

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Federal National Mortgage Association,

Appellant,

v.

Westland Liberty Village, LLC; and Westland
Village Square, LLC,

Respondents.

No. 82174

Electronically Filed
Jan 11 2021 01:29 p.m.

DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Nevada Department 4/13
County Clark Judge Earley/Denton
District Ct. Case No. A-20-819412-B

2. Attorney filing this docketing statement:

Attorney Kelly H. Dove Telephone 702-784-5286

Firm Snell & Wilmer L.L.P.

Address 3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169

Client(s) Federal National Mortgage Association ("Fannie Mae")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney John Benedict Telephone 702-333-3770

Firm Law Offices of John Benedict

Address 2190 E. Pebble Road, Suite 260
Las Vegas, Nevada 89123

Client(s) Westland Liberty Village, LLC and Westland Village Square, LLC

Attorney Joseph Went Telephone 702-669-4619

Firm Holland & Hart LLP

Address 9555 Hillwood Dr., 2nd Floor
Las Vegas, NV 89134

Client(s) Grandbridge Real Estate Capital

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Receiver (Denial)</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff-Appellant Fannie Mae filed a Verified Complaint in the Eighth Judicial District Court seeking the appointment of a receiver. Defendants-Appellees (collectively "Westland") filed counterclaims against Fannie Mae and a third-party complaint against Third-Party Defendant-Appellant Grandbridge Real Estate Capital for a variety of contract-based claims as detailed below. Westland then moved for a TRO/ preliminary injunction to oppose the appointment of a receiver and enjoin foreclosure of the properties. The district court granted not only the relief Westland sought -- the denial of the appointment of a receiver and enjoining the foreclosure, it also granted many provisions of mandatory injunctive relief that had not been in Westland's moving papers or discussed at the hearing, including but not limited to requiring Fannie Mae to turn over \$1.1 million from a reserve account, requiring Fannie Mae to treat Westland and its affiliates favorably with respect to other, unrelated loans, requiring Fannie Mae to rescind notices of default that had been recorded against the properties, and requiring Fannie Mae to strike notices of demand.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court abused its discretion by denying Fannie Mae's application for appointment of a receiver.

Whether the district court abused its discretion by enjoining Fannie Mae from foreclosing on the properties despite Westland's default.

Whether the district court abused its discretion by issuing a sweeping injunction, requiring Fannie Mae to undertake a host of affirmative obligations, including requiring Fannie Mae to turn over \$1.1 million from a reserve account, requiring Fannie Mae to treat Westland and its affiliates favorably with respect to other, unrelated loans, requiring Fannie Mae to rescind notices of default that had been recorded against the properties, and requiring Fannie Mae to strike notices of demand.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal should be retained by the Supreme Court because it originated in Business Court. See NRAP 17(a)(9).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from November 20, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served November 24, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed November 30, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
December 4, 2020: Grandbridge Real Estate Capital, LLC

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(4)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The appealed from order both denies Fannie Mae's application for the appointment of a receiver and grants an injunction in Westland's favor.

NRAP 3A(b)(4) allows an appeal from an order denying the appointment of a receiver.
NRAP 3A(b)(3) allows an appeal from an order granting an injunction.

As such, both are bases to appeal the subject order.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Federal National Mortgage Association (Plaintiff)

Westland Liberty Village, LLC (Defendant/ Counterclaimant/ Third-Party Plaintiff)

Westland Village Square, LLC (Defendant/ Counterclaimant/ Third-Party Plaintiff)

Grandbridge Real Estate Capital LLC (Third-Party Defendant)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Please see attached sheet.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

All claims remain pending - this is an interlocutory appeal from an order granting an injunction and denying the appointment of a receiver.

(b) Specify the parties remaining below:
All parties remain below.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The appealed from order both denies Fannie Mae's application for the appointment of a receiver and grants an injunction in Westland's favor.

NRAP 3A(b)(4) allows an appeal from an order denying the appointment of a receiver.

NRAP 3A(b)(3) allows an appeal from an order granting an injunction.

As such, both are bases to appeal the subject order.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Federal National Mortgage Association
Name of appellant

Kelly H. Dove
Name of counsel of record

Jan 11, 2021
Date

s/Kelly H. Dove
Signature of counsel of record

Las Vegas, NV
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 11th day of January, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

X BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

Dated this 11th day of January, 2021

s/ Maricris Williams
Signature

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

**Plaintiff Fannie Mae's Claims Against Defendants,
Westland Liberty Village, LLC and Westland Village Square, LLC**

1. Specific Performance for Appointment of a Receiver and Assignment of Rents
2. Petition for Appointment of a Receiver

Westland Liberty Village, LLC's Counterclaim Against Fannie Mae

1. Breach of Contract

Westland Village Square, LLC's Counterclaim Against Fannie Mae

1. Breach of Contract

**Westland Liberty Village, LLC and Westland Village Square, LLC's
Counterclaims Against Fannie Mae**

1. Breach of the Covenant of Good Faith and Fair Dealing
2. Declaratory Relief
3. Fraud in the Inducement
4. Negligent Misrepresentation and Concealment
5. Conversion
6. Injunctive Relief
7. Equitable Relief/ Rescission

**Westland Liberty Village, LLC's Third-Party Complaint Against
Grandbridge**

1. Breach of Contract

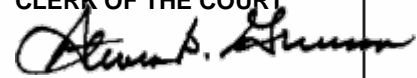
**Westland Village Square, LLC's Third-Party Complaint Against
Grandbridge**

1. Breach of Contract

**Westland Liberty Village, LLC and Westland Village Square, LLC's
Third-Party Complaint Against Grandbridge Real Estate Capital, LLC**

1. Breach of the Covenant of Good Faith and Fair Dealing
2. Declaratory Relief
3. Fraud in the Inducement
4. Negligent Misrepresentation and Concealment
5. Intentional Interference with Contract
6. Conversion
7. Injunctive Relief
8. Equitable Relief/ Rescission

None of the above claims have been disposed of, as this appeal is interlocutory.



CASE NO: A-20-819412-C
Department 4

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC and
WESTLAND VILLAGE SQUARE, LLC,

Defendants.

Case No.

Dept No.

VERIFIED COMPLAINT

**ARBITRATION EXEMPTION
REQUESTED: EQUITABLE RELIEF
SOUGHT**

VERIFIED COMPLAINT

Plaintiff Federal National Mortgage Association ("Plaintiff" of "Fannie Mae") brings this Verified Complaint (the "Complaint") against Westland Liberty Village, LLC ("Liberty Village LLC") and Westland Village Square, LLC ("Village Square LLC") (collectively, "Defendants") and alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a federally chartered corporation that lawfully conducts business in Nevada.
2. Defendant Liberty Village LLC is a Nevada limited-liability company authorized to conduct business in the State of Nevada.
3. Defendant Village Square LLC is a Nevada limited-liability company authorized to conduct business in the State of Nevada.

6. This Court is the appropriate venue for this lawsuit pursuant to NRS § 13.010.

II. GENERAL ALLEGATIONS

A. The Loan Documents and Related Agreements

i. Village Square Loan

7. On or about November 2, 2017, Shamrock Properties VII LLC (“Shamrock VII”), as predecessor-in-interest to Village Square LLC, and SunTrust Bank (“SunTrust”), as predecessor-in-interest to Plaintiff, executed a Multifamily Loan and Security Agreement (“Village Square Loan Agreement”) setting forth the terms and obligations of the parties with respect to a mortgage loan in the amount of \$9,366,000.00. A true and correct copy of the Village Square Loan Agreement is attached as **Exhibit 1**.

8. On or about November 2, 2017, Shamrock VII executed a Multifamily Note (“Village Square Note”) in favor of SunTrust in the original principal amount of \$9,366,000.00, together with interest as detailed therein. A true and correct copy of the Village Square Note is attached as **Exhibit 2**.

9. On or about November 2, 2017, Shamrock VII entered into a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (“Village Square Deed of Trust”) to secure, among other things, repayment of the indebtedness under the Village Square Note. The Village Square Deed of Trust was recorded with the Clark County Recorder on November 3, 2017. The Village Square Deed of Trust encumbers, among other things, certain real and personal property more specifically defined therein as the “Mortgaged Property” (hereinafter, the “Village Square Property”). The Village Square Property includes an apartment complex

1 known as the “Village Square Apartments” located at 5025 Nellis Oasis Lane, Las Vegas, Nevada
2 89115 and situated on the real property described in Exhibit A of the Village Square Deed of Trust.

3 A true and correct copy of the Village Square Deed of Trust is attached as **Exhibit 3**.

4 10. Collectively, the Village Square Loan Agreement, the Village Square Note, the
5 Village Square Deed of Trust, and the documents related thereto are hereinafter referred to as the
6 “Village Square Loan Documents”.

7 11. The Village Square Loan Documents were assigned by SunTrust to Plaintiff. As
8 evidence of that assignment, on November 3, 2017, an Assignment of Security Instruments from
9 SunTrust to Plaintiff was recorded with the Clark County Recorder wherein SunTrust assigned
10 and conveyed its rights in the Village Square Property and its rights and interests under the Village
11 Square Deed of Trust to Plaintiff. A true and correct copy of the Assignment of Security Instrument
12 is attached as **Exhibit 4**.

13 12. On August 29, 2018, Shamrock VII, as transferor, and Ellen Weinstein
14 (“Weinstein”), as original guarantor, and Village Square LLC, as transferee, and Alevy
15 Descendants Trust Number 1 (“Alevy Trust”), as new guarantor, executed an Assumption and
16 Release Agreement (“Village Square Assumption”). Pursuant to the Village Square Assumption,
17 Village Square LLC and Alevy Trust assumed all of the obligations of Shamrock VII and
18 Weinstein under the Village Square Loan Documents. A true and correct copy of the Village
19 Square Assumption is attached as **Exhibit 5**.

20 **ii. Liberty Village Loan**

21 13. On or about November 2, 2017, Shamrock Properties VI LLC (“Shamrock VI”), as
22 predecessor-in-interest to Liberty Village LLC, and SunTrust Bank (“SunTrust”), as predecessor-
23 in-interest to Plaintiff, executed a Multifamily Loan and Security Agreement (“Liberty Village
24 Loan Agreement”) setting forth the terms and obligations of the parties with respect to a mortgage
25 loan in the amount of \$29,000,000.00. The Liberty Village Loan Agreement has been amended
26 six times relating to repairs that were required to restore the Liberty Village Property, as defined
27 below, after two different events that damaged the property. A true and correct copy of the Liberty
28

1 Village Loan Agreement along with the six amendments thereto are attached collectively as
2 **Exhibit 6.**

3 14. On or about November 2, 2017, Shamrock VI executed a Multifamily Note
4 (“Liberty Village Note”) in favor of SunTrust in the original principal amount of \$29,000,000.00,
5 together with interest as detailed therein. A true and correct copy of the Liberty Village Note is
6 attached as **Exhibit 7.**

7 15. On or about November 2, 2017, Shamrock VI entered into a Multifamily Deed of
8 Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (“Liberty Village
9 Deed of Trust”) to secure, among other things, repayment of the indebtedness under the Liberty
10 Village Note. The Liberty Village Deed of Trust was recorded with the Clark County Recorder
11 on November 3, 2017. The Liberty Village Deed of Trust encumbers, among other things, certain
12 real and personal property more specifically defined therein as the “Mortgaged Property”
13 (hereinafter, the “Liberty Village Property”). The Liberty Village Property includes an apartment
14 complex known as the “Liberty Village Apartments” located at 4807 Nellis Oasis Lane, Las Vegas,
15 Nevada 89115 and situated on the real property described in Exhibit A of the Liberty Village Deed
16 of Trust. A true and correct copy of the Liberty Village Deed of Trust is attached as **Exhibit 8.**

17 16. Collectively, the Liberty Village Loan Agreement, the Liberty Village Note, the
18 Liberty Village Deed of Trust, and the documents related thereto are hereinafter referred to as the
19 “Liberty Village Loan Documents”.

20 17. The Liberty Village Loan Documents were assigned by SunTrust to Plaintiff. As
21 evidence of that assignment, on November 3, 2017, an Assignment of Security Instruments from
22 SunTrust to Plaintiff was recorded with the Clark County Recorder wherein SunTrust assigned
23 and conveyed its rights in the Liberty Village Property and its rights and interests under the Liberty
24 Village Deed of Trust to Plaintiff. A true and correct copy of the Assignment of Security
25 Instrument is attached as **Exhibit 9.**

26 18. On or about August 29, 2018, Shamrock VI, as transferor, and Weinstein, as
27 original guarantor, and Liberty Village LLC, as transferee, and Alevy Trust, as new guarantor,
28 executed an Assumption and Release Agreement (“Liberty Village Assumption”). Pursuant to the

1 Liberty Village Assumption, Liberty Village LLC and Alevy Trust assumed all of the obligations
2 of Shamrock VI and Weinstein under the Liberty Village Loan Documents. A true and correct
3 copy of the Liberty Village Assumption is attached as **Exhibit 10**.

4 **B. Plaintiff's Rights Under the Loan Documents**

5 19. Pursuant to the terms of the Village Square Deed of Trust and Liberty Village Deed
6 of Trust, the Plaintiff has a lien in, on, and to, among other things, the "Mortgaged Property"
7 specifically defined therein, which includes, without limitation: (i) the "Land;" (ii) the
8 "Improvements", "Fixtures", and "Personalty;" (iii) all "Rents" and "Leases;" and (iv) any and all
9 other property interests and rights related to the Village Square Property and Liberty Village
10 Property, as more particularly described in the Village Square Deed of Trust and Liberty Village
11 Deed of Trust.

12 20. Pursuant to § 3(a) of the Village Square Deed of Trust and Liberty Village Deed of
13 Trust, Defendant made an absolute and unconditional assignment and transfer to Plaintiff of all
14 "Leases and Rents" from the Village Square Property and Liberty Village Property, respectively.
15 Under § 3(b) of the Village Square Deed of Trust and Liberty Village Deed of Trust, Defendants
16 were granted a revocable license to collect the "Rents" until the occurrence of an "Event of
17 Default" under the Village Square Loan Documents or Liberty Village Loan Documents, at which
18 time such license automatically terminated.

19 21. Pursuant to § 3(e) of the Village Square Deed of Trust and Liberty Village Deed of
20 Trust, upon an "Event of Default," Plaintiff has the right to seek the appointment of a receiver.
21 Specifically, the Village Square Deed of Trust and Liberty Village Deed of Trust each provide:

22 ... regardless of the adequacy of [Plaintiff's] security or Borrower's
23 solvency, and without the necessity of giving prior notice (oral or
24 written) to Borrower, [Plaintiff] may apply to any court having
25 jurisdiction for the appointment of a receiver for the Mortgaged
26 Property to take any or all of the actions set forth in Section 3. If
27 [Plaintiff] elects to seek the appointment of a receiver for the
28 Mortgaged Property at any time after an Event of Default has
occurred and is continuing, Borrower, by its execution of this
Security Instrument, expressly consents to the appointment of such
receiver, including the appointment of a receiver *ex parte*, if
permitted by applicable law. Borrower consents to shortened time
consideration of a motion to appoint a receiver.

Village Square Deed of Trust, Exhibit 3, at § 3(e); Liberty Village Deed of Trust, Exhibit 8, at § 3(e).

C. Defendants' Defaults Under the Loan Documents

22. Section 13.02(a)(4) of the Village Square Loan Agreement and Liberty Village Loan Agreement states:

"Lender may, upon thirty (30) days' prior written notice to Borrower, require an additional deposit(s) to the Replacement Reserve Account or Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit, if Lender determines that the amounts on deposit in either the Replacement Reserve Account or the Repairs Escrow Account are not sufficient to cover the costs for Required Repairs or Required Replacements or, pursuant to the terms of Section 13.02(a)(9), not sufficient to cover the costs for Borrower Requested Repairs, Additional Lender Repairs, Borrower Requested Replacements, or Additional Lender Replacements. Borrower's agreement to complete the Replacements or Repairs as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Replacement Reserve Account or the Repairs Escrow Account, as applicable."

See **Exhibit 1** at p. 61; **Exhibit 6** at p. 61.

23. On September 9, 2019—September 11, 2019, Plaintiff hired a consultant (f3, Incorporated or "f3") to conduct a Property Condition Assessment ("PCA") of the Liberty Village Property and Village Square Property. f3's PCAs provided detailed descriptions of certain deficiencies at the Liberty Village Property and Village Square Property. True and correct copies of the PCAs are attached as **Exhibit 11**.

24. On October 18, 2019, SunTrust, on behalf of Plaintiff, provided Defendants with a Notice of Demand referencing the PCAs and demanding that Defendants cure the deficiencies provided in the PCAs and in accordance with Defendants' obligations under the Agreements by:

(i) immediately implementing corrective actions to undertake repairs to the Liberty Village Property and Village Square Property; (ii) depositing \$1,753,145.00 into the Repair Escrow Account pursuant to Section 13.02(a)(4) of the Liberty Village Loan Agreement and Village Square Loan Agreement; and (iii) to provide an additional \$8,160.00 per month under the Monthly Replacement Reserve Deposit, totaling a new obligation of \$26,760.00 per month, to cover the

1 insufficient funds in the Replacement Reserve Account and Repairs Escrow Account. A true and
2 correct copy of the Notice of Demand, dated October 18, 2019, is attached as **Exhibit 12**.

3 25. Defendants rejected Plaintiff's demand for additional deposits.

4 26. On December 17, 2019, and after the period for Defendants' opportunity to cure its
5 defaults, Plaintiff provided Liberty Village LLC and Village Square LLC, and each of them, with
6 a Notice of Default and Acceleration of Note ("Default and Acceleration") due to Defendants'
7 failures to cure the defaults previously noticed in Plaintiff's Notice of Demand. True and correct
8 copies of the Default and Accelerations are attached as **Exhibit 13**.

9 27. The Default and Accelerations provided notice that Defendants were in default of
10 their obligations under the Agreements for: (i) failing to maintain Liberty Village and Village
11 Square in accordance with Article 6 of the Agreements; and (ii) failing to comply with Plaintiff's
12 request to increase the Replacement Reserve Account in accordance with Section 13.02(a)(4) of
13 the Liberty Village Loan Agreement and Village Square Loan Agreement. Defendants' inactions
14 constituted an "Event of Default" pursuant to Section 14.01 of the Liberty Village Loan Agreement
15 and Village Square Loan Agreement and, pursuant to its rights under the Liberty Village Loan
16 Agreement and Village Square Loan Agreement, Plaintiff demanded that Defendants immediately
17 pay, in full, the unpaid principal balance of the Liberty Village Note and Village Square Note. *Id.*

18 28. Section 14.01 of the Liberty Village Loan Agreement and Village Square Loan
19 Agreement state, in part, that:

20 "(a) **Automatic Events of Default.** Any of the following shall
21 constitute an automatic Event of Default: (1) any failure by Borrower
22 to pay or deposit when due any amount required by the Note, this
Loan Agreement or any other Loan Document"

23 -and-

24 "(b) **Events of Default Subject to a Specified Cure Period.** Any
25 of the following shall constitute an Event of Default subject to the
26 cure period set forth in the Loan Documents: . . . (4) any failure by
27 Borrower to perform any obligations under this Loan Agreement or
any Loan Document that is subject to a specified written notice and
cure period, which failure continues beyond such specified written
notice and cure period as set forth herein or in the applicable Loan
Document."

