the Plaintiffs the amounts due under the Payment Agreement and the April Agreement, and they refused to give the Plaintiffs a trust deed against the Beaufontaine Lots.

25. Instead, on April 20, 2018, Beaufontaine Partners recorded a Trust Deed, with Distinctive Design as beneficiary, against Lots 44, 45, and 49 in the Beaufontaine Project to secure the promised payments.

26. Just 31 days later, on May 21, 2018, the senior lienholder foreclosed on Lots 44, 45, and 49—the lots to which Beaufontaine Partners granted an interest to Distinctive Design.

27. Upon information and belief, Beaufontaine Partners and the Lake City Parties knew that the foreclosure was imminent and knew that the interest it granted in Lots 44, 45, and 49 to Distinctive Design was worthless.

28. The Lake City Parties and Beaufontaine Partners refused to give the Plaintiffs a trust deed for the Beaufontaine Lots—despite promising to do so—because those lots were not encumbered by the senior lien that was foreclosed on May 21, 2018.

29. After learning of the May 21, 2018 foreclosure, Brown told Pendleton that the Lake City Parties were obtaining a new loan for the Beaufontaine Project and that he had an agreement with the foreclosing senior lienholder to buy back the Beaufontaine Project after obtaining the loan.

30. Brown told Pendleton that Brown would obtain the loan during the summer of 2018 and that the Lake City Parties would honor all obligations to the Plaintiffs.

31. As of the date of this Complaint, the Lake City Parties have not paid any money to the Plaintiffs.

32. On August 30, 2018, the Court entered an amended judgment against LCCH in the amount of $363,246.16 through July 11, 2018, with an order that the Judgment will be

augmented to include post-judgment interest at 12% per annum and attorneys' fees incurred to collect the Judgment.

33. In addition to the Judgment, the Plaintiffs have incurred significant additional damages as a result of the Lake City Parties' breaches of their various agreements and tortious conduct.

34. Because of the Lake City Parties' conduct, the Plaintiffs have been unable to pay their vendors, which has caused significant damage to their business relationships and goodwill that has been nurtured for several decades.

35. Because of the Lake City Parties' conduct, the Plaintiffs' superior credit rating built over several decades has been destroyed, resulting in significant damages.

36. Because of the Lake City Parties' conduct, the Plaintiffs have lost business opportunities, resulting in significant damages.

37. Because of the Lake City Parties' conduct, Pendleton has suffered from degradation of health and emotional stress.

FIRST CAUSE OF ACTION

(Breach of Contract Against the Lake City Parties – the Services Agreement)

38. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

39. The Services Agreement constitutes a valid and enforceable contract whereby the Plaintiffs agreed to provide the Services in exchange for the Lake City Parties' promise to pay Plaintiffs in full.

40. Plaintiffs have satisfied their obligations under the Services Agreement by furnishing the agreed-upon Services.

41. The Lake City Parties, on the other hand, have materially breached the Services Agreement by, among other things, failing to pay the Plaintiffs in full.

42. As a direct and proximate result of the Lake City Parties' breach of the Services Agreement as described above, the Plaintiffs have incurred, and continue to incur, damages in an amount to be determined at trial, but which amount is not less than $958,000, together with interest at 12% per annum, costs and attorneys' fees.

43. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 1 of the Prayer for Relief.

SECOND CAUSE OF ACTION

(Breach of Contract Against the Lake City Parties – the Payment Agreement)

44. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

45. The Payment Agreement constitutes a valid and enforceable contract whereby the Plaintiffs agreed to subordinate their interest in Lot 319 in exchange for the Lake City Parties' promise to pay Plaintiffs in full.

46. Plaintiffs have satisfied their obligations under the Payment Agreement.

47. The Lake City Parties, on the other hand, have materially breached the Payment Agreement by, among other things, failing to pay the Plaintiffs in full.

48. As a direct and proximate result of the Lake City Parties' breach of the Payment Agreement as described above, the Plaintiffs have incurred, and continue to incur, damages in an

amount to be determined at trial, but which amount is not less than $958,000, together with interest at 12% per annum, costs and attorneys' fees.

49. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 2 of the Prayer for Relief.

THIRD CAUSE OF ACTION

(Breach of Contract Against the Lake City Parties and Beaufontaine Partners – the April Agreement)

50. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

51. The April Agreement constitutes a valid and enforceable contract whereby the Lake City Parties and Beaufontaine Partners agreed that if Distinctive Design would release its judgment lien from Lot 319, the Lake City Parties and Beaufontaine Partners would (1) pay the Plaintiffs the amounts due under the Judgment, (2) hire the Design Parties to perform construction services valued at $600,000 in connection with the development and construction of the Beaufontaine Project, (3) pay the Plaintiffs $150,000, which payment would be secured by a trust deed recorded against all of the lots contained in the Beaufontaine Project, and (4) pay the Plaintiffs an additional $100,000 within thirty days, which payment would be secured by a trust deed recorded against the Beaufontaine Lots.

52. Plaintiffs have satisfied their obligations under the April Agreement.

53. The Lake City Parties and Beaufontaine Partners, on the other hand, have materially breached the April Agreement by, among other things, failing to pay the Plaintiffs in full, failing to hire the Design Parties to perform construction services, failing to give the

Plaintiffs an interest in the Beaufontaine Project, and failing to secure the amounts owed to the Plaintiffs with a trust deed recorded against the Beaufontaine Lots.

54. As a direct and proximate result of the Lake City Parties' and Beaufontaine Partners' breaches of the April Agreement as described above, the Plaintiffs have incurred, and continue to incur, damages in an amount to be determined at trial, but which amount is not less than $958,000, together with interest at 12% per annum, costs and attorneys' fees.

55. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 3 of the Prayer for Relief.

FOURTH CAUSE OF ACTION

(Fraud Against the Lake City Parties and Beaufontaine Partners)

56. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

57. The Lake City Parties and Beaufontaine Partners, through Brown, their manager, knowingly misrepresented presently existing material facts to the Plaintiffs that, among other things, the Lot 319 senior lienholder was going to foreclose on that property if the Plaintiffs did not subordinate their interest in Lot 319; the Beaufontaine Project senior lienholder was going to foreclose on the Beaufontaine Project if the Plaintiffs did not release their judgment lien from Lot 319; the Lake City Parties and Beaufontaine Partners will pay the Plaintiffs all amounts owed if the Plaintiffs release their judgment lien from Lot 319; the Lake City Parties and Beaufontaine Partners will secure payment of the amounts owed with a trust deed against the Beaufontaine Lots if the Plaintiffs release their judgment lien from Lot 319; the Lake City Parties and Beaufontaine Partners will pay the Design Parties $600,000 to complete the

landscaping work on the Beaufontaine Project if the Plaintiffs will release their judgment lien from Lot 319; and the Plaintiffs would receive a trust deed on unencumbered lots in the Beaufontaine Project if the Plaintiffs release their judgment lien from Lot 319.

58. The Lake City Parties and Beaufontaine Partners executed a trust deed, with Distinctive Design as the beneficiary, on lots in the Beaufontaine Project that the Lake City Parties and Beaufontaine Partners knew were encumbered and were facing an imminent foreclosure.

59. The Lake City Parties and Beaufontaine Partners deliberately and knowingly withheld from the Plaintiffs information relating to the status of the foreclosure and the encumbrances against the Beaufontaine Project. In fact, the Lake City Parties and Beaufontaine Partners, through Brown, their manager, told the Plaintiffs that the lots that were subject to the trust deed given to Distinctive Design were not encumbered.

60. The Lake City Parties and Beaufontaine Partners made all of the above-referenced representations with knowledge of their falsity and deliberately for the purpose of deceiving the Plaintiffs and inducing them to release the judgment lien from Lot 319.

61. The Plaintiffs justifiably relied on the above-referenced representations and omissions, which reliance proximately caused the Plaintiffs to incur significant damages.

62. After the Plaintiffs learned that the senior lienholder foreclosed on the Beaufontaine Project in May 2018, Brown continued to represent to the Plaintiffs that Beaufontaine Partners still owned the Beaufontaine Project.