28 See **Exhibit 1** at p. 68-69; **Exhibit 6** at p. 68-69.

29. On December 17, 2019, Plaintiff provided Defendants its Demand and Notice Pursuant to Nevada Revised Statutes (“NRS”) 107 A.270 (“Demand for Rents”) for Liberty Village and Village Square to provide written notice pursuant to NRS 107 A.270 that Plaintiff is entitled to be paid the proceeds of any and all “Rents” (as defined in Liberty Village Deed of Trust and Village Square Deed of Trust, respectively) and to demand that Defendants pay to Plaintiff all rents accrued and unpaid as of December 17, 2019. The Demands for Rents further revoked and terminated the Defendants’ license to collect the “Rents” under the Liberty Village Deed of Trust and Village Square Deed of Trust, consistent with Plaintiff’s rights thereunder. True and correct copies of the Demands for Rents are attached as **Exhibit 14**.

30. Section 7.02(c) **Payment of Rents** provides that: “Borrower shall: (1) pay to Lender upon demand all Rents after an Event of Default has occurred and is continuing . . .” See **Exhibit 1**, p. 32; **Exhibit 6**, p. 32.

31. As of the date of this filing, Defendants have failed to pay the balance of the Liberty Village Note and Village Square Note as required under the Liberty Village Loan Agreement and Village Square Loan Agreement due to their continued default. Defendants’ outstanding obligations continue to incur fees, costs, and interest to the detriment of Plaintiff.

32. Plaintiff needs a receiver to protect the Liberty Village Property and Village Square Property from danger of waste, loss, dissipation, or impairment. Unless a receiver is appointed, the Liberty Village Property and Village Square Property may be significantly damaged or devalued, depriving Plaintiff of a substantial part of its security as provided for in the Agreements.

33. Pursuant to its rights under the Liberty Village Deed of Trust, on July 14, 2020, Plaintiff recorded a “Notice of Default and Election to Sell Under Deed of Trust” in Clark County, Nevada for the Liberty Village Property. A true and correct copy of the Liberty Village Notice of Default is attached as **Exhibit 15**.

34. Pursuant to its rights under the Village Square Deed of Trust, on July 14, 2020, Plaintiff recorded a “Notice of Default and Election to Sell Under Deed of Trust” in Clark County, Nevada for the Village Square Property. A true and correct copy of the Village Square Notice of Default is attached as **Exhibit 16**.

III. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Specific Performance – Appointment of Receiver and Assignment of Rents)

35. Plaintiff hereby incorporates the allegations set forth above in the preceding paragraphs as though fully set forth herein.

36. The Liberty Village Loan Documents are valid and enforceable contracts between Plaintiff and Liberty Village LLC.

37. The Village Square Loan Documents are valid and enforceable contracts between Plaintiff and Village Square LLC.

38. Plaintiff performed all of its obligations under the Liberty Village Loan Documents and Village Square Loan Documents.

39. Liberty Village LLC failed to perform its obligations under the Liberty Village Loan Documents by, among other things, failing to maintain the Liberty Village Property in accordance with Article 6 of the Liberty Village Loan Agreement and failing to comply with Plaintiff's request to increase the Replacement Reserve Account in accordance with Section 14.02 of the Liberty Village Loan Agreement.

40. Village Square LLC failed to perform its obligations under the Village Square Loan Documents by, among other things, failing to maintain the Village Square Property in accordance with Article 6 of the Village Square Loan Agreement and failing to comply with Plaintiff's request to increase the Replacement Reserve Account in accordance with Section 14.02 of the Village Square Loan Agreement.

41. Pursuant to the terms of the Liberty Village Deed of Trust and Village Square Deed of Trust and applicable law, upon their default, Defendants' license to the rents, deposits, and leases on the Liberty Village Property and Village Square Property was revoked. In addition, due to Defendants' default, Plaintiff is entitled to seek the appointment of a receiver for, or to obtain possession of, any real or personal collateral for the debt and to enforce its security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property identified in the Liberty Village Deed of Trust and Village Square Deed of Trust.

1 42. As a result of Defendants' breach of the Liberty Village Deed of Trust and Village
2 Square Deed of Trust and other Loan Documents, Plaintiff is entitled to specific performance of
3 the receivership and assignment of rents provisions set forth in §§ 3(b) and 3(e) of the Liberty
4 Village Deed of Trust and Village Square Deed of Trust.

5 **SECOND CAUSE OF ACTION**
6 **(Petition for Appointment of Receiver)**

7 43. Plaintiff hereby incorporates the allegations set forth above in the preceding
8 paragraphs as though fully set forth herein.

9 44. Without limitation, based on Liberty Village LLC's failure to maintain the Liberty
10 Village Property and failure to comply with Plaintiff's request to increase the Replacement
11 Reserve Account, Liberty Village LLC is in default under the Loan Documents.

12 45. Without limitation, based on Village Square LLC's failure to maintain the Village
13 Square Property and failure to comply with Plaintiff's request to increase the Replacement Reserve
14 Account, Village Square LLC is in default under the Loan Documents

15 46. Plaintiff is entitled to the appointment of a receiver pursuant to one or more Nevada
16 statutes, including NRS §§ 32.010, 107.100, and/or 107A.260.

17 47. Pursuant to NRS § 32.010(6), this is a case where a receiver has heretofore been
18 appointed by courts of equity.

19 48. In accordance with NRS § 107.100, Plaintiff has filed a "Notice of Default and
20 Election to Sell Under Deed of Trust" with the Clark County Recorder's Office for the Liberty
21 Village Property and Village Square Property.

22 49. A receiver must be appointed pursuant to NRS § 107.100 due to the fact that it
23 appears that personal property subject to the Liberty Village Deed of Trust and Village Square
24 Deed of Trust is in danger of being lost, removed, materially injured or destroyed and the real
25 property subject to the Liberty Village Deed of Trust and Village Square Deed of Trust is in danger
26 of substantial waste, or the income therefrom is in danger of being lost.

27 50. In accordance with NRS § 107A.260, Defendants are in default of their obligations
28 and Defendants have agreed in a signed document to the appointment of a receiver in the event of

1 default. In addition, Plaintiff has provided written demand to Defendants to turn over the rents
2 from the Liberty Village Property and Village Square Property. Upon information and belief,
3 Defendants have turned over some rents to the servicer of the loan, however, they continue to
4 receive rents from the Liberty Village Property and Village Square Property.

5 51. Unless a receiver is appointed, Plaintiff may lose its right to rents and otherwise
6 may be deprived of a part of the security provided for in the Liberty Village Loan Documents and
7 Village Square Loan Documents

8 52. Plaintiff has no adequate remedy at law to enforce its rights and, unless granted the
9 relief as prayed for herein, will suffer irreparable injury.

10 53. Plaintiff has been required to retain the services of an attorney and is entitled to its
11 expenses, and reasonable attorneys' fees and costs.

12 WHEREFORE, Plaintiff prays for relief as follows:

- 13 (a) For specific performance of the receivership and assignment of rents provisions
14 contained in the Liberty Village Deed of Trust and Village Square Deed of Trust;
15 (b) For an order appointing a receiver and allowing the receiver, after taking
16 possession of Liberty Village and Village Square, to perform such duties as set
17 forth in the order appointing a receiver;
18 (c) For Plaintiff's reasonable attorneys' fees and costs incurred for bringing this action;
19 and
20 (d) For such other and further relief as the Court may deem just and appropriate.

21 **AFFIRMATION**

22 Pursuant to NRS 239B.030, the undersigned hereby certify that the foregoing document
23 does not contain the social security number of any person.
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1 Dated: August 12, 2020

SNELL & WILMER L.L.P.



By:

Nathan G. Kanute, Esq. (NV Bar No. 12413)
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*Attorneys for Plaintiff Federal National
Mortgage Association*

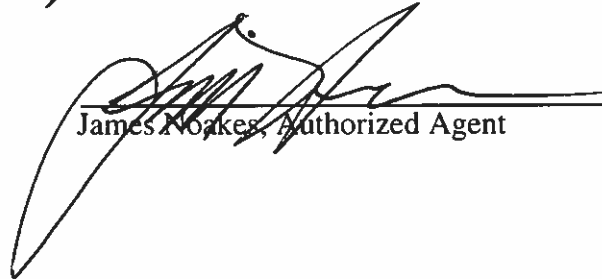
VERIFICATION

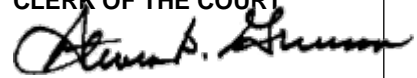
I, James Noakes, declare under penalty of perjury the following:

I am a Senior Asset Manager for Plaintiff Federal National Mortgage Association, a federally chartered corporation. I have read the foregoing Verified Complaint, know the contents thereof, and verify that the pleading is true of my own knowledge, except as to those matters stated on information and belief, and that as to such matters I believe such to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 31st day in July, 2020 in Collin Co, Texas.


James Noakes, Authorized Agent



AACC
JOHN BENEDICT, ESQ.
Nevada Bar No. 005581
LAW OFFICES OF JOHN BENEDICT
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
Telephone: (702) 333-3770
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Attorneys for Defendants/Counterclaimants/
Third Party Plaintiffs Westland Liberty Village,
LLC & Westland Village Square LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC and
WESTLAND VILLAGE SQUARE, LLC,

Defendants.

WESTLAND LIBERTY VILLAGE, LLC, a
Nevada Limited Liability Company; and
WESTLAND VILLAGE SQUARE, LLC, a
Nevada Limited Liability Company

Counterclaimants,

vs.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, a federally-chartered
corporation,

Counter-Defendant.

CASE NO. A-20-819412-C

DEPT NO. 4

**ANSWER TO PLAINTIFF'S
COMPLAINT, COUNTERCLAIM
AND THIRD PARTY COMPLAINT**

**EXEMPTION FROM
ARBITRATION:
Title to Real Property and Declaratory
Relief requested via Counterclaim**

1 WESTLAND LIBERTY VILLAGE, LLC, a
2 Nevada Limited Liability Company; and
3 WESTLAND VILLAGE SQUARE, LLC, a
4 Nevada Limited Liability Company,

5 Third Party Plaintiffs,

6 vs.

7 GRANDBRIDGE REAL ESTATE CAPITAL,
8 LLC, a North Carolina Limited Liability
9 Company,

10 Third Party Defendant.

11 **ANSWER**

12 Defendants, Westland Liberty Village, LLC (“Liberty LLC”) and Westland Village
13 Square, LLC (“Square LLC” and in combination with Liberty LLC, “Defendants” or “Westland”),
14 by and through their counsel of record, the Law Offices of John Benedict, answer Plaintiff’s
15 Verified Complaint, and admits, denies and alleges, as follows:

16 Defendants deny each and every allegation of Plaintiff’s Complaint, except those
17 allegations that are specifically admitted, qualified, or otherwise answered.

18 **I. PARTIES, JURISDICTION AND VENUE**

19 1. In response to the allegations contained in Paragraph 1 of the Complaint,
20 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
21 allegations contained therein, and therefore deny same.

22 2. In response to the allegations contained in Paragraph 2 of the Complaint,
23 Defendants admit the allegations contained therein.

24 3. In response to the allegations contained in Paragraph 3 of the Complaint,
25 Defendants admit the allegations contained therein.

26 4. In response to the allegations contained in Paragraph 4 of the Complaint,
27 Defendants admit the allegations related to the location of the properties and regarding expressly
28 agreeing to the jurisdiction and venue of this Court, but the remaining allegations are so vague and
ambiguous that they are unintelligible, and on that based Defendant denies the remaining
allegations contained therein.

1 5. In response to the allegations contained in Paragraph 5 of the Complaint,
2 Defendants admit the allegations contained therein.

3 6. In response to the allegations contained in Paragraph 6 of the Complaint,
4 Defendants admit the allegations contained therein.

5 **II. GENERAL ALLEGATIONS**

6 7. In response to the allegations contained in Paragraph 7 of the Complaint,
7 Defendants admit only that the Loan Agreement speaks for itself, and Defendants are without
8 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
9 contained in paragraph 7 of the Complaint, and therefore deny same.

10 8. In response to the allegations contained in Paragraph 8 of the Complaint,
11 Defendants admit only that the Loan Agreement and Note speak for themselves, and Defendants
12 are without knowledge or information sufficient to form a belief as to the truth of the remaining
13 allegations contained in paragraph 8 of the Complaint, and therefore deny same.

14 9. In response to the allegations contained in Paragraph 9 of the Complaint,
15 Defendants admit only that the Deed of Trust speaks for itself and the address of the real property,
16 and Defendants are without knowledge or information sufficient to form a belief as to the truth of
17 the remaining allegations contained in paragraph 9 of the Complaint, and therefore deny same.

18 10. In response to the allegations contained in Paragraph 10 of the Complaint,
19 Defendants are not required to answer or respond to the allegations set forth therein because they
20 lack any substance, but to the extent there is any allegation in Paragraph 10 that requires a response,
21 such allegation is denied.

22 11. In response to the allegations contained in Paragraph 11 of the Complaint,
23 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
24 allegations contained therein, and therefore deny same.

25 12. In response to the allegations contained in Paragraph 12 of the Complaint,
26 Defendants admit only that the Assumption and Release Agreement speaks for itself, and
27 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations contained in paragraph 12 of the Complaint, and therefore deny same.

1 13. In response to the allegations contained in Paragraph 13 of the Complaint,
2 Defendants admit only that the Loan Agreement speaks for itself, and Defendants are without
3 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
4 contained in paragraph 13 of the Complaint, and therefore deny same.

5 14. In response to the allegations contained in Paragraph 14 of the Complaint,
6 Defendants admit only that the Loan Agreement and Note speak for themselves and Defendants
7 are without knowledge or information sufficient to form a belief as to the truth of the remaining
8 allegations contained in paragraph 14 of the Complaint, and therefore deny same.

9 15. In response to the allegations contained in Paragraph 15 of the Complaint,
10 Defendants admit only that the Deed of Trust speaks for itself, and Defendants are without
11 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
12 contained in paragraph 15 of the Complaint, and therefore deny same.

13 16. In response to the allegations contained in Paragraph 16 of the Complaint,
14 Defendants are not required to answer or respond to the allegations set forth therein because they
15 lack any substance, but to the extent there is any allegation in Paragraph 16 that requires a response,
16 such allegation is denied.

17 17. In response to the allegations contained in Paragraph 17 of the Complaint,
18 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
19 allegations contained therein, and therefore deny same.

20 18. In response to the allegations contained in Paragraph 18 of the Complaint,
21 Defendants admit only that the Assumption and Release Agreement speaks for itself, and
22 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
23 remaining allegations contained in paragraph 18 of the Complaint, and therefore deny same.

24 19. In response to the allegations contained in Paragraph 19 of the Complaint,
25 Defendants admit only that each Deed of Trust speaks for itself, and Defendants are without
26 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
27 contained in paragraph 18 of the Complaint, and therefore deny same.
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1 20. In response to the allegations contained in Paragraph 20 of the Complaint,
2 Defendants admit only that each Deed of Trust speaks for itself, and Defendants deny the
3 remaining allegations contained in paragraph 20 of the Complaint.

4 21. In response to the allegations contained in Paragraph 21 of the Complaint,
5 Defendants admit only that the quoted text is contained in each Deed of Trust and that each Deed
6 of Trust speaks for itself, and Defendants deny the remaining allegations contained in paragraph
7 21 of the Complaint.

8 22. In response to the allegations contained in Paragraph 22 of the Complaint,
9 Defendants admit only that the quoted texted is contained in each Loan Agreement and that each
10 Loan Agreement speaks for itself, and Defendants deny the remaining allegations contained in
11 paragraph 22 of the Complaint.

12 23. In response to the allegations contained in Paragraph 23 of the Complaint,
13 Defendants admit only that f3 was onsite at each real property purportedly to conduct a Property
14 Condition Assessment, and Defendants deny the remaining allegations contained in paragraph 23
15 of the Complaint.

16 24. In response to the allegations contained in Paragraph 24 of the Complaint,
17 Defendants deny the allegations contained therein.

18 25. In response to the allegations contained in Paragraph 25 of the Complaint,
19 Defendants deny the allegations contained therein.

20 26. In response to the allegations contained in Paragraph 26 of the Complaint,
21 Defendants deny the allegations contained therein.

22 27. In response to the allegations contained in Paragraph 27 of the Complaint,
23 Defendants deny the allegations contained therein.

24 28. In response to the allegations contained in Paragraph 28 of the Complaint,
25 Defendants admit only that the quoted texted is contained in each Loan Agreement and that each
26 Loan Agreement speaks for itself, and Defendants deny the remaining allegations contained in
27 paragraph 28 of the Complaint.

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1 29. In response to the allegations contained in Paragraph 29 of the Complaint,
2 Defendants deny the allegations contained therein.

3 30. In response to the allegations contained in Paragraph 30 of the Complaint,
4 Defendants admit only that the quoted text is contained in each Loan Agreement and that each
5 Loan Agreement speaks for itself, and Defendants deny the remaining allegations contained in
6 paragraph 30 of the Complaint.

7 31. In response to the allegations contained in Paragraph 31 of the Complaint,
8 Defendants deny the allegations contained therein.

9 32. In response to the allegations contained in Paragraph 32 of the Complaint,
10 Defendants deny the allegations contained therein.

11 33. In response to the allegations contained in Paragraph 33 of the Complaint,
12 Defendants deny the allegations contained therein.

13 34. In response to the allegations contained in Paragraph 34 of the Complaint,
14 Defendants deny the allegations contained therein.

15 **III. CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**

17 **(Specific Performance)**

18 35. In response to the allegations contained in Paragraph 35 of the Complaint,
19 Defendants restate and incorporate by reference their answers to paragraphs 1 through 34 of
20 Plaintiff's Complaint as if fully set forth herein.

21 36. In response to the allegations contained in Paragraph 36 of the Complaint,
22 Defendants deny the allegations contained therein.

23 37. In response to the allegations contained in Paragraph 37 of the Complaint,
24 Defendants deny the allegations contained therein.

25 38. In response to the allegations contained in Paragraph 38 of the Complaint,
26 Defendants deny the allegations contained therein.

27 39. In response to the allegations contained in Paragraph 39 of the Complaint,
28 Defendants deny the allegations contained therein.

40. In response to the allegations contained in Paragraph 40 of the Complaint, Defendants deny the allegations contained therein.

41. In response to the allegations contained in Paragraph 41 of the Complaint, Defendants deny the allegations contained therein.

42. In response to the allegations contained in Paragraph 42 of the Complaint, Defendants deny the allegations contained therein.

SECOND CAUSE OF ACTION

(Petition for Appointment of Receiver)

43. In response to the allegations contained in Paragraph 43 of the Complaint, Defendants restate and incorporate by reference their answers to paragraphs 1 through 42 of Plaintiff's Complaint as if fully set forth herein.

44. In response to the allegations contained in Paragraph 44 of the Complaint, Defendants deny the allegations contained therein.

45. In response to the allegations contained in Paragraph 45 of the Complaint, Defendants deny the allegations contained therein.

46. In response to the allegations contained in Paragraph 46 of the Complaint, Defendants deny the allegations contained therein.

47. In response to the allegations contained in Paragraph 47 of the Complaint, Defendants deny the allegations contained therein.

48. In response to the allegations contained in Paragraph 48 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny same.

49. In response to the allegations contained in Paragraph 49 of the Complaint, Defendants deny the allegations contained therein.

50. In response to the allegations contained in Paragraph 50 of the Complaint, Defendants deny the allegations contained therein.

51. In response to the allegations contained in Paragraph 51 of the Complaint, Defendants deny the allegations contained therein.

52. In response to the allegations contained in Paragraph 52 of the Complaint, Defendants deny the allegations contained therein.

53. In response to the allegations contained in Paragraph 53 of the Complaint, Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

As separate affirmative defenses to Plaintiff's Complaint, Westland alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each and every allegation contained therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has waived its right to assert every cause of action set forth in Plaintiff's Complaint through its conduct and actions.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is estopped from obtaining the relief sought in Plaintiff's Complaint.

FOURTH AFFIRMATIVE DEFENSE

If Plaintiff suffered any damages or less, which is expressly denied, then Westland alleges that persons, both served and unserved, named and unnamed, in some manner or percentage were responsible for Plaintiff's damages.

FIFTH AFFIRMATIVE DEFENSE

Westland alleges that any damage suffered by Plaintiff as alleged in its Complaint was the result of Plaintiff's acts, omissions and failure to satisfy the conditions of the contract, which resulted in breaching the contracts and not the result of acts or omissions of Westland.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's allegations contained in Plaintiff's Complaint, and each of them, are barred by the doctrine of laches in that Plaintiff has unreasonably delayed in bringing these claims, and said delays have caused prejudice to Westland.

SEVENTH AFFIRMATIVE DEFENSE

1 No relief may be obtained under the Complaint by reason of the doctrine of unclean hands
2 and by reason of the unconscionability of Plaintiff's acts and claims.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 Westland acted in good faith and dealt fairly and responsibly with Plaintiff, based on all
5 relevant facts and circumstances known by them at the time Westland acted. However, Plaintiff
6 and its agents have acted in bad faith, including but not limited to filing an improper notice of
7 default and intention to sell ("NOD").

8 **NINTH AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred, in whole or in part, because in the event the Court determines
10 the language of the applicable contractual documents support the construction Plaintiff now places
11 on them, the Court should reform such language due to the mutual mistake of the parties, their
12 assignors and predecessors-in-interest, regarding the construction the Court would make of such
13 language.

14 **TENTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, by the failure of conditions precedent or
16 other anticipated incidents whose occurrence or non-occurrence were assumptions of the parties'
17 agreement and understanding.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 The injury or damage purportedly suffered by Plaintiff, if any, would be adequately
20 compensated in an action at law for damages, and accordingly Plaintiff has a complete and
21 adequate remedy at law and is not entitled to seek equitable relief.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 No relief may be obtained under the Complaint by reason of Plaintiff's failure to do equity
24 in the matters alleged in the Complaint, including, but not limited to, failing to make a valid and
25 viable statement of the indebtedness due and of the value of the improvements made by Westland
26 to the real property in this litigation.

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THIRTEENTH AFFIRMATIVE DEFENSE

No relief may be obtained under the Complaint by Plaintiff by reason of the probations on enforcement of unconscionable contracts, and prohibition on receipt of benefits accruing through unconscionable conduct, and the unconscionability of Plaintiff’s acts and claims.

FOURTEENTH AFFIRMATIVE DEFENSE

Having prevented and hindered Westland from performing under the contract and from obtaining the benefits thereof, Plaintiff would be unjustly enriched if allowed to enforce the contract or obtain damages for the alleged breaches in this Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

Prior to any of the acts of Westland complained of in the Complaint, Plaintiff had breached the contracts and obligations on which Plaintiff seeks damages. Plaintiff’s breaches thus prevented Westland’s performance and excused any obligation to perform that might be said to be resting on Westland. Plaintiff’s breach occurred when Westland was performing as the parties had expressly agreed, and the breach constituted a breach of Plaintiff’s obligations in violation of contract and of the inherent covenant of good faith and fair dealing.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovering any damages or any other relief by reason of the failure of consideration that defeats the effectiveness of the contract between the parties.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a result of Plaintiff’s failure to conduct a reasonable inspection at the time of the initial loan and prior to Westland’s assumption of the loan agreements, Plaintiff failed to obtain reserves based on the same standard used in September 2019, and through no fault of Westland, the purposes recognized by both Plaintiff and Westland as the basis for the contract, which was a loan of funds, would be fundamentally frustrated and defeated. Accordingly, Plaintiff’s claims are without merit.

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EIGHTEENTH AFFIRMATIVE DEFENSE

The Complaint constitutes a pleading per Nevada Rule of Civil Procedure 11 and/or NRS 18.010(2)(b) which is submitted for an improper purpose; is not warranted by existing law or by a non-frivolous argument for an extension, modification, or reversal of existing law or the establishment of new law; contains allegations and other factual contentions without evidentiary support or which are likely not to have evidentiary support after a reasonable opportunity for further investigation or discovery; and/or which is brought without any basis and/or to harass Westland. The Complaint thus violates Rule 11 and/or NRS 18.010(2)(b).

NINETEENTH AFFIRMATIVE DEFENSE

It has been necessary for Westland to retain the services of an attorney to defend against Plaintiff’s claims, and Westland is thereby entitled to recover reasonable attorney’s fees and costs in defending this matter.

TWENTIETH AFFIRMATIVE DEFENSE

Westland affirmatively alleges that they have not had a reasonable opportunity to complete discovery and facts hereinafter may be discovered which may substantiate other affirmative defenses not listed herein. By this Answer, Westland waives no affirmative defenses and reserves the right to amend this Answer to insert any subsequently discovered affirmative defenses.

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WHEREFORE, Westland prays for judgment as follows:

- 1. That the Court make a judicial determination that Plaintiff is not entitled to the specific performance requested.
- 2. That Plaintiff takes nothing by its Complaint and that this action be dismissed in its entirety with prejudice;
- 3. For costs incurred in defense of this action;
- 4. For reasonable attorneys’ fees incurred in defense of this action; and
- 5. For such other relief as the Court may deem just and proper.

Dated: August 31, 2020 LAW OFFICES OF JOHN BENEDICT

/s/ John Benedict
John Benedict (NV Bar No. 5581)
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
Telephone: (702) 333-3770

Attorneys for Defendants/Counterclaimants
Westland Liberty Village, LLC & Westland Village
Square LLC

1 **COUNTERCLAIM**

2 Defendants/Counterclaimants, Westland Liberty Village, LLC (“Liberty LLC”) and
3 Westland Village Square, LLC (“Square LLC” and in combination with Liberty LLC,
4 “Counterclaimants” or “Westland”), through their attorneys of record, the Law Offices of John
5 Benedict, for their Counterclaim against Plaintiff/Counter-Defendant Federal National Mortgage
6 Association (“Fannie Mae”) allege as follows¹:

7 **I. STATEMENT OF THE CASE**

8 1. This case arises because Fannie Mae and its agents, including Grandbridge Real
9 Estate Capital, LLC (formerly Cohen Financial, Suntrust Bank, and Truist Bank, but for ease of
10 reference, regardless of the time period, it shall be referred to solely as “Grandbridge” or
11 “Servicer”),² have filed an improper Notice of Default and Intent to Sell (“NOD”), and have thus
12 caused improper non-judicial foreclosure proceedings to be commenced. This illegal conduct
13 *threatens to foreclose on Westland’s two multifamily housing communities (the “Properties”)*
14 *based on insupportable non-financial defaults*, which, despite multiple requests by Westland, have
15 never been substantiated, *and to be put simply, were manufactured, by Fannie Mae’s Servicer*. To
16 be clear, all monthly debt service payments have been timely made on this loan. In fact, since
17 February 2020, when Servicer abruptly ceased sending loan statements, Counterclaimants have
18 actually overpaid their monthly debt service obligation payments by over \$100,000. Moreover,
19 Counterclaimants have over \$20 million of equity in the Properties, and therefore, there is
20 absolutely no good faith basis the noticed foreclosure sales or for any assertion that Fannie Mae
21 or Grandbridge has a risk of loss of assets or the need for an appointment of a receiver.

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25 _____
26 ¹ As noted in the Third Party Complaint below, the general allegations contained in this Counterclaim also form the
27 general allegations for the causes of action asserted in the Third Party Complaint, and thus there are references to both
the Counterclaim-Defendant and the Third Party Defendant herein.

28 ² While the Servicer has had multiple name changes, including based on a merger with BB&T Bank, the employees
“servicing” this loan have continuously remained the same regardless of the name of the entity.

1 2. Instead, in reality, the Properties were only in a distressed condition, *prior* to
2 Westland's acquisition of the two properties in August 2018.³ Immediately before Westland
3 bought the Properties, the Properties were in disrepair, had management that misrepresented the
4 true occupancy rates at the properties, and had such a high rate of serious crimes that the Las Vegas
5 Metropolitan Police Department even sent a Notice and Declaration of Chronic Nuisance (the
6 "Nuisance Notice") to address the criminal activity *at that time*.⁴ Still, in late 2017, despite the
7 poor condition of the Properties, Delegated Underwriting and Servicing ("DUS") lender/loan
8 servicer Grandbridge⁵ made an initial loan on the properties. Upon information and belief that
9 loan never should have been made under Fannie Mae's lending guidelines.

10 3. Compounding matters, when the initial loan documents were signed, Grandbridge
11 used a local office of CBRE to conduct a property condition assessment ("PCA") and based
12 thereon, only required a combined total deposit of \$560,187.00 for the replacement reserve and
13 repair reserve accounts at both Properties, plus a small addition to the monthly debt service. In
14 August 2018, those reserve accounts were reduced to approximately \$143,000⁶ when the loan was
15 assumed by Westland, and the same monthly debt service additions were maintained. At that point
16 Grandbridge also made an explicit representation in its loan assumption letter that "after a thorough
17 review and analysis of the Proposed Borrower's financial and managerial capacity, the Assumption
18 has been approved on the following terms: . . . No change to the Replacement Reserve" and "No
19 Change to the Required Repair Reserve." The statement was either a negligent misrepresentation
20 based on absence of any adequate review, or made fraudulently to induce Westland to sign the
21

22 ³ Even when Fannie Mae owned the Properties during 2014 after a foreclosure, and the Properties were operated by a
23 receiver, the Properties were crime-ridden.

24 ⁴ The Nuisance Notice (Exhibit A) provides it was sent because the two properties had generated over 1,000 calls for
25 service to the police department in the six-month period between September 28, 2017 and April 4, 2018. Under
current ownership, the calls decreased to 5% of that amount by July 2019, and now rarely include violent offenses.

26 ⁵ A DUS lender is able to make loans without Fannie Mae's prior approval.

27 ⁶ While there was approximately an additional \$545,000 in escrow for the Liberty Property, those funds were
28 separately deposited insurance proceeds that were earmarked for use in rebuilding two apartment buildings that were
completely destroyed by fires in April 2018 and May 2018, after the initial the initial loans were taken out. Those
building have since been fully rebuilt, but Fannie Mae and Grandbridge continue to hold those funds.

1 assumption, *because only one year later*, Grandbridge sent its Notice of Demand seeking to have
2 Westland deposit another \$2.7 million into the reserves.

3 4. As such, in July 2019, Westland was taken completely by surprise, when after it
4 had: invested over \$20 million of its own cash to purchase the Properties, cleaned up the crime
5 problem, spent approximately \$1.8 million in capital improvements,⁷ installed competent
6 management, and acquired an adjacent parcel to further stabilize the Properties with local
7 community services,⁸ Grandbridge then improperly and without justification sought a PCA
8 conducted by the Texas-based f3, Inc. which employed a heightened standard. Grandbridge, and
9 Fannie Mae acting through Servicer, then bootstrapped that assessment into a demand to place an
10 additional \$2.7 million into the reserve accounts Servicer maintained. To be blunt, the PCAs
11 should not have even been performed, because after Westland's purchase of the Properties the
12 condition of the Properties improved, not deteriorated, which meant that the Servicer had no right
13 to demand a property assessment, let alone any subsequent demand for additional reserves based
14 on that PCA. Essentially, Westland's efforts to work with Fannie Mae and its Servicer in good
15 faith on this loan, have led to the first NOD that any Westland related entity has ever received,
16 even though: the real estate group has been in operation over 50 years, has a loan portfolio with
17 Fannie Mae amounting to approximately \$300 million, Westland's efforts have improved the lives
18 of the diverse working class families who reside in the over 10,000 multifamily housing units that
19 Westland serves in the Las Vegas market alone, and *Westland has timely made every monthly debt*
20 *service payment related to this loan*. As such, Westland was required to bring this Counterclaim
21
22

23 ⁷ Based on Westland's efforts and investment, the condition of the Properties only continues to improve. In the year
24 since the PCA occurred, Westland has poured over an *additional \$1.7 million* into capital expenditures and related
costs at the Properties.

25 ⁸ In July 2019, a Westland associated entity, AF Properties 2015 LLC, signed a purchase and sale agreement for the
26 adjacent retail properties at 3435-3455 N. Ellis Blvd. The parcels are largely undeveloped, with only a bar and liquor
27 store onsite, and based on our management team's assessment were a magnet that drew the criminal element to the
28 neighborhood. To neutralize the negative influence of that site, Westland purchased the parcel, and is working with
the Office of the County Commissioner to build local community-based resources at the site, which would serve the
Properties and be attractive to working class families. Proposals being investigated include building a police
substation and/or day care center.

1 and the Third Party Complaint below to prevent Fannie Mae's pending foreclosure and to preserve
2 the Properties along with the vibrant communities they have established.

3 **II. PARTIES**

4 5. Counterclaimant and Third Party Plaintiff, Westland Liberty Village, LLC dba
5 Liberty Village Apartment Homes ("Liberty LLC") is and at all times herein mentioned is a
6 Nevada Limited Liability Company.

7 6. Counterclaimant and Third Party Plaintiff, Westland Village Square, LLC dba
8 Village Square Apartment Homes ("Square LLC") is and at all times herein mentioned is a Nevada
9 Limited Liability Company.

10 7. Counter-Defendant, Federal National Mortgage Association, is a federally chartered
11 corporation ("Fannie Mae"), which at all times mentioned herein has done business in the State of
12 Nevada.

13 8. Third Party Defendant, Grandbridge Real Estate Capital, LLC, is a North Carolina
14 Limited Liability Company (formerly known as Cohen Financial, Suntrust Bank, and Truist Bank,
15 but for ease of reference, regardless of the time period, it shall be referred to solely as
16 "Grandbridge" or "Servicer"), which at all times mentioned herein has done business in the State
17 of Nevada.

18 9. All of the acts or failures to act herein were duly performed by and attributable to
19 Counter-Defendant or those acting on Counter-Defendant's behalf, who each acted as agent,
20 employee, or under the direction and/or control of Counter-Defendant. Said acts or failures to act
21 were within the scope of said agency and/or employment, and Counter-Defendant ratified the acts
22 and omissions by such parties, including third party defendant and its employees. Whenever and
23 wherever reference is made in this Complaint to any acts by Counter-Defendant, such allegations
24 and references shall also be deemed to mean the acts of Counter-Defendant and third-party
25 defendant acting individually, jointly or severally.

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1 **III. FACTS COMMON TO ALL CAUSES OF ACTION**

2 10. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
3 preceding paragraphs as if fully set forth herein.

4 **Westland's Real Estate Wherewithal**

5 11. By way of background, Amusement Industry, Inc., a California entity, and Las
6 Vegas Residential Properties, LLC, a Nevada limited liability company, are entities doing business
7 as Westland Real Estate Group, which was founded by an individual who has over 50 years of
8 experience in the Southern California and Las Vegas real estate markets.

9 12. During the 50 years Westland Real Estate Group has been in business, consistent
10 with lender required practices for risk allocation in the real estate industry, Westland has formed
11 numerous special purpose entities to own each separate large multifamily real property.

12 13. Cumulatively, the ownership of and entities associated with Westland Real Estate
13 Group, are characterized by the following traits:

- 14 a. Westland Real Estate Group associated entities focus on ownership of
15 properties in the Las Vegas and Southern California multifamily housing
16 markets.
- 17 b. Westland Real Estate Group associated entities own and manage approximately
18 100 multifamily residential properties and a limited number of manufactured
19 home sites, for a combined 13,000 residential units, *over 10,000 of which are*
20 *located at 38 different multifamily housing communities in all sections of the*
21 *Las Vegas metropolitan area.*
- 22 c. Westland Real Estate Group associated entities have approximately \$300
23 million of loans outstanding with Fannie Mae, and approximately \$800 million
24 of loans with all lenders.
- 25 d. *Prior to the present matter*, over the course of the 50 years that Westland Real
26 Estate Group has been in operation, its associated entities have had an
27 unblemished lending reputation, in that *no entity associated with Westland Real*
28

1 *Estate Group has ever had a notice of default issued on even a single mortgage*
2 *loan with any lender.*

- 3 e. The primary tenant base associated with Westland Real Estate Group are
4 working class families of modest means. With its major investments in these
5 communities, Westland is able to provide housing to tenants of all protected
6 classes and socio-economic groups, and build local communities.
- 7 f. The mission of Westland Real Estate Group entities is to provide those working
8 class families a safe, stable and pleasant living environment within its
9 communities. Unlike most real estate investors, Westland invests the time and
10 financial resources to do so.
- 11 g. In order to provide those safe and stable communities, Westland Real Estate
12 Group entities employ approximately 500 employees, such as onsite managers,
13 maintenance personnel, a dedicated “turn” team that rehabilitates vacant units,
14 accounting staff, marketing staff, leasing representatives, and call center
15 personnel, who have attained substantial experience in addressing the needs of
16 its tenant base. The majority of that staff is located in Las Vegas.
- 17 h. Westland Real Estate Group employees give the group a competitive advantage
18 by allowing the combined entities to function in a cost-effective manner, which
19 efficiencies cannot be replicated by other property management entities that
20 operate primarily by employing outside contractors.
- 21 i. Westland Real Estate Group’s associated entities and employees are able to
22 create safe and stable communities by their established productive relationships
23 with law enforcement officers and providers of specialized services.

24 14. In 2018, Liberty, LLC and Village, LLC were the two entities formed by the
25 principals of Westland Real Estate Group to hold the properties located at 4870 Nellis Oasis Lane,
26 Las Vegas, NV 89115, and 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

27 //

28 //

1 **The Westland Liberty Property & Square Property Ownership**

2 15. On or about August 29, 2018, Liberty LLC purchased the property commonly
3 known as 4870 Nellis Oasis Lane, Las Vegas, NV 89115 (the “Liberty Property”).

4 16. Liberty LLC recorded its deed with the Clark County Recorder’s Office as
5 Instrument No. 20180830-0002684 (the “Liberty Deed”) on or about August 30, 2018, thus Liberty
6 LLC is the legal title holder of the Liberty Property. (Exhibit B, Liberty Property Grant, Bargain
7 and Sale Deed, filed August 30, 2018.)

8 17. On or about August 29, 2018, Square LLC purchased the property commonly
9 known as 5025 Nellis Oasis Lane, Las Vegas, NV 89115 (the “Square Property” and together with
10 the Liberty Property, the “Properties”).

11 18. Square, LLC recorded its deed with the Clark County Recorder’s Office as
12 Instrument No. 20180830-0002651 (the “Square Deed”) on or about August 30, 2018, thus Square,
13 LLC is the legal title holder of the Square Property. (Exhibit C, Square Property Grant, Bargain
14 and Sale Deed, filed August 30, 2018.)

15 **The Shamrock Purchase**

16 19. Prior to Liberty LLC’s and Square LLC’s purchase of the Liberty Property and the
17 Square Property, the Properties were owned by Shamrock Properties VI LLC and Shamrock
18 Properties VII LLC (in combination the “Shamrock Entities”).

19 20. Upon information and belief, the Shamrock Entities acquired the properties in a
20 distressed condition from a lender Real Estate Owned (“REO”) sale held for the benefit of Fannie
21 Mae in 2014.

22 21. An REO is a lender owned property that the lender was unable to sell at a
23 foreclosure auction, which requires that lending bank or quasi-governmental entity (namely Fannie
24 Mae or Freddie Mac) to take ownership of the foreclosed property after it was unable to be sold
25 for an amount sufficient to cover the existing loan at a foreclosure sale.

26 22. It is commonly known in the real estate industry that lenders sell REO properties
27 “as is” and do not make repairs to the properties before the properties are sold, and on that basis
28 such properties are typically in disrepair.