63. When called on it, Brown acknowledged the foreclosure, but he represented that the Lake City Parties and Beaufontaine Partners have an agreement with the senior lienholder to buy back the Beaufontaine Project, but there is and never has been any such agreement.

64. As a direct and proximate result of the Lake City Parties' and Beaufontaine Partners' fraud as described above, the Plaintiffs have incurred, and continue to incur, damages in an amount to be determined at trial, but which amount is not less than $958,000, together with interest at 12% per annum, costs and attorneys' fees.

65. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 4 of the Prayer for Relief.

FIFTH CAUSE OF ACTION

(Fraudulent Transfer Against All Defendants)

66. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

67. Defendants transferred the following parcels of real property (the "Properties") with the actual intent to hinder, delay, or defraud the Plaintiffs:

a. Salt Lake County Parcel No. 21-34-480-023-0000
b. Salt Lake County Parcel No. 21-34-480-021-0000
c. Salt Lake County Parcel No. 34-18-101-029-0000
d. Salt Lake County Parcel No. 28-33-451-011-0000
e. Salt Lake County Parcel No. 34-08-278-025-0000
f. Salt Lake County Parcel No. 34-08-278-019-0000
g. Salt Lake County Parcel No. 34-08-279-003-0000
h. Salt Lake County Parcel No. 34-08-279-004-0000
i. Salt Lake County Parcel No. 34-08-279-005-0000
j. Salt Lake County Parcel No. 34-08-279-007-0000
k. Salt Lake County Parcel No. 34-08-279-008-0000
l. Salt Lake County Parcel No. 34-08-278-014-0000
m. Salt Lake County Parcel No. 34-08-278-029-0000
n. Salt Lake County Parcel No. 34-08-427-004-0000

o. Salt Lake County Parcel No. 34-04-256-007-0000
p. Wasatch County Parcel No. 00-0021-1593
q. Wasatch County Parcel No. 00-0021-1594
r. Wasatch County Parcel No. 00-0021-1595
s. Wasatch County Parcel No. 00-0021-1597
t. Wasatch County Parcel No. 00-0021-1604
u. Wasatch County Parcel No. 00-0021-1607
v. Wasatch County Parcel No. 00-0021-1611

68. Defendants transferred its interests in the Properties without receiving reasonably equivalent value in exchange for the transfers.

69. At the time of the transfers, Defendants were insolvent or became insolvent as a result of transferring the Properties.

70. The Plaintiffs are entitled to (i) an avoidance of the transfer(s), (ii) attachment or other provisional remedies against the assets transferred or other property of the Defendants, (iii) injunctive relief, (iv) an order allowing the Plaintiffs to levy on the transferred assets, (v) a judgment against the Defendants, in an amount to be determined at trial but in no event less than $958,000, including pre- and post-judgment interest, attorney fees, and costs as provided by law, and (vi) any other relief that the circumstances may require.

71. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 5 of the Prayer for Relief.

SIXTH CAUSE OF ACTION
(Reformation of Vesting or Encumbering Instrument Against the Lake City Parties and Beaufontaine Partners)

72. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

73. On April 20, 2018, Beaufontaine Partners recorded a trust deed as Entry No. 450495 (the "Trust Deed"), with Distinctive Design as beneficiary, against Lots 44, 45, and 49 in the Beaufontaine Project to secure the promised payments.

74. The Trust Deed, which is recorded against Lots 44, 45, and 49, is inconsistent with the intention and agreement of the parties because the Trust Deed should have been recorded against the Beaufontaine Lots.

75. The inconsistency was discovered after the May 2018 foreclosure when the Plaintiffs learned that the senior lienholder had foreclosed.

76. As a result of the inconsistency, the Plaintiffs have been damaged because their interest in the Beaufontaine Project was foreclosed by the senior lienholder.

77. The Plaintiffs have made a demand upon the Lake City Parties and Beaufontaine Partners to remedy the Trust Deed, but the Lake City Parties and Beaufontaine Partners have failed and refused to take corrective action.