23. Upon information and belief, typically when Fannie Mae conducts a REO sale, Fannie Mae will not agree to finance that property again.

24. At the time of initial purchase at the REO sale, the Liberty Property and the Square Property were not financed by the Shamrock Entities through Fannie Mae or Freddie Mac.

The Properties' Condition During the Shamrock Years

25. In 2017, the Liberty Property and the Square Property remained in a perilous position.

26. Upon information and belief, at the time of the initial purchase of the two properties, the owners of the Shamrock Entities had hoped to be able to capitalize on the close proximity of the properties to Nellis Air Force Base by becoming approved as a provider of off-base housing for military personnel.

27. However, the ownership group associated with the Shamrock Entities operated out of Indiana and Connecticut, that ownership group attempted to oversee the properties from those remote locations, and they were not invested in the Las Vegas community.

28. Further, the ownership and onsite staff employed by the Shamrock Entities utilized questionable business practices, including in the area of financial accounting.

29. By way of example, after Westland took over the two properties, it discovered that the financial information it received had improperly accounted for the occupancy rate at the properties. While at the time of purchase in August 2018, the Shamrock Entities touted the occupancy rate as 85%, the Shamrock Entities' financials failed to show the true occupancy rate by failing to report that a substantial portion of its "tenant" base was delinquent, failing to disclose that those tenants had not paid rent for several months, continuing to show those units as generating rental income that had not been paid, and not taking any action to evict those "tenants."

30. Upon information and belief, the Shamrock Entities provided the same financial misinformation regarding occupancy rates to Fannie Mae and its loan servicer.

31. Upon information and belief, the high levels of delinquencies at the properties were related to the utilization of questionable leasing practices, including a lax background check process that resulted in the Shamrock Entities accepting tenants with unacceptably high levels of

1 credit risk and/or those with unacceptable criminal records. Those practices were implemented to
2 further inflate occupancy rates but were counterproductive in that the processes resulted in the lack
3 of a safe, viable community for the qualified residents of the properties, which in turn resulted in
4 high turnover rates among qualified residents of the properties.

5 32. The Shamrock Entities were never able to operate the Properties as effective
6 communities, were never able to fully physically rehabilitate the properties, and were not able to
7 become an approved off-base housing provider for Nellis Air Force Base consistent with their
8 original plan.

9 33. Instead, during the Shamrock Entities ownership, the condition of the Properties
10 continued to deteriorate and the rate of crime at the Properties increased to precarious levels.

11 34. Upon information and belief, prior to Fannie Mae's ownership of the Properties in
12 2014, it was crime ridden and gang infested.

13 35. Upon information and belief, when Fannie Mae installed a receiver in 2014, the
14 receiver was unable to get rid of the criminal element at the Properties, and that criminal element
15 continued to plague the Properties until Westland purchased them.

16 36. In fact, by letter dated April 4, 2018, the Las Vegas Metropolitan Police
17 Department, sent the Shamrock Entities a Notice and Declaration of Chronic Nuisance (the
18 "Nuisance Notice"), based on the high rate of crime at the two properties, which included a high
19 rate of violent and serious criminal conduct. (Attached as Exhibit A, is the Letter of Matthew J.
20 Christian on behalf of Sherriff Joseph Lombardo, dated April 4, 2018.)

21 37. The Nuisance Notice states that it was sent because the two properties had
22 generated over 1000 calls for service to the police department in the six-month period between
23 September 28, 2017, and April 4, 2018. (Exhibit A at 2.)

24 38. Further, the Nuisance Notice noted that the calls generated at the two properties
25 included an alarming number of violent and serious offenses, such as "fights, assaults, batteries,
26 and illegal shootings" and stated that "[d]rugs, gangs, and sexual predators are also prevalent at
27 the Property." (Exhibit A at 2.)
28

1 39. The Nuisance Notice provided a “sample of recent events,” which recounted
2 conduct that frequently involved the use of firearms and dangerous weapons, and the letter noted
3 that “violent crime has been a continual problem at the Property. The lack of cooperation from
4 management and security is also a continual problem.” (Exhibit A at 3-6.)

5 40. Simply stated, the Shamrock Entities were never able to rehabilitate the Properties
6 as they had planned.

7 **Shamrock’s Exit Strategy & The Loan Agreements**

8 41. During early to mid-2017, recognizing their inability to rehabilitate the Properties,
9 the Shamrock Entities marketed the Liberty Property and the Square Property for sale.

10 42. However, the Shamrock Entities were unable to sell the two Properties.

11 43. As such, upon information and belief, the owners of the Shamrock Entities did the
12 next best thing, they shifted their focus to obtaining financing in an effort to remove their capital
13 investment in the Properties, until the Properties could be sold.

14 44. Upon information and belief, one of the owners of the Shamrock Entities had a
15 prior relationship with a division of SunTrust Bank known as Cohen Financial, which after several
16 name changes was later renamed Grandbridge Real Estate Capital, LLC.

17 45. Upon information and belief, based on that pre-existing relationship, during
18 November 2017, the Shamrock Entities were able to secure financing for seven years on a
19 \$29,000,000 loan on the Liberty Property (the “Liberty Loan”) and a \$9,366,000 loan on the
20 Square Property (the “Square Loan,” and in combination with the Liberty Loan, the “Loans”),
21 allowing the owners of the Shamrock Entities to cash out roughly \$38,000,000.

22 46. As the entity underwriting and servicing the Loans, Grandbridge has, at all times
23 mentioned herein, done business in the State of Nevada as a DUS lender and loan servicer for
24 Fannie Mae.

25 47. In relation to the “DUS Servicing and Underwriting platform,” Fannie Mae’s own
26 website states that “**25 DUS** lender partners are authorized to **underwrite, close, and deliver**
27 **loans** on our behalf. In exchange, Lenders and Fannie Mae **share the risk** on those loans” by
28 covering 1/3 of the credit risk. <https://www.fanniemae.com/powerofpartnershiparbor/index.html>

1 48. Further, information published by Fannie Mae states that “the DUS program grants
2 approved lenders the ability to underwrite, close, and sell loans on multifamily properties to Fannie
3 Mae without prior Fannie Mae review.”

4 49. Stated differently, Grandbridge, was able to make the Liberty Loan and the Square
5 Loan without Fannie Mae’s prior approval.

6 50. Upon information and belief, when making loans, DUS lenders are required to
7 follow Fannie Mae’s credit and underwriting criteria for loans, and the DUS lender is subject to
8 ongoing credit review and monitoring.

9 51. Upon information and belief, at the time that the loans were underwritten by
10 Grandbridge for the Shamrock Entities, the Liberty Property and Square Property did not meet
11 Fannie Mae’s credit and underwriting criteria, because, *inter alia*, the two properties had
12 excessively high crime rates,⁹ the Properties were subject to a prior Fannie Mae REO sale, the
13 income for the Properties was overstated.

14 **Grandbridge’s & Fannie Mae’s Reserve Requirements for the Shamrock Entities**

15 52. Additionally, to the extent that Fannie Mae and Grandbridge claim that the present
16 physical condition of the Properties requires a larger repair and/or replacement reserve deposit
17 based on Fannie Mae’s underwriting criteria, then the physical condition of the Properties in
18 November 2017 would also have violated Fannie Mae’s credit and underwriting criteria, and since
19 the condition of the Properties has improved, the initial funding of the loan to Grandbridge should
20 have required an even larger repair and/or replacement reserve deposit.

21 53. Upon information and belief, at the time of the November 2017 loan, Grandbridge
22 contracted to have a property condition assessment report prepared by CBRE for both properties.

23 54. At the Liberty Property, CBRE did not inspect every unit, but rather only made
24 “[r]epresentative observations” from 71 units at the 720 unit, 90 building property, and while
25 several units were found to be in poor condition, the comment to that section of the report was
26

27 ⁹ To be clear, as stated in Paragraph 36-39, the LVMPD’s letter was sent in response to conduct between September
28 28, 2017 through April 4, 2018, which means that the loans were underwritten while the high levels of crime related
to the Nuisance Notice were in process.

1 only “[n]o further action required.” (Exhibit D, CBRE Property Condition Assessment Report for
2 Liberty Village, dated August 8, 2017, at 5, 29-32.) Similarly, at the Square Property, CBRE’s
3 “[r]epresentative observations” were made from 41 units at the 409 unit, 7 building property, and
4 although several units were found to be in poor condition the report concluded there was “[n]o
5 further action required.” (Exhibit E, CBRE Property Condition Assessment Report for Village
6 Square, dated August 8, 2017, at 5, 29-30.)

7 55. Further, while the August 2017 Liberty report noted that “[t]he unit finishes
8 appeared in generally good to poor condition,” the report opined that maintenance could be
9 “addressed as part of unit turns, tenant request, or periodic inspections.” (Exhibit D, at 32.) This
10 was echoed by the August 2017 Square report that noted 13 of the 41 units inspected were
11 “undergoing renovation,” and that another 4 units were only in “fair condition,” but still the report
12 concluded that maintenance could be “addressed as part of unit turns, tenant request, or periodic
13 inspections.” (Exhibit E, at 29-31.)

14 56. As such, despite discrepancies being noted within the inspected units at the
15 Properties in the August 2017 reports, Grandbridge and Fannie Mae did not require any funds to
16 be immediately deposited into a reserve account for unit repairs. (Exhibit D, at 8-10; Exhibit E, at
17 8-10.)

18 57. Instead, aside from units that were considered “down units” related to an insurable
19 event, the Shamrock Entities were only required to supply a monthly deferred maintenance
20 payment for each unit, rather than an immediate reserve deposit. (Exhibit D, at 6, 8-10, 32; Exhibit
21 E, at 6, 8-10, 32.)

22 58. The amount of that monthly reserve deposit was based on a formulaic calculation
23 related to the depreciable life of various features of the multiple bedroom layouts at the Liberty
24 Property, such as appliances, paving, HVAC systems, and flooring, which resulted in a cost of
25 \$300 per unit/per annum, which was increased to \$354 per unit per annum when accounting for
26 inflation. (Exhibit D, at 6, 10.) The same formulaic calculation was conducted for the Square
27 Properties’ studio units, and resulted in a cost of \$210 per unit/per annum, which was increased to
28 \$248 per unit/per annum when accounting for inflation. (Exhibit E, at 6, 10.)

1 59. Based on the standard used during those inspections, it is clear that no reserve
2 deposit amounts were required for vacant units that needed to be “turned” for re-rental, including
3 those that were in need of repair or “undergoing renovations.”

4 60. Instead, the only reserve and repair escrow items that were required to be deposited
5 were items related to immediate substantial extra-ordinary property improvements, such as asphalt
6 repairs, façade repairs, balcony repairs, fire damage repairs, laundry room renovations, sport court
7 renovations, and pool equipment replacement. (Plaintiff’s Complaint, Ex. 1, page 117, 131, 133;
8 Plaintiff’s Complaint, Ex. 6, pages 117, 131 133, 149.)

9 61. Based on the use of that standard, for the Liberty Property, the Shamrock Entities
10 were only required to deposit a total of \$315,000 for the initial replacement reserve and \$165,635
11 for the initial repair reserve, and for the Square Property, the Shamrock Entities only deposited
12 \$85,091 for the repair reserve with no replacement reserve. (Plaintiff’s Complaint, Ex. 1, page
13 117, 131, 133; Plaintiff’s Complaint, Ex. 6, pages 117, 131 133, 149.) Stated differently, in order
14 to meet all of the repair and replacement reserve requirements at the time of the initial loan closing,
15 the Shamrock Entities were only required to place \$560,187.00 into the reserve accounts for both
16 Properties.

17 62. At the time of the initial loan closing, Grandbridge had an incentive to obtain the
18 smallest repair and replacement reserve requirements possible in order to increase its chance of
19 closing the loan with the Shamrock Entities, which would, in turn, generate initial underwriting
20 fees and continuing Servicer fees for itself, as well as business for Fannie Mae.

21 63. As such, Grandbridge, with the knowledge and consent of Fannie Mae, utilized
22 CBRE to perform the August 2017 PCA, despite that Grandbridge and Fannie Mae knew doing so
23 would result in minimal repair and replacement reserve requirements that were inadequate.

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27

28

1 **Westland's Purchase of the Properties & Loan Assumption**

2 64. Approximately one year after the CBRE inspections, and only nine months after
3 the initial loan closing, Westland completed its purchase of the Liberty Property and Square
4 Property on August 29, 2018.

5 65. Westland acquired the Liberty Property through Liberty LLC for \$44,300,000,
6 *including a \$15,300,000.00 cash deposit* from Westland's own funds and by assuming the
7 \$29,000,000 loan made by Grandbridge and Fannie Mae to the Shamrock Entities. (Exhibit F,
8 Purchase and Sale Agreement for Liberty Village, dated June 22, 2018, at Pages 4, Section 1.18 &
9 Page 5, Section 1.33.)

10 66. Westland acquired the Square Property through Square LLC for \$16,000,000.00,
11 *including a \$6,634,000.00 cash deposit* from Westland's own funds and by assuming the
12 \$9,366,000 loan made by Grandbridge and Fannie Mae to the Shamrock Entities. (Exhibit G,
13 Purchase and Sale Agreement for Village Square, dated June 22, 2018, at Page 4, Section 1.12 &
14 Page 5, Section 1.25.)

15 67. Prior to permitting Counterclaimants to assume the two loan agreements,
16 Grandbridge required the payment of a 1% loan assumption fee, amounting to \$290,000 and
17 \$93,660 respectively for the two Properties, as well as payment of all costs and expenses associated
18 with approving the assumption agreement. (Exhibit H, Assumption Closing Statement for Liberty
19 Village, dated August 29, 2018; Exhibit I, Assumption Closing Statement for Village Square, dated
20 August 29, 2018.)

21 68. One of the costs included on each closing statement was a \$435.00 charge for a
22 "property inspection invoice," which was far short of the fee that would normally be charged for
23 a full and accurate property condition assessment report, and far short of the approximately
24 \$30,000 fee for f3, Inc.'s PCA that Fannie Mae is now seeking reimbursement. (Exhibits H & I.)

25 69. While no legitimate property condition assessment report appears to have been
26 performed at the time of the assumption, based on Article 13.02(a)(3)(B) of the loan agreement,
27 Fannie Mae and Grandbridge had the ability to require another inspection to be performed at that
28 time, and to require that any transfer be conditioned on an additional transfer into the repair or

1 replacement reserves. (Plaintiff's Complaint, Ex. 1, pages 69-70, Section 13.02(a)(3)(B);
2 Plaintiff's Complaint, Ex. 6, pages 69-70, Section 13.02(a)(3)(B).)

3 70. Grandbridge and Fannie Mae simply failed to do so.

4 71. Instead, at the time the loans were assumed, no change was made to the
5 Replacement Reserve monthly payment and no additional Repair Reserve deposit was required.
6 As such, at that time, the total reserves for both Properties was \$143,319.30. (Exhibit J,
7 Assumption Approval Letter for Liberty Village, dated August 22, 2018, at 2, 5-7; Exhibit K,
8 Assumption Approval Letter for Village Square, dated August 22, 2018, at 2, 5-7.)

9 72. Further, Grandbridge recognized the repairs that had already been performed in the
10 nine months since the initial PCA, which resulted in the funds for the repair reserve account being
11 *reduced* to a de minimus amount of \$39,375 for both Properties, and Grandbridge maintained the
12 same monthly debt service payments to account for the depreciable items related to the
13 replacement reserves. (*Id.*)

14 73. At the time the loans were assumed, Grandbridge had access to both the Shamrock
15 Entities' and Westland's financial information, and based on that information, Grandbridge
16 realized that Westland possessed greater financial wherewithal and property management
17 experience.

18 74. Stated differently, Grandbridge knew Westland was a better borrower, and that
19 substituting a better borrower for the Shamrock Entities would decrease the risk associated with
20 the loan to the benefit of both itself and Fannie Mae.

21 75. As such, Grandbridge had an incentive to utilize the smallest repair and replacement
22 reserve requirements possible in order to increase its chance of completing the loan assumption
23 with Westland.

24 76. Completing the loan assumption from the Shamrock Entities to Westland resulted
25 in Grandbridge's generation of a 1% loan assumption fee of \$383,660 with nearly no effort from
26 Grandbridge.

1 77. In completing the loan assumption, Grandbridge was acting for the benefit of
2 Fannie Mae, by substituting a borrower on the loan, which stated in the simplest terms, had an
3 increased credit rating.

4 78. As such, Grandbridge, with the knowledge and consent of Fannie Mae, continued
5 to rely solely upon CBRE's August 2017 PCA, despite that Grandbridge and Fannie Mae knew
6 doing so would result in minimal repair and replacement reserve requirements.

7 79. Westland relied on Grandbridge's and Fannie Mae's actions in refraining from
8 increasing those reserves at the time of the loan assumption, which lead Westland to believe that
9 the same levels of reserve funding that had been required to that point would continue to be used
10 in the future, especially since the Loan Agreements limited adjustments to the reserves to expenses
11 of the same type that had been charged in the original loan documents.

12 80. Based on Westland's increased capital expenditure spending, no deterioration in
13 the condition of the Properties, other than ordinary wear and tear, has occurred since Westland's
14 assumption of the Loan Agreements.

15 **Westland's Rehabilitation of the Properties and Community Building**

16 81. Nearly immediately after it began managing the Properties, Westland realized that
17 the Properties were not in the condition that had been represented by the Shamrock Entities,
18 because the onsite tenants made unusual statements regarding the Shamrock Entities' practices at
19 the Properties.

20 82. Further, nearly contemporaneously with the closing, the Shamrock Entities had
21 produced a copy of electronic records that, once uploaded, it was discovered contained embedded
22 information related to historical data proving that the Shamrock Entities had overstated occupancy
23 numbers and presented misleading information on its delinquency balances.

24 83. Based on the voluminous amount of financial information, and the method that such
25 information is typically disclosed in a property sale, Westland did not immediately unravel the
26 Shamrock Entities improper accounting practices.

1 84. However, based on the method that financial delinquencies and occupancies are
2 reported to lenders, the Shamrock Entities misstated financials should have been detected by
3 Grandbridge and Fannie Mae.

4 85. At the time of due diligence or a real estate closing in Nevada, the industry practice
5 is that only limited financial statements, including a rent roll, will be provided to a purchaser, but
6 here the rent roll failed to show accurate levels of delinquencies by listing delinquent units as
7 income producing; however, based on their loan agreements, Fannie Mae and Servicer were
8 entitled to more detailed financial information that would account for those delinquencies unless
9 they were provided false information.

10 86. Upon determining the Shamrock Entities' improper accounting practices and
11 misrepresentations, Westland informed Fannie Mae, through Grandbridge, that the Shamrock
12 Entities' financials appeared inaccurate at the time it made its first quarterly financial report.

13 87. Westland made those disclosures knowing that it was required to incorporate a
14 portion of the Shamrock Entities financial information in order to produce the first quarterly
15 financial report, and on that basis, it wanted Grandbridge and Fannie Mae to know that it could
16 not ensure the complete reliability of that financial information.

17 88. Specifically, Westland advised Grandbridge and Fannie Mae that the Shamrock
18 Entities financials overstated occupancy rates at the Properties by approximately 10% from the
19 86% that had been reported and that the overstated occupancy rates resulted from the Shamrock
20 Entities' failure to evict tenants that had not paid rent for several months and failure to show tenants
21 that had not paid rent as delinquent.

22 89. Upon information and belief, the Shamrock Entities had an incentive to
23 misrepresent the true occupancy rates at the Properties for several reasons, including that:

- 24 a) a standard term in purchase and sale agreements, including the purchase and
25 sale agreement applicable to the sale of the Properties, requires a property seller
26 to restore all vacant units to rent ready condition and disclosing the true
27 occupancy rate would disclose that additional units were vacant,
28 b) processing evictions is costly in terms of time and money, and

1 c) the Shamrock Entities had misrepresented the true vacancy rate to Fannie Mae
2 and Grandbridge at the time the loan was initiated several months early in
3 November 2017, and continued to misrepresent that rate for the remainder of
4 the time that they owned the Properties.

5 90. Tellingly, when Westland purchased the Properties from the Shamrock Entities,
6 Shamrock provided that Westland could retain any of its local staff, but due to widespread issues
7 of incompetence and ethically questionable behavior, Westland was only able to retain 2 of
8 Shamrock's 20 employees that worked at the Properties. Further, based on Westland's experience,
9 a staff of 32 employees is required to handle the onsite operations at the Properties.

10 91. Additionally, in order to clean up the crime problems at the Properties, Westland
11 enforced a "no tolerance" crime policy, including by evicting tenants who were engaging in
12 criminal acts, offensive misconduct, or who received "red cards" from the Las Vegas Metropolitan
13 Police Department. The immediate fallout from evicting tenants causing these problems was that
14 the occupancy rate at the Properties fell further, at least temporarily, until more stable and law-
15 abiding tenants could be found and moved into the Properties.

16 92. The eviction of the individuals who failed to pay rent and who engaged in criminal
17 offenses was necessary to create a safe, stable community at the Properties for Westland's
18 responsible tenants.

19 93. Westland also utilized an elevated security guard presence at the Properties to
20 decrease the "fights, assaults, batteries, and illegal shootings, [d]rugs, gangs, and sexual predators"
21 that were "so prevalent at the Property" prior to Westland's ownership.

22 94. Specifically, to create a safer environment for the Properties' tenants, during the
23 slightly less than two years from the date of purchase through the present, Westland has paid a
24 total of \$1,573,600 to security guard providers that have, depending on the relevant time period,
25 continuously provided either three or four guards on a twenty-four hour basis consistent with the
26 needs of the Properties.

27 95. Westland implemented heightened background and credit check standards to
28 increase the likelihood that it was filling vacant units at the Properties with a quality tenant base.

1 96. Westland's efforts to create safe, viable communities for its working class family
2 residents were successful, because Westland was able to dramatically decrease the incidents of
3 crime at the Properties, decrease the number of violent and firearm related crimes at the Properties,
4 decrease the delinquency rates at the Properties, and improve the condition of the Properties for
5 the remaining tenants.

6 97. By way of example, shortly prior to Westland's purchase, the Nuisance Notice
7 recognized that over 1,000 calls were made to the Las Vegas Metropolitan Police Department over
8 a six month period of time, whereas by mid-2019, prior to the property condition assessment being
9 performed only 69 calls were received by the police department for the prior six months, and there
10 has been a corresponding decrease in the number of violent and firearm related offenses.

11 98. By July 2019, less than a year after the loan was assigned, Westland had caused
12 dramatic enhancements at the Properties, including replacing the criminal element with viable
13 tenants, hiring competent management, and investing \$1.8 million in capital improvements.

14 99. In fact, Westland's dramatic turnaround of the Properties has been recognized by
15 the Executive Director of the Nevada State Apartment Association and the County Commissioner.
16 (Exhibit L, Letter of Nevada State Apartment Association Executive Director, dated November
17 22, 2019; Exhibit M, Letter of County Commissioner, dated August 20, 2020.)

18 100. However, those long-term improvements came with a short-term cost related to the
19 financial profitability of the Properties resulting from a dramatic decrease in the occupancy rate
20 during the first few months that Westland operated the Properties.

21 101. Specifically, occupancy rates at the Properties bottomed out at 44% during July
22 2019.

23 102. Based on those decreased occupancy rates at the Properties, from the time of
24 Westland's acquisition through early 2020, the Properties were not even generating sufficient
25 income to pay the Properties' monthly debt service obligations.

26 103. When the Properties were not generating sufficient income between September
27 2018 through early 2020, Westland was required to invest several million dollars of its own funds
28 for the Properties to be able to meet their monthly debt service obligations and other obligations.

1 104. However, by early 2020 Westland’s efforts had begun to pay off financially as well,
2 because not only had the occupancy rate at the Properties risen to 61% in February 2020, but
3 Westland was able to obtain an increased rental rate for each renovated residential unit that
4 Westland had “turned” and made rent ready – or stated differently, *by January 2020 the Properties*
5 *were stabilized with a positive NOI, and by April 2020 they were meeting their monthly debt*
6 *service payments.*

7 105. Under Westland’s management, the occupancy rates have continued to increase by
8 the 3% per month figure Westland projected within its November 2019 strategic plan, and the
9 Properties currently have over an 80% occupancy rate as of August 2020. (Exhibit N, Westland
10 Strategic Improvement Plan for Liberty Village and Village Square, dated November 27, 2019.)

11 106. Coincidentally, the Properties’ current over 80% occupancy rate is nearly identical
12 to, but slightly higher than, the 77.7% *real* occupancy rate that existed at the Properties at the time
13 they were operated by the Shamrock Entities.

14 107. Even though the occupancy rates are nearly the same, the Properties are currently
15 far more profitable than under the Shamrock Entities ownership, because based on the higher
16 quality renovations that Westland performs when “turning” units, as well as Westland’s superior
17 screening of tenants, Westland has been able to implement significantly higher unit rents.

18 108. The Properties are now not only covering debt service but are now also generating
19 income in excess of operating expenses and improvement costs.

20 109. As such, Westland’s management has been able to restore the Properties, and is
21 now operating them at a high level of efficiency.

22 110. The efficient management that Westland has put in place at the Properties is
23 unlikely to be able to be replicated by an outside property management vendor, as Westland’s 32
24 onsite employees have developed an in-depth knowledge of the Properties.

25 111. Further, not only has Westland invested in the Properties themselves, but Westland
26 has also begun to strategically invest in the local community, in order to develop community-based
27 resources in the local area that will make the Properties attractive to hard-working families.

28

1 112. Specifically, shortly after Westland’s purchase of the Properties, its onsite
2 management reported that a liquor store and bar located on a parcel adjacent to the Square
3 Property, at 3435 North Nellis Boulevard, Las Vegas (the “Parcel”), were attracting a criminal
4 element to the neighborhood. (Exhibit O, Property Site Map [showing the location of the Parcel
5 in relation to Properties].)

6 113. Upon contacting the Parcel’s owners, Westland learned that the bar and liquor store
7 were then being under-managed, because the original owner had passed away and the Parcel was
8 under the supervision an out-of-state executor for an estate.

9 114. The bar and liquor store only occupied a small portion space on the Parcel.

10 115. Ultimately, when Westland’s efforts to have the administrator take a more active
11 role with the Parcel was ineffective, in January 2019, Westland offered to buy the Parcel, so that
12 it could oversee the businesses that would operate there, and could redevelop the site to improve
13 the community-based resources available to the Properties’ residents.

14 116. Westland signed a purchase and sale agreement for the Parcel on July 8, 2019, and
15 completed its purchase of the property in February 2020. (Exhibit P, Purchase and Sale Agreement
16 for 3435 N. Nellis Blvd., Las Vegas, dated July 8, 2019.)

17 117. Since completing the purchase in February 2020, Westland has been working with
18 the Office of the County Commissioner to develop community-based services at the Parcel.

19 118. Proposals for such services include a police substation and/or community day care
20 center.

21 119. Based on interactions with its tenants, Westland’s management staff has
22 determined that increasing such community-based services in the immediate vicinity of the
23 Properties would be attractive to the working class families that Westland serves.

24 120. Based not only on Westland’s investment in the Properties, but also in the local
25 community, Westland would be irreparably harmed, if a receiver is put in place.

26 //

27 //

1 **Grandbridge's Servicing of the Loans since the Assumption**

2 121. Upon information and belief, after Westland disclosed to Grandbridge and Fannie
3 Mae that the Shamrock Entities' financial statements failed to provide accurate occupancy rates
4 for the Properties, the loans and Grandbridge's underwriting came under greater scrutiny from
5 Fannie Mae.

6 122. Upon information and belief, Fannie Mae for the first time recognized that
7 Grandbridge's underwriting was insufficient and did not comply with Fannie Mae guidelines.

8 123. Upon information and belief, Fannie Mae for the first time recognized that the loan
9 had been underwritten despite it violating Fannie Mae's credit and underwriting criteria credit and
10 underwriting criteria, because, *inter alia*, the two properties had excessively high crime rates, the
11 properties were subject to a prior Fannie Mae REO sale, and the income for the Properties was
12 overstated.

13 124. Upon information and belief, Fannie Mae demanded for Grandbridge to either
14 provide additional reserve funding as security or for Grandbridge to obtain additional security from
15 the borrower on the Loans.

16 125. Upon information and belief, Grandbridge decided that it would push the obligation
17 onto Westland.

18 126. Based on the assumption agreement that Liberty LLC and Square LLC executed,
19 any effort by Grandbridge and/or Fannie Mae to adjust the deposits required from Westland had
20 to be administered consistent with the terms of the Multifamily Loan and Security Agreement
21 signed by the Shamrock Entities (the "Loan Agreements") for each Property.

22 **The Loan Agreements' Requirements for Adjustments to Deposits**

23 127. Section 13.02(a)(3) of the Loan Agreements governs *adjustments to deposits* and
24 permits such adjustments under only two limited circumstances: 1) after a property condition
25 assessment is performed on loans with a term that is over 10 years long; or 2) as a condition for a
26 transfer of either the underlying real property or an entity owning the real property. (Plaintiff's
27 Complaint, Ex. 1, pages 69-70, Section 13.02(a)(3); Plaintiff's Complaint, Ex. 6, pages 69-70,
28 Section 13.02(a)(3).)

1 128. Schedule B to the Loan Agreements shows that each of the loans at issue here has
2 loan terms lasting 84 months, or seven years, so Section 13.02(a)(3)(A) does not permit an
3 adjustment to the deposits. (Plaintiff's Complaint, Ex. 1, pages 69-70, Section 13.02(a)(3)(A), and
4 page 115, Schedule B [showing the 84 month loan term]; Plaintiff's Complaint, Ex. 6, pages 69-
5 70, Section 13.02(a)(3)(A), and page 115, Schedule B [showing the 84 month loan term].)

6 129. Even in the case of a ten-year loan, the PCA is not conducted until between the
7 sixth and ninth month of the tenth year, unless it is an affordable housing loan, which this is not.
8 (Id.)

9 130. Otherwise, an adjustment to the deposits may only be made as a condition for a
10 transfer of either the underlying real property or an entity owning the real property, but here no
11 such condition was presented at the time that the loans were assumed. (Plaintiff's Complaint, Ex.
12 1, pages 69-70, Section 13.02(a)(3)(B); Plaintiff's Complaint, Ex. 6, pages 69-70, Section
13 13.02(a)(3)(B).)

14 131. Fannie Mae and Grandbridge have failed to act in good faith by ignoring the explicit
15 contract term that governs when adjustments to the loans required deposits may be required from
16 the borrower.

17 132. Upon information and belief, the limitations on adjustments to the deposits exist as
18 a borrower protection, so that an unscrupulous servicer, such as Grandbridge, does not improperly
19 attempt to revise the deposit amounts after a loan has already been agreed upon by a borrower and
20 the borrower no longer has any recourse, because at that point the borrower would be subject to
21 additional costs and fees in order to arrange for alternative financing.

22 **The Loan Terms for Property Condition Assessments**

23 133. Additionally, the Loan Agreements specify that limitations apply on when a
24 Property Condition Assessment may be conducted. Such an assessment may only occur after
25 "Lender determines that the condition of the Mortgaged Property has deteriorated (ordinary wear
26 and tear excepted) since the Effective Date" of the loan. (Plaintiff's Complaint, Exhibit 1, page
27 39, Article 6.03(c).)

1 134. Neither Fannie Mae nor Grandbridge had any reasonable basis to determine that
2 the condition of the Properties had deteriorated in excess of ordinary wear and tear from the time
3 the loans were taken out in November 2017.

4 135. Moreover, neither Fannie Mae nor Grandbridge bothered to obtain a report or other
5 information establishing the condition of the Properties at the time the loans were assumed in late
6 August 2018, despite the Loan Agreements providing for such an assessment.

7 136. The failure to obtain such a report renders any assertion by Fannie Mae and/or
8 Grandbridge that the condition of either Property has deteriorated since the loan on the Properties
9 was assumed baseless and unsupportable.

10 137. Without a valid basis in the loan documents, in mid-2019, Grandbridge's
11 representatives, individually and as an agent/servicer for Fannie Mae, demanded access for a
12 property assessment by the Texas-based f3, Inc.

13 138. Moreover, Fannie Mae and Grandbridge knew that they were improperly seeking a
14 Property Condition Assessment report, because prior to conducting the property condition
15 assessment, during a phone call in July 2019, Grandbridge's Senior Vice President of Loan
16 Servicing and Asset Management Joe Greenhaw represented that Westland would not be required
17 to pay the cost of the assessment if Westland agreed to provide f3, Inc. PCA access to the
18 Properties, despite that the Loan Agreements provides a Property Condition Assessment will be
19 conducted "at Borrower's expense" when it is warranted by the Loan Agreements. (Plaintiff's
20 Complaint, Exhibit 1, page 39, Article 6.03(c).)

21 139. Mr. Greenhaw also represented that if any deficiencies were found, Westland would
22 only be required to provide a small addition to the reserve accounts, consistent with deferred
23 maintenance scheduling practices then in place, which would stretch the depositing of the cost of
24 any repairs required over the life of the loans.

25 140. Based on Mr. Greenhaw's representations, Westland provided f3, Inc. access to
26 conduct a property condition assessment.

1 141. Had Mr. Greenhaw, Grandbridge, or Fannie Mae been honest about their intentions,
2 Westland would not have provided access to f3, Inc. for a property condition assessment, because
3 there was no requirement to do so based on the Loan Agreements.

4 142. Upon information and belief, Fannie Mae and its servicers do not utilize f3, Inc. for
5 PCA reports issued before a loan closes, but f3, Inc. is one of their preferred vendors when Fannie
6 Mae and Grandbridge want a report to support a demand for additional repair and replacement
7 reserve funding.

8 143. Not surprisingly then, f3, Inc., provided a skewed and inflated assessment designed
9 to cover for Grandbridge's prior poor underwriting at the Properties.

10 144. The PCA resulted in those inflated values because f3, Inc. was employed to, and in
11 fact did, utilize a far different standard than the lenient standard employed by CBRE when it was
12 to Grandbridge's and Fannie Mae's benefit to have lower reserve numbers.

13 145. In contrast to CBRE, which inspected a random 10% of the units at each Property,
14 f3's inspections were consistent with a stated agenda by servicer Grandbridge and Fannie Mae.

15 146. f3 noted that it inspected 352 of the 720 units at the Liberty Property, which
16 amounted to 48.9% of the units, and 211 of the 409 units at the Square Property, which amounted
17 to 51.6% of the units, including nearly every vacant unit at both Properties. Consistent with
18 Grandbridge's design, the inspections were performed or replacement costs to serve as the basis
19 for an improper adjustment of reserve deposits. (Plaintiff's Complaint, Ex. 11, page 7 and 315.)

20 147. Further, in contrast to CBRE's depreciation schedule for the Liberty Property that
21 required \$300 per unit/per annum, which was increased to \$354 per unit per annum when
22 accounting for inflation (Exhibit D, at 6, 10), f3, Inc. recommended a monthly fee of \$406 per unit
23 per annum, which amounted to \$446 when accounting for inflation. (Plaintiff's Complaint, Ex.
24 11, pages 334.)

25 148. Likewise, in contrast to CBRE's depreciation schedule for the Square Property that
26 required \$210 per unit/per annum, which was increased to \$248 per unit per annum when
27 accounting for inflation (Exhibit E, at 6, 10), f3, Inc. recommended a monthly fee of \$312 per unit
28

1 per annum, which amounted to \$342 when accounting for inflation. (Plaintiff's Complaint, Ex.
2 11, page 23.)

3 149. For scheduled maintenance on the same depreciable items identified in two
4 inspections around a year apart there is no reason for the Liberty Property to have a \$92, i.e. 25.6%
5 increase in per door; or the Square Property to have a \$94, i.e. 37.9% increase per door. f3's
6 numbers increased despite the tens of thousands of dollars Westland had already invested in the
7 Properties to fix them up, particularly as units turned over. It is clear not only that f3 used a totally
8 different standard than the inspection report that was part of the inducement to have Westland
9 assume these non-performing loans from Shamrock, it is equally clear that f3 was given and
10 executed an agenda, and did not undertake an independent assessment of the Properties' condition.

11 150. Had the same standard been employed at the time of the loans' initial property
12 condition assessment, or during a property condition assessment at the time of the assumption, the
13 Shamrock Entities would have been responsible to pay those costs. And, if neither Grandbridge
14 nor Fannie Mae required an additional deposit from the Shamrock Entities at that time, then
15 Westland would have required either an adjustment to the purchase price that it paid Shamrock or
16 required Shamrock to fully fund the lender's adjustment to the reserve deposit. Had Westland
17 known it would be held to a higher standard after closing than Shamrock was helped to before and
18 during the assumption period, then these protections would have been a condition to completing
19 the loan assumption or Westland would not have completed the purchase and loan assumption at
20 all. Instead, Fannie Mae and Grandview changed the rules after the fact.

21 151. Based on the f3, Inc. assessment, a demand was made for Westland to deposit an
22 additional \$2,706,150.00 (\$1,507,098.00 for the Liberty Property and \$1,199,052.00 for the
23 Square Property) into reserves.

24 152. The f3, Inc. report identified those deposits as repair reserve items.¹⁰

25 ¹⁰ Upon information and belief, Grandbridge and Fannie Mae recognized that the physical conditions listed in the f3,
26 Inc. PCAs were not the types of items previously listed in the repair schedules, and on that basis at the time of default
27 attempted to recast those amount as an addition to the replacement reserve in the Notice of Default and Acceleration
28 of Note, despite that Grandbridge had specifically transferred funds from the interest bearing replacement reserve to
the non-interest bearing repair reserve. (Pl. Complaint, Exhibit 13, at page 1 [listing purported defaults]; cf. Pl.
Complaint, Exhibit 12, at page 2 [transferring funds to repair reserve escrow].)

1 153. When Westland objected and advised Fannie Mae and Grandbridge that their
2 actions seemed in bad faith because Westland had already spent \$1.8 million on capital
3 expenditures that improved the condition of the Property, which caused the condition of the
4 Properties to have improved not deteriorated, Defendants responded with a non-specific default
5 notice letter in December 2019.

6 154. And, even though Westland objected to placing those funds into reserve accounts
7 due to the fact that Grandbridge has routinely failed to respond to any reserve disbursement
8 request,¹¹ Westland has still performed the vast majority, if not all of the items identified in the
9 September 2019 PCA reports for both Properties over the course of the past year, and has continued
10 fully to perform on the loans.

11 155. As such, based on Fannie Mae's and Grandbridge's deceptive practices, it would
12 be improper to permit Fannie Mae and Grandbridge to continue to utilize the improperly
13 obtained f3, Inc. property condition assessment.

14 **The Loan Terms for Additional Lender Reserves and Replacements**

15 156. Additionally, instead of utilizing the applicable section of the Loan Agreements
16 dealing with adjustments to deposits, namely Article 13.02(a)(3), Fannie Mae and Grandbridge
17 asserted a default based on Section 13.02(a)(4) regarding insufficient funds in reserve accounts,
18 without clearly identifying the mechanism by which they assert that such an "increase in the
19 Replacement Reserve Account" is warranted.