78. To resolve the inconsistency between the Trust Deed and the parties' agreement, the Trust Deed should be reformed to reflect the parties' agreement to give the Plaintiffs an interest in and a trust deed against the Beaufontaine Lots.

79. The Plaintiffs seeks to reform the Trust Deed by changing the encumbered lots from Lots 44, 45, and 49 to the Beaufontaine Lots.

80. The Court should reform the Trust Deed as set forth herein to reflect the agreement and wishes of the parties.

81. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 6 of the Prayer for Relief.

SEVENTH CAUSE OF ACTION

(Alter Ego Against All Defendants)

82. Plaintiffs hereby incorporate by reference the allegations set forth above as if fully set forth herein.

83. Upon information and belief, the Defendants that are entities (the "Defendant Entities") are closely affiliated entities, and Brown personally operates, manages, and controls all of the Defendant Entities all for his own personal benefit with no responsibility or concern for the interests of or accountability to other persons, creditors, directors, or shareholders.

84. Such a unity of interest and ownership exists among Brown and the Defendant Entities, separately and collectively, including the intermingled business activities of Brown and the Defendant Entities, that the separate personality of the Defendants no longer exists individually but, instead, is each the alter ego of the other.

85. Observation of the corporate form of the Defendant Entities would sanction a fraud, promote injustice, and/or result in an inequity.

86. Accordingly, Plaintiffs are entitled to an Order from the Court declaring that each of Brown and the Defendant Entities is the alter ego of the other and is therefore jointly and severally liable for all damages caused to Plaintiffs by each of the Defendant Entities and Brown, which damages are to be determined at trial, but which amount is not less than $958,000, together with interest at 12% per annum, costs and attorneys' fees.

87. The Plaintiffs are therefore entitled to judgment as set forth below in paragraph 7 of the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against the Defendants as follows:

1. On the First Cause of Action, asserting a claim against the Lake City Parties for breaching the Services Agreement, for a judgment in an amount not less than $958,000, together with interest at the rate of 12% per annum, costs, and attorneys' fees.

2. On the Second Cause of Action, asserting a claim against the Lake City Parties for breaching the Payment Agreement, for a judgment in an amount not less than $958,000, together with interest at the rate of 12% per annum, costs, and attorneys' fees.

3. On the Third Cause of Action, asserting a claim against the Lake City Parties and Beaufontaine Partners for breaching the April Agreement, for a judgment in an amount not less than $958,000, together with interest at the rate of 12% per annum, costs, and attorneys' fees.

4. On the Fourth Cause of Action, asserting a claim against the Lake City Parties and Beaufontaine Partners for fraud, for a judgment in an amount not less than $958,000, together with interest at the rate of 12% per annum, costs, and attorneys' fees.

5. On the Fifth Cause of Action, asserting a claim for voidable transfer against Defendants under Utah Code Ann. § 25-6-202, for a judgment and order avoiding Defendants' transfers of the Properties and, in the event that it is not practicable to recover value from such property, or if the Plaintiffs so elect with respect to the Properties, for judgment against Defendants in an amount not less than $958,000, together with interest, costs, and attorneys' fees, and, pursuant to Utah Code Ann. § 25-6-304, for a judgment for the value of the assets transferred.

6. On the Sixth Cause of Action, asserting a claim for deed reformation, for an order that the Plaintiffs may record with the county recorder to secure all amounts that the Defendants owe to the Plaintiffs with a trust deed against the Beaufontaine Lots.

7. On the Seventh Cause of Action, asserting a claim for alter ego against the Defendants, for an order declaring that each of the Defendant Entities and Brown is the alter ego of the other and is therefore jointly and severally liable for all amounts owed to the Plaintiffs by any or all of the Defendant Entities or Brown.

8. For an order allowing the sale of the Beaufontaine Lots and all assets of the Defendants to satisfy the amounts owed to the Plaintiffs.

9. For interest at the pre-and post-judgment rate of 12% per annum, costs, and attorney's fees as provided by Utah law and pursuant to the Judgment.

10. For such other and further relief as the Court deems necessary, just, and proper.

DATED this 18th day of October, 2018.

BENNETT TUELLER JOHNSON & DEERE

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