20 157. The reason for the lack of clarity is simple, their demands for adjustments to the
21 deposits violate the Loan Agreements.

22 158. Specifically, Section 13.02(a)(4) is a vague catch-all section of the Loan
23 Agreements that deals with additional deposits for Replacement Reserves, Required Repairs,
24 Additional Lender Repairs, Additional Lender Replacements and Borrower Requested Repairs.

25 ¹¹ For instance, at the time of acquisition of the Properties, two buildings at Liberty Village were damaged by fires,
26 which rendered them complete losses. The insurance carrier issued joint checks for the nearly \$1 million that it cost
27 to restore those buildings. All of the funds from the carrier have been held by Grandbridge since that time, and
28 Westland funded the full cost to completely restore those buildings. Still, nothing was received in response to
Westland's reserve disbursement request, despite those funds being specifically earmarked for restoring the buildings
associated with the fires. As such, *Grandbridge has improperly withheld \$1 million of Westland's funds.*

1 159. Westland has not submitted any request for disbursements related to a “Borrower
2 Requested Repair,” which is a defined term in the Loan Agreements that only arises when a
3 borrower asks for a disbursement for items other than those appearing on a schedule, but with such
4 disbursement request it is clear that no such deposit is required from the Westland.

5 160. The Required Repairs Escrow was fully funded at the time the initial loan was
6 funded, no additional Required Repairs deposit was mandated at the time the loans were assumed,
7 and there was, and is, no basis for Fannie Mae to assert that the amount escrowed for such repairs
8 was insufficient because at the time of the loan assumption Fannie Mae and Grandbridge
9 recognized that all such repairs had been performed other than a \$9,375.00 reserve related to
10 refinishing the sport courts at the Liberty Property (Exhibit J, at 7; Exhibit K, at 7.)

11 161. Notably, the only cost remaining in the repair reserve, for sport court related repairs,
12 remains fully funded – specifically, \$9,375.00 remains in the Required Repair Escrow for that
13 purpose.

14 162. Likewise, Schedule 1 of each Loan Agreement, which defines “Additional Lender
15 Repairs” as “*repairs of the type listed on the Required Repair Schedule* but not otherwise identified
16 thereon . . . to keep the Mortgaged Property in good order and repair (ordinary wear and tear
17 excepted)” effectively prohibits any request for additional reserves, because Grandbridge and
18 Fannie Mae have admitted that no such repairs remained outstanding. (Plaintiff’s Complaint, Ex.
19 1, Schedule 1, page 93; Plaintiff’s Complaint, Ex. 6, Schedule 1, page 93. [emphasis added].)

20 163. Nonetheless, the PCA conducted by f3, Inc., demands a deposit of approximately
21 \$2.7 million dollars for “immediate repairs.”

22 164. \$1,908,760 of those “immediate repairs” were related to “turning” vacant
23 apartments into rent ready units, which was an expense that was clearly not addressed in any prior
24 schedule at the time of the initial loan or the assumption.

25 165. Instead, the prior report by CBRE stated that such costs were expected to be handled
26 in the ordinary course of business as opposed to part of the reserve process.

1 166. The remaining “repair” items either were not addressed in any schedule, or were of
2 a type that was addressed in the original replacement reserve schedule by an addition to the
3 monthly debt service charges.

4 167. As to deposits under the Replacement Reserve, it would be improper to require an
5 immediate deposit, because no immediate deposit was required for any such expense at the Square
6 Property either upon the initial closing of the loan or upon its assumption.

7 168. To now demand over one million dollars (\$1,000,000) of reserves for only the
8 Square Property related to such depreciable costs, on items such as roofs, boilers and turning
9 vacant units, after the passage of only one year seems disingenuous at best, and instead reveals
10 that a different condition standard is being used, apparently to cover up Grandview’s poor
11 underwriting of the loans from a weaker borrower (Shamrock) in the first place.

12 169. Of course changing the rules after closing a deal is not permitted. Here, using a
13 different standard is directly contrary to Schedule 1 of each Loan Agreement that defined the term
14 “Additional Lender Replacements” to mean “*replacements of the type listed on the Required*
15 *Replacement Schedule* but not otherwise identified thereon . . . to keep the Mortgaged Property in
16 good order and repair (ordinary wear and tear excepted).” (Plaintiff’s Complaint, Ex. 1, Schedule
17 1, page 93; Plaintiff’s Complaint, Ex. 6, Schedule 1, page 93. [emphasis added].)

18 170. Based on the depreciable schedule associated with such costs it is insupportable to
19 demand that the entire cost of such items would be advanced to the present. Rather, such costs are
20 naturally consistent with funding through inclusion on a monthly debt service obligation payment
21 designed to match the depreciation schedule of the underlying asset.

22 171. Likewise, deviating from the depreciation schedule agreed when the loans funded
23 is improper for both Properties, because the underlying depreciation schedules for the same assets
24 should not have changed, and did not change when Westland assumed the two loans.

25 172. Notably, each definition of additional repairs, additional replacements, and
26 conditions that justify performing a property condition assessment provides that “ordinary wear
27 and tear [is] excepted,” but the vast majority of the items Servicer seeks a deposit for are items
28

1 related to “ordinary wear and tear” within vacant units, which is thereby precluded by the
2 definitions contained in the Loan Agreements.

3 173. Additionally, Servicer’s demand is improper because the definitions for Additional
4 Lender Repair and Additional Lender Replacement are limited to repairs or replacements “of the
5 type listed” on the two schedules attached to the Loan Agreement.

6 174. However, even ignoring the language of the defined terms from the Loan
7 Agreement, it is clear that the amount included in the original schedules for the Liberty Property
8 and Square Property which totaled \$560,187.00, or 1.5% of the loan balance are not of the same
9 type or substantially equivalent to the additional reserve funding that Fannie Mae and Grandbridge
10 seek in the amount of \$2,706,150.00 or 7.05% of the loan balance, after only one year has passed,
11 and both Properties, by any objective measure are much improved and the collateral is much more
12 valuable than when Westland assumed the loans.

13 175. Perhaps even more alarming is that the figures for the calculation of monthly
14 reserve allocations payments changed dramatically as well. The monthly reserve allocations
15 should have remained the same if the same standard had been used.

16 176. As such, the factual circumstances evidence that Fannie Mae and Grandbridge’s
17 assertion of a default is baseless, because there is no demonstrable deterioration in the condition
18 of the Properties.

19 **The Abandoned Default**

20 177. Notably, this is not the only baseless default that Fannie Mae and Grandbridge have
21 made, because they also initially cited a default based on “Borrower’s [] failure to maintain the
22 Mortgage Property in accordance with Article 6 of the Loan Agreement.” (Ex. 13, page 1.)

23 178. However, if based on the failure to make repairs, that purported default was
24 disingenuous because Fannie Mae and Grandbridge never provided Westland an opportunity to
25 perform repairs, as contemplated by the Loan Agreements, prior to making their \$2.7 million
26 demand to place funds into escrow.

27 179. Upon information and belief, such an assertion of a default was in bad faith,
28 because Article 6 is six pages in length, and after Westland’s request for further information on

1 the purported default, including the identification of the section breached, neither Grandbridge nor
2 Fannie Mae ever provided any response.

3 180. Upon information and belief, Fannie Mae and Grandbridge have abandoned that
4 baseless claim, because it does not appear as a basis for relief in the Complaint.

5 **The Purported Default**

6 181. On or about October 18, 2019, Michael Woolf of Grandbridge forwarded a letter to
7 each Westland entity, which recounted that a Property Condition Assessment was performed on
8 September 9 through 11, 2019, and included “a schedule of needed repairs” as an attachment.

9 182. The letter stated that the various physical conditions at the Properties amounted to
10 Additional Lender Repairs and Additional Lender Replacements under the Loan Agreements, and
11 that Grandbridge would require Westland to “execute an Amendment to the Loan Agreement
12 reflecting the amendment and restatement of the” repair and replacement reserve schedules that
13 were attached to the Loan Agreement.

14 183. Based on that demand for Westland to execute new replacement and repair reserve
15 schedules, it was stated that Westland would need to deposit \$1,753,145 to the Liberty Property
16 repairs escrow account, and \$1,092,835.00 to the Square Property repairs escrow account.

17 184. Further, the letter noted that Grandbridge would be transferring 75% of the balance
18 from the interest bearing Replacement Reserve account balance to the non-interest bearing Repair
19 Reserve account.

20 185. Based on those transfers, Westland would be deprived of the interest that would
21 normally accrue to the \$246,047.00 transferred from Replacement Reserve at the Liberty Property
22 and to the interest normally accruing on the \$106,217 for the Square Property.

23 186. Grandbridge and/or Fannie Mae took those actions in bad faith.

24 187. On November 1, 2019, Westland requested an extension of time to consider the
25 request, so it could evaluate the PCA reports and formulate a response without interfering with
26 Jewish holidays.

27 188. Minutes later, Grandbridge and/or Fannie Mae refused this request for a little bit
28 more time.

1 189. On November 13, 2019, Westland contested the demand, noted that the requested
2 adjustments to the reserves was improper, and gave a list of reasons why. Westland also advised
3 that it would agree to engage in an open dialogue to attempt to obtain a resolution. (Exhibit Q,
4 Letter of John Hofsaess, dated November 13, 2019.)

5 190. In response to Westland's letter, prior to the November 18, 2019, deadline for a
6 deposit, Grandbridge stated that Westland would have to place the full amount of the requested
7 reserves into escrow or face a Default.

8 191. After Grandbridge refused to have any substantive conversation with Westland or
9 to extend its time to respond to the demand, Westland requested to speak directly with Fannie Mae
10 prior to November 18, 2019, but Westland did not receive any further response to its inquiry prior
11 to November 18, 2019.

12 192. After November 18, 2019, Fannie Mae and Grandbridge refused to have any
13 discussion of the proper amount of reserve funding unless Westland signed a pre-negotiation letter,
14 which would require Westland to admit to a default.

15 193. In an effort to pacify Grandbridge and Fannie Mae, on November 28, 2019,
16 Westland forwarded a letter containing Westland's Strategic Plan for the Properties, which
17 designated a budget for any outstanding repairs, and addressed that many of the requested repairs
18 had already been performed.

19 194. On or about December 21, 2019, Westland received a default letter, dated
20 December 17, 2019, with the above-referenced purported defaults.

21 195. On December 23, 2019, Westland submitted a letter to Fannie Mae's counsel
22 requesting additional details, including an identification of the specific sections of the loan
23 agreements that had been violated, but no response was ever received. (Exhibit R, Letter of John
24 Hofsaess, dated December 23, 2019.)

25 196. On January 6, 2020, after not having received a response to the December 23, 2019,
26 Westland again sought further clarification, but no clarifying response was ever received. (Exhibit
27 S, Letter of John Hofsaess, dated January 6, 2020.)
28

1 197. Instead, Fannie Mae and Grandbridge only forwarded a pre-negotiation letter with
2 unacceptable terms to even enter into a potential discussion of the proper amount of reserves.

3 198. When Westland requested that Grandbridge agree to make adjustments to the
4 draconian requirements of the pre-negotiation letter, Fannie Mae and Grandbridge refused.

5 199. Despite declaring a default on or about December 17, 2019, Grandbridge and
6 Fannie Mae continued to remove an ACH payment from Westland's account for the month of
7 January 2020.

8 200. In February 2020, in an apparent attempt to create a financial default, where no
9 such default previously existed, without prior notice, Grandbridge did not remove any ACH
10 payment for February 2020, as it had been doing for months, and as had been requested by
11 Grandview, and agreed to by Westland as its method of paying the loans each month.

12 201. When Westland realized the monthly debt service obligation payment was not
13 timely withdrawn on or about February 4, 2020, Westland contacted the loan servicer, requested a
14 billing statement, and the loan servicer's representative responded that a statement would be sent.

15 202. The loan servicer never responded further, nor did it provide any billing statement
16 as promised.

17 203. As such, on February 10, 2020, without any response from the loan servicer, Square
18 LLC issued a check for \$58,471.94, and Liberty LLC issued a check for \$180,621.79, which
19 approximated the amount of the last monthly debt service obligation payment plus 10%.

20 204. Every month since February 2020, Square LLC and Liberty LLC have forwarded
21 the loan servicer a check for \$58,471.94 and \$180,621.79 respectively to approximate the amount
22 of the last monthly debt service obligation payment plus 10%. The loan servicer has accepted
23 those funds, and legal counsel for the lender has confirmed receipt of each of those payments in a
24 series of non-waiver letters. (Exhibit T, Lender's counsel's Non-Waiver Letters, dated February
25 19, 2020 (February 2020 payment), March 11, 2020 (March 2020 payment), June 4, 2020 (April,
26 May & June 2020 payments) August 12, 2020 (July & August 2020 payments).)

27 205. On several occasions, after the October 2019 Notice of Demand, Westland has
28 attempted to discuss the proper amount of reserve funding related to the loans, but through counsel,

1 Grandbridge and/or Fannie Mae have refused to do so without attaching conditions that have in
2 effect operated as a poison pill, including that Westland pay for all costs associated with
3 Grandbridge's attempts to increase Westland's reserve deposits despite having no such rights in
4 the Loan documents.

5 206. For instance, in June 2020, Fannie Mae's counsel relayed that Fannie Mae would
6 agree to discuss the purported default and attempt to resolve the parties' dispute, but represented
7 that they would not do so without an update regarding the Properties' status, without counsel
8 being present, without Westland continuing to make monthly debt service payments, and without
9 Westland agreeing to pay all the costs and legal fees that Fannie Mae and Grandbridge had
10 incurred in conjunction with the improper default.

11 207. Westland responded by consenting to each of those terms, other than agreeing to
12 pay the costs and legal fees they were attempting to extract as an entrance fee to enter into a
13 discussion with Fannie Mae. Still, in June 2020, Fannie Mae responded that they would not agree
14 to meet without Westland agreeing to all four terms. On August 13, 2020, after Westland produced
15 over 2,300 pages of work orders showing the additional work that had been done at the Properties
16 between May 2019 and June 2020, Fannie Mae's counsel provided that he would request that
17 Fannie Mae meet without Westland agreeing to pay such cost and fees. On August 24, 2020,
18 Fannie Mae's counsel confirmed that they would not agree to a waiver of those costs and fees, and
19 stated that they would agree to meet only based on the application of Westland's excess monthly
20 debt service obligation payments, because Fannie Mae planned to apply those payments to costs
21 and fees.

22 208. Despite Westland fully paying its monthly debt service obligations on time, and its
23 continuing to make improvements at the Properties that render the purported default notice moot,
24 and further despite both Fannie Mae and Grandbridge knowing those facts to be true, on July 15,
25 2020, Fannie Mae's counsel illegally forwarded Westland a notice of default and election to sell
26 the Properties.

27 209. Based on the foregoing, Westland has had to respond with this legal filing, in order
28 to prevent and improper foreclosure and appointment of a receiver.

1 210. Westland's legal filings are necessary to prevent Fannie Mae and Grandbridge
2 from selling or foreclosing on the Property until Westland's claims are heard on the merits.

3 211. Without an injunction, Westland will be irreparably harmed by the loss of the
4 Properties, or control of the Properties to the extent a receiver is appointed.

5 212. Moreover, since Westland's purchase of the Properties, Westland has expended
6 significant additional funds and resources in relation to the Properties, in excess of \$3.5 million
7 in capital expense and related improvements alone, which would be lost by the foreclosure sale.

8 213. Finally, without Court intervention, approximately \$20,000,000 in equity
9 combined for the Properties will be lost via foreclosure.

10 **IV. COUNTERCLAIMS**

11 **a. FIRST CAUSE OF ACTION (BREACH OF CONTRACT – LIBERTY** 12 **LOAN – BY WESTLAND LIBERTY VILLAGE, LLC)**

13 214. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
14 preceding paragraphs as if fully set forth herein.

15 215. A valid assumption agreement was entered into between Liberty LLC, on the one
16 hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the
17 Assumption and Release Agreement.

18 216. The assumption agreement utilized the general provisions of the Multifamily Loan
19 and Security Agreement entered into between Liberty LLC's predecessor on the one hand, and
20 Fannie Mae and Grandbridge on the other hand, to specify the terms that would govern the parties'
21 practices for administration of the loan.

22 217. Upon information and belief, Grandbridge assigned its interests in a portion of the
23 Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer
24 on either the Loan agreement or a portion of the agreements that were signed by Liberty LLC's
25 predecessor, which obligations were assumed by Liberty LLC.

26 218. Separately, Grandbridge signed the closing statement, which conveyed its 1% loan
27 assumption fee as "Lender."
28

1 219. Grandbridge signed the Liberty Loan agreements, and the assumption agreement
2 with Westland, both on its own behalf and on behalf of Fannie Mae.

3 220. Liberty LLC has performed all of the duties and obligations required of it under the
4 terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan
5 payments and paying the 1% loan assumption fee.

6 221. Liberty LLC has performed all of the duties and obligations required of it under the
7 terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly
8 periodic loan payment and paying the 1% loan assumption fee.

9 222. To the extent that any duties or obligations required of Westland have not been
10 performed, such duties or obligations have been excused because of Grandbridge's and Fannie
11 Mae's non-performance of the Agreement.

12 223. Fannie Mae and Grandbridge have materially breached their agreement with
13 Liberty LLC by failing to require adequate reserves at the time of the initial loan, requesting and
14 performing an improper property condition assessment, utilizing that improper PCA to demand
15 and adjustment to reserve deposits, failing to disburse funds in response to reserve disbursement
16 requests, sending/filing improper notices, and generally violating the terms of the Multifamily
17 Loan and Security Agreement to the point that the administration has become so one-sided that
18 Liberty LLC had no option but to commence these proceedings.

19 224. That as a direct and proximate result of Fannie Mae's breach of contract, Liberty
20 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
21 determined at trial.

22 225. That it has been necessary for Liberty LLC to retain counsel to prosecute this action
23 by reason of which it is entitled to reasonable attorney's fees.

24 **b. SECOND CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE**
25 **LOAN – BY WESTLAND VILLAGE SQUARE, LLC)**

26 226. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
27 preceding paragraphs as if fully set forth herein.
28

1 227. A valid assumption agreement was entered into between Square LLC, on the one
2 hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the
3 Assumption and Release Agreement.

4 228. The assumption agreement utilized the general provisions of the Multifamily Loan
5 and Security Agreement entered into between Square LLC's predecessor on the one hand, and
6 Fannie Mae and Grandbridge on the other hand, to specify the terms that would govern the parties'
7 practices for administration of the loan.

8 229. Upon information and belief, Grandbridge assigned its interests in a portion of the
9 Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer
10 on either the loan agreement or a portion of the agreements that were signed by Square LLC's
11 predecessor, which obligations were assumed by Square LLC.

12 230. Separately, Grandbridge signed the closing statement, which conveyed its 1% loan
13 assumption fee as "Lender."

14 231. Grandbridge signed the Square Loan agreements, and the assumption agreement
15 with Westland, both on its own behalf and on behalf of Fannie Mae.

16 232. Square LLC has performed all of the duties and obligations required of it under the
17 terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan
18 payment and paying the 1% loan assumption fee.

19 233. Square LLC has performed all of the duties and obligations required of it under the
20 terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly
21 periodic loan payment and paying the 1% loan assumption fee.

22 234. To the extent that any duties or obligations required of Westland have not been
23 performed, such duties or obligations have been excused because of Grandbridge's and Fannie
24 Mae's non-performance of the Agreement.

25 235. Fannie Mae has materially breached its agreement with Square LLC by failing to
26 require adequate reserves at the time of the initial loan, requesting and performing an improper
27 property condition assessment, utilizing that improper PCA to demand and adjustment to reserve
28 deposits, failing to disburse funds in response to reserve disbursement requests, sending/filing

1 improper notices, and generally violating the terms of the Multifamily Loan and Security
2 Agreement to the point that the administration has become so one-sided that Square LLC had no
3 option but to commence these proceedings.

4 236. That as a direct and proximate result of Fannie Mae's breach of contract, Square
5 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
6 determined at trial.

7 237. That it has been necessary for Liberty LLC to retain counsel to prosecute this action
8 by reason of which it is entitled to reasonable attorney's fees.

9 **c. THIRD CAUSE OF ACTION (BREACH OF COVENANT OF GOOD**
10 **FAITH AND FAIR DEALING)**

11 238. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
12 preceding paragraphs as if fully set forth herein.

13 239. A valid and binding agreement was formed between Westland and Fannie
14 Mae/Grandbridge on each of the two separate sets of loan agreements.

15 240. Westland's agreements utilized the general provisions of the underlying loan
16 agreement entered into between Westland's predecessor and Fannie Mae/Grandbridge to specify
17 the terms that would govern the parties' practices for administration of the loan.

18 241. In every contract, including the loans between Westland and Fannie
19 Mae/Grandbridge, there exists in law an implied covenant of good faith and fair dealing.

20 242. Both prior to the loan assumption and after, Westland acted in good faith by paying
21 Fannie Mae/Grandbridge a 1% loan assumption fee under each agreement, providing Fannie
22 Mae/Grandbridge access to both the Liberty Property and the Square Property, paying for
23 substantial improvements at each of the Properties, improving the condition of each of the
24 Properties and their tenant base, providing confidential business documents to Fannie
25 Mae/Grandbridge, and continuously paying Westland's full loan payments on a timely basis even
26 after Fannie Mae/Grandbridge without prior notice suspended the automatic ACH payments the
27 parties had used as the agreed upon method of payment by Westland for the Loan.

1 243. Fannie Mae and Grandbridge wrongfully and deliberately took advantage of
2 Westland's good faith actions, by, *inter alia*, failing to perform all conditions, covenants and
3 promises required by them in accordance with the loans, including without limitation, altering the
4 standard that they would apply to a property condition assessment undertaken in July 2019 from
5 the standard used at the time the loan was assumed, telling Westland that they would cover the
6 cost of the July 2019 property condition assessments but then refusing to discuss the purported
7 default unless Westland paid those costs, making a demand that Westland deposit an additional
8 \$2,706,150.00 into escrow despite that the condition of its Properties had improved not
9 deteriorated since the assumption agreement was signed, and by each of these actions Fannie Mae
10 thereby breached the implied covenant of good faith and fair dealing inherent in the subject
11 agreement.

12 244. Grandbridge's actions were taken both on its own behalf as a Lender and/or
13 Servicer, and/or on behalf of Fannie Mae as its agent.

14 245. Wherefore Grandbridge and Fannie Mae did not act in good faith, that is, did not
15 perform its contract with each Counterclaimant in the manner reasonably contemplated by the
16 parties, so that each Counterclaimant has a remedy that goes beyond that of breach of the express
17 terms of their contract.

18 246. Grandbridge's and Fannie Mae's actions, misrepresentations, deception,
19 concealment, and breach of the covenant of good faith and fair dealing were done intentionally
20 with malice for the specific purpose of causing injury to Liberty LLC and Square LLC.

21 247. As a direct and proximate result of Fannie Mae's breach, each Counterclaimant has
22 suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

23 248. As a further direct and proximate result of Fannie Mae's breach, each
24 Counterclaimant has had to hire counsel to prosecute this matter by reason of which it is entitled
25 to reasonable attorney's fees.

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27 //

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1 **d. FOURTH CAUSE OF ACTION (DECLARATORY RELIEF)**

2 249. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
3 preceding paragraphs as if fully set forth herein.

4 250. A genuine justiciable controversy exists relevant to the rights and obligations herein
5 regarding Westland's obligations under each of the Loan Agreements, and whether Fannie Mae
6 and Grandbridge may demand that Westland deposit additional funds into reserve accounts.

7 251. The interests of Counterclaimants, on the one hand, and Fannie Mae and
8 Grandbridge on the other are adverse.

9 252. Specifically, the present dispute that resulted in a Notice of Default and Election to
10 Sell being sent by Fannie Mae is a dispute over the parties' interpretation of Article 13.02 of the
11 Loan Agreement related to adjustments to reserve funding and the related reserve administration
12 requirements, as well as Article 6.03 related to the conditions when property condition assessments
13 may be utilized.

14 253. Westland has a legally protectable interest in the two Properties.

15 254. These issues are ripe for judicial determination, because on or about October 18,
16 2019, Grandbridge served a Notice of Demand, both as Servicer/Lender, and on behalf of Fannie
17 Mae.

18 255. These issues are ripe for judicial determination, because on or about July 15, 2020,
19 Fannie Mae served Westland with a Notice of Default and Intent to Sell the Properties.

20 256. These issues are ripe for judicial determination, because on or about August 12,
21 2020, Fannie Mae filed a complaint seeking the appointment of a receiver to ouster Westland from
22 its Properties.

23 257. Westland seeks an order from this Court declaring that Article 13.02 and Article
24 6.03 are only implicated if the condition of the Properties has physically deteriorated, or impaired
25 the value of Fannie Mae's and Grandbridge's security, and that no additional reserve deposit is
26 needed.

27 258. Westland seeks an order from this Court declaring that Fannie Mae and/or
28 Grandbridge breached the terms of the two Loan Agreements by demanding a property condition

1 assessment, demanding the adjustment of reserve deposits without any proper basis, and filing a
2 NOD.

3 259. That it has been necessary for Westland to retain the services of legal counsel for
4 which Westland is entitled to recover such costs and expenses from Fannie Mae.

5 **e. FIFTH CAUSE OF ACTION (FRAUD IN THE INDUCEMENT)**

6 260. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
7 preceding paragraphs as if fully set forth herein.

8 261. That Westland entered into its Loan Agreement relying on Fannie Mae and
9 Grandbridge continuing to utilize the same standard for evaluating the condition of the Properties
10 that had been used at the origination of the Loan Agreements during late 2017, and at the time of
11 the loan assumption during the summer of 2018.

12 262. When Grandbridge forwarded documents regarding the loan assumption and loan
13 agreements to Westland, it did so not only on its own behalf, but also on behalf of Fannie Mae,
14 who advised Grandbridge to forward those documents to Westland with the intent that Westland
15 would be provided the loan assumption, loan agreements, and reserve schedules, and that Westland
16 would rely on those documents.

17 263. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
18 Fannie Mae to Liberty LLC that, “after a thorough review and analysis of the Proposed Borrower’s
19 [Liberty LLC’s] financial and managerial capacity, the Assumption has been approved on the
20 following terms: . . . No change to the Replacement Reserve monthly deposit or established
21 schedule identified on Exhibit B attached hereto; No Change to the Required Repair Reserve of
22 \$39,375.00 as identified in schedule on Exhibit C attached hereto . . .” (Exhibit J.) Further, Exhibit
23 C, Required Reserve Schedule, listed all items as completed, except for a \$9,375.00 holdback for
24 “Misc. Concrete and Fence Repairs. Sports Court Resurfacing” that was shown as having already
25 been fully funded. (Exhibit J, at 7.)

26 264. Further, by letter dated August 20, 2018, Grandbridge represented on behalf of
27 itself and Fannie Mae to Square LLC that, “after a thorough review and analysis of the Proposed
28 Borrower’s [Square LLC’s] financial and managerial capacity, the Assumption has been approved

1 on the following terms: . . . No change to the Replacement Reserve monthly deposit or established
2 schedule identified on Exhibit B attached hereto . . .” (Exhibit K.) Further, Exhibit C, Required
3 Repair Reserve Schedule, simply stated “N/A” indicating that no repair reserve was required for
4 that loan. (Exhibit K, at 7.)

5 265. Fannie Mae and Grandbridge knew that Westland relied upon the amounts and
6 types of conditions requiring reserve deposits when entering into the Loan Agreements.

7 266. That Fannie Mae and Grandbridge did not inform Westland that they planned to
8 seek additional reserves in order to induce Westland to consent to the Loan Agreements, to collect
9 the loan assumption fee from Westland, for Grandbridge to improve its own liquidity position with
10 Fannie Mae, to improve the creditworthiness of Fannie Mae’s loan portfolio, to attempt to
11 improperly generate additional fees and costs, and to improperly profit off of holding Westland’s
12 funds in a non-interest bearing escrow account.

13 267. That Fannie Mae does credit reviews and monitoring of Grandbridge’s lending
14 practices, and upon information and belief, that Fannie Mae determined that Grandbridge failed to
15 follow Fannie Mae’s credit and underwriting criteria for loans in underwriting the November 2017
16 loan.

17 268. Upon information and belief, that Fannie Mae required that Grandbridge obtain
18 additional security due to its poor underwriting, and thus Grandbridge had no intent to service the
19 Loan Agreements consistent with the documentation that was provided at the time of the August
20 2018 loan assumption.

21 269. That had Westland known that Fannie Mae and Grandbridge would require an
22 additional deposit of over \$2.7 million of additional reserve funding based on a loan balance of
23 approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a loan
24 with a seven year term, Counterclaimants would not have entered into the assumption agreement
25 and would have obtained alternative financing.

26 270. Westland reasonably relied upon the types of expenses contained in the repair and
27 replacement escrow accounts schedules, because Westland has entered into numerous loan
28

1 agreements previously, but on those loan agreements, the lender never requested any significant
2 adjusted reserve deposits.

3 271. Westland relied on Fannie Mae's material misstatements and omissions by paying
4 a 1% loan assumption fee, providing Fannie Mae access to the Property, paying for substantial
5 improvements at the Property, improving the condition of the Property and its tenant base,
6 providing Fannie Mae confidential business documents, and continuously paying loan payments.

7 272. As a result of Grandbridge's misrepresentations and concealments, on behalf of
8 itself and Fannie Mae, Westland was induced to enter into the assumption agreement with Fannie
9 Mae as lender and Grandbridge as servicer, which has damaged Westland.

10 273. As a direct and proximate result of Fannie Mae's misstatements and omissions,
11 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be proven
12 at trial, because, *inter alia*, this is the only default that Westland has ever suffered, it will impair
13 Westland's credit rating leading to long term higher borrowing costs, and it has impaired
14 Westland's ability to re-finance its Properties at a time when interest rates are at an all-time low.

15 274. By reason of the foregoing, Fannie Mae acted with oppression, fraud and malice,
16 and therefore, Westland is entitled to exemplary and punitive damages.

17 **f. SIXTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION AND**
18 **CONCEALMENT)**

19 275. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
20 preceding paragraphs as if fully set forth herein.

21 276. Grandbridge and Fannie Mae supplied information and made material
22 misrepresentations to Westland, including without limitation, as detailed above that adequate
23 reserve amounts had already been submitted, consistent with the schedules attached to the loan
24 assumption letters and documentation.

25 277. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
26 Fannie Mae to Westland that, it conducted "a thorough review and analysis of the Proposed
27 Borrower's financial and managerial capacity" before approving the assumption.
28

1 278. Upon information and belief, Grandbridge negligently misrepresented that it
2 conducted an adequate review when setting the reserve amounts in August 2018, prior to Westland
3 signing the loan assumption, because a short one (1) year later, it requested an additional \$2.7
4 million be placed into escrow with no deterioration of the Properties.

5 279. The information and representations made by Grandbridge and Fannie Mae was
6 false, in that unbeknownst to Westland they knew the loan did not have sufficient security, and
7 that there was a substantial likelihood they would attempt to seek additional reserves.

8 280. Grandbridge and Fannie Mae supplied the information and made the
9 representations to induce Westland to rely upon it, to act or refrain from acting in reliance upon it,
10 and to have Westland enter into the assumption agreement.

11 281. Grandbridge and Fannie Mae owed Westland a duty not to make material
12 misrepresentations.

13 282. Westland justifiably relied upon the information Grandbridge and Fannie Mae
14 provided.

15 283. As a direct and proximate result of Fannie Mae's misstatements and omissions,
16 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be proven
17 at trial, because, *inter alia*, this is the only default that Westland has ever suffered and it will impair
18 Westland's credit rating and leading to long term higher borrowing costs, and it has impaired
19 Westland's ability to re-finance its Properties at a time when interest rates are at an all-time low.

20 **g. SEVENTH CAUSE OF ACTION (CONVERSION)**

21 284. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
22 preceding paragraphs as if fully set forth herein.

23 285. Grandbridge processed all reserve reimbursement payment requests, both on behalf
24 of Fannie Mae, and for its own benefit.

25 286. Westland has submitted several prior reserve reimbursement requests that have
26 gone unanswered by Grandbridge, including before its November 2019 demand for additional
27 reserve funding.

28

1 287. Westland and its predecessor submitted funds related to two fire insurance claims
2 to Grandbridge, which earmarked funds were to be held in escrow until the two fire-damaged
3 building were rebuilt.

4 288. The fire-damaged buildings were completely rebuilt with Westland's funds.

5 289. Westland has submitted reserve disbursement requests for the release of those
6 funds, and other reserve disbursement requests for work that was completed, each of which was
7 accompanied by invoices, proof of payment, and documentation showing approval of all required
8 permits, but Grandbridge has failed to respond to those requests.

9 290. As such, Fannie Mae has wrongfully exerted dominion over Westland's personal
10 property, including, without limitation, the funds that Grandbridge is holding in reserve accounts,
11 that were earmarked for reconstruction of two fire damaged buildings at the Liberty Property, and
12 Grandbridge has thereby wrongly converted the funds to their own use and benefit.

13 291. Fannie Mae's continued dominion over Westland's personal property was
14 unauthorized and inconsistent with Westland's property rights.

15 292. Fannie Mae's dominion over Westland's personal property deprived Westland of
16 all of their property rights relating thereto.

17 293. Fannie Mae's acts constitute conversion.

18 294. As a direct and proximate result of Fannie Mae's conversion, Westland has suffered
19 damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

20 295. Further, due to the wanton, malicious, and intentional conduct of Fannie Mae,
21 Westland is entitled to an award of exemplary and punitive damages against Fannie Mae.

22 296. Fannie Mae knew that by refusing to return the converted proceeds after just
23 demand, Borrowers would have to hire counsel to have those funds returned. Thus, it was
24 foreseeable that Borrowers would incur attorney's fees as special damages. Borrowers have
25 incurred these fees and request same as part of their special damages for conversion.

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1 **h. EIGHTH CAUSE OF ACTION (INJUNCTIVE RELIEF)**

2 297. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
3 preceding paragraphs as if fully set forth herein.

4 298. On or about July 15, 2020, two NODs were filed against the Liberty Property and
5 the Square Property and served on Westland.

6 299. Upon information and belief, in Nevada, the typical period for a foreclosure sale to
7 occur after a borrower receives a NOD is 120 days.

8 300. As Westland has made all debt service payments, and complied with the terms of
9 the Loan Agreements, the Properties rightfully belong to Westland.

10 301. Fannie Mae and Grandbridge are attempting to utilize Nevada's non-judicial
11 foreclosure process to improperly seize and sell Westland's Liberty Property and Square Property.

12 302. Real property is a unique asset, and on that basis, in the event that a wrongful
13 foreclosure sale occurs, Westland will suffer extreme hardship and actual and impending
14 irreparable loss and damage.

15 303. Westland has no adequate or speedy remedy at law to prevent the sale of the
16 Properties, and injunctive relief is therefore Westland's only means for securing relief.

17 304. Westland is likely to succeed in this lawsuit on the merits of its claims.

18 305. Based on the foregoing, Westland is entitled to temporary restraining orders and
19 preliminary and permanent injunctive relief to preserve the status quo, to mitigate its damages, and
20 to prevent further irreparable injury to Westland, including, without limitation by: (a) enjoining
21 Fannie Mae and/or Grandbridge from any further attempts to foreclose on the Properties related to
22 their baseless requests to adjust the reserve deposits, and (b) enjoining Fannie Mae and/or
23 Grandbridge from any further attempts to coerce Westland into providing additional reserves or to
24 pay for the expenses related to the default that Grandbridge manufactured.

25 306. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
26 improper demands to adjust reserves, their filing of the NOD, and the filing of their Complaint
27 seeking appointment of a receiver, Westland has had to hire counsel to prosecute this matter by
28 reason of which it is entitled to reasonable attorney's fees.

1 **i. NINTH CAUSE OF ACTION (EQUITABLE RELIEF/RESCISSION/**
2 **REFORMATION)**

3 307. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
4 preceding paragraphs as if fully set forth herein.

5 308. On or about August 29, 2018, Westland entered into two assumption agreements
6 for the loans applicable to the Liberty Property and the Square Property.

7 309. Prior to signing the assumption, Grandbridge individually, and on behalf of Fannie
8 Mae, forwarded Westland a loan assumption agreement letter, which contained the terms under
9 which it would permit Westland's assumption of the Liberty Loan and Square Loan.

10 310. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
11 Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed Borrower's
12 [Liberty LLC's] financial and managerial capacity, the Assumption has been approved on the
13 following terms: . . . No change to the Replacement Reserve monthly deposit or established
14 schedule identified on Exhibit B attached hereto; No Change to the Required Repair Reserve of
15 \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.) Further, Exhibit
16 C, Required Reserve Schedule, listed all items as completed, except for a \$9,375.00 holdback for
17 "Misc. Concrete and Fence Repairs. Sports Court Resurfacing" that was shown as having already
18 been fully funded. (Exhibit J, at 7.)

19 311. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
20 Fannie Mae to Square LLC that, "after a thorough review and analysis of the Proposed Borrower's
21 [Square LLC's] financial and managerial capacity, the Assumption has been approved on the
22 following terms: . . . No change to the Replacement Reserve monthly deposit or established
23 schedule identified on Exhibit B attached hereto . . ." (Exhibit K.) Further, Exhibit C, Required
24 Repair Reserve Schedule, simply stated "N/A" indicating that no repair reserve was required for
25 that loan. (Exhibit K, at 7.)

26 312. When the loan assumption agreements were signed, the above-referenced Required
27 Repair Reserve Schedule and Required Replacement Reserve Schedule, for each Property, were
28 specifically included as part of the assumption agreement.

1 313. The statements made by Grandbridge, on behalf of itself and on behalf of Fannie
2 Mae, were either false or amounted to a mutual mistake by both parties, because Grandbridge and
3 Fannie Mae later attempted to obtain additional reserve payments in excess of the schedules that
4 were provided to Westland, and those requests for additional reserve deposits included requests to
5 deposit \$2.7 million of funds related to physical conditions that were not of the same type or
6 category as the expenses included in the schedules.

7 314. In making those statements, Fannie Mae and Grandbridge knew that Westland
8 would rely upon the amounts and types of conditions requiring reserve deposits when entering into
9 the Loan Agreements, and intended for Westland to do so, to ensure that the loans would close.

10 315. Westland did rely on the amounts and types of conditions requiring reserve deposits
11 that were listed in the schedules attached to the loan assumption letters, and as such Westland
12 justifiably relied upon the information Grandbridge and Fannie Mae provided.

13 316. If Grandbridge or Fannie Mae would have had f3 or other inspection company
14 perform a PCA as thorough and with the same criteria before the assumption as it did a year later,
15 and told Westland that an additional reserve deposit would be required, then Westland would have
16 demanded that the Shamrock Entities met the additional reserve funding requirement prior to
17 agreeing to assume the loan, that the terms of the purchase and/or loan assumption be amended,
18 and/or other relief from the Shamrock Entities, Fannie Mae and/or Grandbridge, and without such
19 relief, would not have entered into the two assumption agreements.

20 317. As such, to the extent that that a finding is made that the loan agreements would
21 permit Grandbridge and Fannie Mae to demand additional reserve deposits, then the loan
22 documents should be reformed consistent with the statements contained in the loan assumption
23 letters and its attached reserve schedules due to irregularities in assumption process amounting to
24 fraud, unfairness or oppression, and if not reformed, other appropriate equitable relief to rectify
25 the inequities and unfairness of this situation, and if not, then rescinded altogether.

26 318. Based on the foregoing, Westland is entitled to reformation, other equitable relief,
27 or rescission of the loan agreements consistent with Grandbridge's and Fannie Mae's statements
28 that no additional reserve deposits were required for the loans.

1 319. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
2 improper demands to adjust reserves and related actions, Westland has had to hire counsel to
3 prosecute this matter and obtain reformation of the loan documents by reason of which it is entitled
4 to reasonable attorney's fees.

5 **WHEREFORE**, Counterclaimants pray for judgment against Counterclaim-Defendant, as
6 follows:

- 7 1. For declaratory relief acknowledging that no default has occurred and that
- 8 Counterclaim-Defendant improperly sought a property condition assessment;
- 9 2. For injunctive relief, including without limitation, precluding any non-judicial
- 10 foreclosure against either the Liberty Property or the Square Property;
- 11 3. For equitable relief as demanded herein;
- 12 4. For compensatory damages in excess of \$15,000;
- 13 5. For punitive damages;
- 14 6. For prejudgment interest at the statutory rate;
- 15 7. For attorney's fees and costs of suit herein including as special damages for
- 16 conversion; and
- 17 8. For such other relief as the Court deems appropriate.

18 Dated: August 31, 2020

LAW OFFICES OF JOHN BENEDICT

19 /s/ John Benedict

20 John Benedict (NV Bar No. 5581)

21 2190 E. Pebble Road, Suite 260

22 Las Vegas, NV 89123

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24 *Attorneys for Defendants/Counterclaimants/Third*
25 *Party Plaintiffs Westland Liberty Village, LLC &*
26 *Westland Village Square LLC*
27
28

THIRD PARTY COMPLAINT

Defendants/Counterclaimants/Third Party Plaintiffs, Westland Liberty Village, LLC (“Liberty LLC”) and Westland Village Square, LLC (“Square LLC” and in combination with Liberty LLC, “Counterclaimants” or “Westland”), through their attorneys of record, the Law Offices of John Benedict, for their Third Party Complaint against Grandbridge Real Estate Capital, LLC (formerly Cohen Financial, Suntrust Bank, and Truist Bank, but for ease of reference, regardless of the time period, it shall be referred to solely as “Grandbridge” or “Servicer”)¹² hereby incorporate in full all allegations contained in Section I, Statement of Case, Section II, Parties, and Section III, Facts Common to all Causes of Action, as asserted above in the Counterclaim, and assert the following causes of action against Grandbridge as follows and maintaining the numbering from the Counterclaim for ease of reference:

V. CLAIMS FOR RELIEF

a. FIRST CAUSE OF ACTION (FOR BREACH OF CONTRACT – LIBERTY LOAN – BY WESTLAND LIBERTY VILLAGE, LLC)

320. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

321. A valid assumption agreement was entered into between Liberty LLC, on the one hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the Assumption and Release Agreement.

322. The assumption agreement utilized the general provisions of the Multifamily Loan and Security Agreement entered into between Liberty LLC’s predecessor on the one hand, and Fannie Mae and Grandbridge on the other hand, to specify the terms that would govern the parties’ practices for administration of the loan.

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¹² While the Servicer has had multiple name changes, including based on a merger with BB&T Bank, the employees “servicing” this loan have continuously remained the same regardless of the name of the entity.

1 323. Upon information and belief, Grandbridge assigned its interests in a portion of the
2 Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer
3 on either the loan agreement or a portion of the agreements that were signed by Liberty LLC's
4 predecessor, which obligations were assumed by Liberty LLC.

5 324. Separately, Grandbridge signed the closing statement, which conveyed its 1% loan
6 assumption fee as "Lender."

7 325. Grandbridge signed the Liberty Loan agreements, and the assumption agreement
8 with Westland, both on its own behalf and on behalf of Fannie Mae.

9 326. Liberty LLC has performed all of the duties and obligations required of it under the
10 terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan
11 payment and paying the 1% loan assumption fee.

12 327. Liberty LLC has performed all of the duties and obligations required of it under the
13 terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly
14 periodic loan payment and paying the 1% loan assumption fee.

15 328. To the extent that any duties or obligations required of Westland have not been
16 performed, such duties or obligations have been excused because of Grandbridge's and Fannie
17 Mae's non-performance of the Agreement.

18 329. Grandbridge has materially breached its agreement with Liberty LLC by failing to
19 require adequate reserves at the time of the initial loan, requesting and performing an improper
20 property condition assessment, utilizing that improper PCA to demand and adjustment to reserve
21 deposits, failing to disburse funds in response to reserve disbursement requests, sending/filing
22 improper notices, and generally violating the terms of the Multifamily Loan and Security
23 Agreement to the point that the administration has become so one-sided that Liberty LLC had no
24 option but to commence these proceedings.

25 330. That as a direct and proximate result of Grandbridge's breach of contract, Liberty
26 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
27 determined at trial.

28

1 331. That it has been necessary for Liberty LLC to retain counsel to prosecute this action
2 by reason of which it is entitled to reasonable attorney's fees.

3 **b. SECOND CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE**
4 **LOAN – BY WESTLAND VILLAGE SQUARE, LLC)**

5 332. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
6 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

7 333. A valid assumption agreement was entered into between Square LLC, on the one
8 hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the
9 Assumption and Release Agreement.

10 334. The assumption agreement utilized the general provisions of the Multifamily Loan
11 and Security Agreement entered into between Liberty Square LLC's predecessor on the one hand,
12 and Fannie Mae and Grandbridge on the other hand, to specify the terms that would govern the
13 parties' practices for administration of the loan.

14 335. Upon information and belief, Grandbridge assigned its interests in a portion of the
15 Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer
16 on either the loan agreement or a portion of the agreements that were signed by Square LLC's
17 predecessor, which obligations were assumed by Square LLC.

18 336. Separately, Grandbridge signed the closing statement, which conveyed its 1% loan
19 assumption fee as "Lender."

20 337. Grandbridge signed the Square Loan agreements, and the assumption agreement
21 with Westland, both on its own behalf and on behalf of Fannie Mae.

22 338. Square LLC has performed all of the duties and obligations required of it under the
23 terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan
24 payment and paying the 1% loan assumption fee.

25 339. Square LLC has performed all of the duties and obligations required of it under the
26 terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly
27 periodic loan payment and paying the 1% loan assumption fee.
28

1 340. To the extent that any duties or obligations required of Westland have not been
2 performed, such duties or obligations have been excused because of Grandbridge's and Fannie
3 Mae's non-performance of the Agreement.

4 341. Grandbridge has materially breached its agreement with Square LLC by failing to
5 require adequate reserves at the time of the initial loan, requesting and performing an improper
6 property condition assessment, utilizing that improper PCA to demand and adjustment to reserve
7 deposits, failing to disburse funds in response to reserve disbursement requests, sending/filing
8 improper notices, and generally violating the terms of the Multifamily Loan and Security
9 Agreement to the point that the administration has become so one-sided that Square LLC had no
10 option but to commence these proceedings.

11 342. That as a direct and proximate result of Grandbridge's breach of contract, Square
12 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
13 determined at trial.

14 343. That it has been necessary for Square LLC to retain counsel to prosecute this action
15 by reason of which it is entitled to reasonable attorney's fees.

16 **c. THIRD CAUSE OF ACTION (BREACH OF COVENANT OF GOOD**
17 **FAITH AND FAIR DEALING – BY BOTH THIRD PARTY PLAINTIFFS)**

18 344. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
19 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

20 345. A valid and binding agreement was formed between Westland and Fannie
21 Mae/Grandbridge on each of the two separate sets of loan agreements.

22 346. Westland's agreements utilized the general provisions of the underlying loan
23 agreement entered into between Westland's predecessor and Fannie Mae/Grandbridge to specify
24 the terms that would govern the parties' practices for administration of the loan.

25 347. In every contract, including the loans between Westland and Fannie
26 Mae/Grandbridge, there exists in law an implied covenant of good faith and fair dealing.

27 348. Both prior to the loan assumption and after, Westland acted in good faith by paying
28 Fannie Mae/Grandbridge a 1% loan assumption fee under each agreement, providing Fannie

1 Mae/Grandbridge access to both the Liberty Property and the Square Property, paying for
2 substantial improvements at each of the Properties, improving the condition of each of the
3 Properties and their tenant base, providing confidential business documents to Fannie
4 Mae/Grandbridge, and continuously paying Westland's full loan payments on a timely basis even
5 after Fannie Mae/Grandbridge suspended the automatic ACH payments the parties had used
6 without prior notice.

7 349. Grandbridge wrongfully and deliberately took advantage of Westland's good faith
8 actions, by, *inter alia*, failing to perform all conditions, covenants and promises required under the
9 Loan Agreements, including without limitation, altering the standard that they would apply to a
10 property condition assessment undertaken in July 2019 from the standard used at the time the loan
11 was assumed, telling Westland that they would cover the cost of the July 2019 property condition
12 assessments but then refusing to discuss the purported default unless Westland paid those costs,
13 making a demand that Westland deposit an additional \$2,706,150.00 into escrow despite that the
14 condition of its Properties had improved not deteriorated since the assumption agreement was
15 signed, and by each of these actions Grandbridge and Fannie Mae thereby breached the implied
16 covenant of good faith and fair dealing inherent in the subject agreement.

17 350. Grandbridge's actions were taken both on its own behalf as a Lender and/or
18 Servicer.

19 351. Wherefore Grandbridge did not act in good faith, that is, did not perform its contract
20 with each Third Party Plaintiff in the manner reasonably contemplated by the parties, so that each
21 Third Party Plaintiff has a remedy that goes beyond that of breach of the express terms of their
22 contract.

23 352. Grandbridge's actions, misrepresentations, deception, concealment, and breach of
24 the covenant of good faith and fair dealing were done intentionally with malice for the specific
25 purpose of causing injury to Liberty LLC and Square LLC.

26 353. As a direct and proximate result of Grandbridge's breach, each Third Party Plaintiff
27 has suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

28

1 354. As a further direct and proximate result of Grandbridge's breach, each Third Party
2 Plaintiff has had to hire counsel to prosecute this matter by reason of which it is entitled to
3 reasonable attorney's fees.

4 **d. FOURTH CAUSE OF ACTION (DECLARATORY RELIEF)**

5 355. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
6 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

7 356. A genuine justiciable controversy exists relevant to the rights and obligations herein
8 regarding Westland's obligations under each of the Loan Agreements, and whether Grandbridge
9 may demand that Westland deposit additional funds into reserve accounts.

10 357. The interests of Third Party Plaintiffs, on the one hand, and Grandbridge on the
11 other are adverse.

12 358. Specifically, the present dispute that resulted in a Notice of Default and Election to
13 Sell being sent by Fannie Mae is a dispute over the parties' interpretation of Article 13.02 of the
14 Loan Agreement related to adjustments to reserve funding and the related reserve administration
15 requirements, as well as Article 6.03 related to the conditions when property condition assessments
16 may be utilized.

17 359. Westland has a legally protectable interest in the two Properties.

18 360. These issues are ripe for judicial determination, because on or about October 18,
19 2019, Grandbridge served a Notice of Demand, both as Servicer/Lender, and/or on behalf of
20 Fannie Mae.

21 361. These issues are ripe for judicial determination, because on or about July 15, 2020,
22 Fannie Mae served Westland with a Notice of Default and Intent to Sell Westland's Properties.

23 362. These issues are ripe for judicial determination, because on or about August 12,
24 2020, Fannie Mae filed a complaint seeking the appointment of a receiver to ouster Westland from
25 its Properties.

26 363. Westland seeks an order from this Court declaring that Article 13.02 and Article
27 6.03 are only implicated if the condition of the Properties has physically deteriorated, or impaired
28

1 the value of Fannie Mae's and Grandbridge's security, and that no additional reserve deposit is
2 needed.

3 364. Westland seeks an order from this Court declaring that Fannie Mae and/or
4 Grandbridge breached the terms of the two Loan Agreements by demanding a property condition
5 assessment, demanding the adjustment of reserve deposits without any proper basis, and filing a
6 NOD.

7 365. That it has been necessary for Westland to retain the services of legal counsel for
8 which Westland is entitled to recover such costs and expenses from Grandbridge.

9 **e. FIFTH CAUSE OF ACTION (FRAUD IN THE INDUCEMENT)**

10 366. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
11 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

12 367. That Westland entered into its Loan Agreement relying on Fannie Mae and
13 Grandbridge continuing to utilize the same standard for evaluating the condition of the Properties
14 that had been used at the origination of the Loan Agreements during late 2017, and at the time of
15 the loan assumption during the summer of 2018.

16 368. When Grandbridge forwarded documents regarding the loan assumption and loan
17 agreements to Westland, it did so not only on its own behalf, but also on behalf of Fannie Mae,
18 who advised Grandbridge to forward those documents to Westland with the intent that Westland
19 would be provided the loan assumption, loan agreements, and reserve schedules, and that Westland
20 would rely on those documents.

21 369. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
22 Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed Borrower's
23 [Liberty LLC's] financial and managerial capacity, the Assumption has been approved on the
24 following terms: . . . No change to the Replacement Reserve monthly deposit or established
25 schedule identified on Exhibit B attached hereto; No Change to the Required Repair Reserve of
26 \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.) Further, Exhibit
27 C, Required Reserve Schedule, listed all items as completed, except for a \$9,375.00 holdback for
28

1 “Misc. Concrete and Fence Repairs. Sports Court Resurfacing” that was shown as having already
2 been fully funded. (Exhibit J, at 7.)

3 370. Further, by letter dated August 20, 2018, Grandbridge represented on behalf of
4 itself and Fannie Mae to Square LLC that, “after a thorough review and analysis of the Proposed
5 Borrower’s [Square LLC’s] financial and managerial capacity, the Assumption has been approved
6 on the following terms: . . . No change to the Replacement Reserve monthly deposit or established
7 schedule identified on Exhibit B attached hereto . . .” (Exhibit K.) Further, Exhibit C, Required
8 Repair Reserve Schedule, simply stated “N/A” indicating that no repair reserve was required for
9 that loan. (Exhibit K, at 7.)

10 371. Grandbridge knew that Westland relied upon the amounts and types of conditions
11 requiring reserve deposits when entering into the Loan Agreements.

12 372. Grandbridge did not inform Westland that they planned to seek additional reserves
13 in order to induce Westland to consent to the Loan Agreements, to collect the loan assumption fee
14 from Westland, for Grandbridge to improve its own liquidity position with Fannie Mae, to improve
15 the creditworthiness of Fannie Mae’s loan portfolio, to attempt to improperly generate additional
16 fees and costs, and to improperly profit off of holding Westland’s funds in a non-interest bearing
17 escrow account.

18 373. That Fannie Mae does credit reviews and monitoring of Grandbridge’s lending
19 practices, and upon information and belief, that Fannie Mae determined that Grandbridge failed to
20 follow Fannie Mae’s credit and underwriting criteria for loans in underwriting the November 2017
21 loan.

22 374. Upon information and belief, that Fannie Mae required that Grandbridge obtain
23 additional security due to its poor underwriting, and thus Grandbridge had no intent to service the
24 Loan Agreements consistent with the documentation that was provided at the time of the August
25 2018 loan assumption.

26 375. That had Westland known that Fannie Mae and Grandbridge would require an
27 additional deposit of over \$2.7 million of additional reserve funding based on a loan balance of
28 approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a loan

1 with a seven year term, Counterclaimants would not have entered into the assumption agreement
2 and would have obtained alternative financing.

3 376. Westland reasonably relied upon the types of expenses contained in the repair and
4 replacement escrow accounts schedules, because Westland has entered into numerous loan
5 agreements previously, but on those loan agreements, the lender never requested any significant
6 adjusted reserve deposits.

7 377. Westland relied on Fannie Mae's material misstatements and omissions by paying
8 a 1% loan assumption fee, providing Fannie Mae access to the Property, paying for substantial
9 improvements at the Property, improving the condition of the Property and its tenant base,
10 providing Fannie Mae confidential business documents, and continuously paying loan payments.

11 378. As a result of Grandbridge's misrepresentations, Westland was induced to enter
12 into the assumption agreement with Fannie Mae as lender and Grandbridge as servicer, which has
13 damaged Westland.

14 379. As a direct and proximate result of Grandbridge's misstatements and omissions,
15 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be proven
16 at trial, because, *inter alia*, this is the only default that Westland has ever suffered, it will impair
17 Westland's credit rating leading to long term higher borrowing costs, and it has impaired
18 Westland's ability to re-finance its Properties at a time when interest rates are at an all-time low.

19 380. By reason of the foregoing, Grandbridge acted with oppression, fraud and malice,
20 and therefore, Westland is entitled to exemplary and punitive damages.

21 **f. SIXTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION AND**
22 **CONCEALMENT)**

23 381. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
24 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

25 382. Grandbridge supplied information and made material misrepresentations to
26 Westland, including without limitation, as detailed above that adequate reserve amounts had
27 already been submitted, consistent with the schedules attached to the loan assumption letters and
28 documentation.

1 383. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
2 Fannie Mae to Westland that, it conducted “a thorough review and analysis of the Proposed
3 Borrower’s financial and managerial capacity” before approving the assumption.

4 384. Upon information and belief, Grandbridge negligently misrepresented that it
5 conducted an adequate review when setting the reserve amounts in August 2018, prior to Westland
6 signing the loan assumption, because a short one (1) year later, it requested an additional \$2.7
7 million be placed into escrow with no deterioration of the Properties.

8 385. The information and representations made by Grandbridge was false, in that
9 unbeknownst to Westland they knew the loan did not have sufficient security, and that there was
10 a substantial likelihood they would attempt to seek additional reserves.

11 386. Grandbridge supplied the information and made the representations to induce
12 Westland to rely upon it, to act or refrain from acting in reliance upon it, and to have Westland
13 enter into the assumption agreement.

14 387. Grandbridge owed Westland a duty not to make material misrepresentations.

15 388. Westland justifiably relied upon the information Grandbridge provided.

16 389. As a direct and proximate result of Grandbridge’s misstatements and omissions,
17 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be proven
18 at trial, because, *inter alia*, this is the only default that Westland has ever suffered and it will impair
19 Westland’s credit rating and leading to long term higher borrowing costs, and it has impaired
20 Westland’s ability to re-finance its Properties at a time when interest rates are at an all-time low.

21 **g. SEVENTH CAUSE OF ACTION (INTENTIONAL INTERFERENCE WITH**
22 **CONTRACT)**

23 390. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
24 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

25 391. To the extent that Grandbridge is not found to be a party to the assumption
26 agreements and/or the loan agreements, this cause of action is pleaded in the alternative against it
27 by both Third Party Plaintiffs.
28

1 392. Based on Westland's financial disclosures at the time of the loan assumption,
2 Grandbridge knew Westland Real Estate Group is a privately held real estate company with a
3 sizable portfolio of properties, and approximately \$800 million in loans outstanding.

4 393. Each of the loans underlying that are part of that \$800 million loan portfolio is a
5 written contractual agreement. Upon information and belief, Grandbridge knows these contracts
6 and lending arrangements exist.

7 394. Further, Grandbridge knew that \$300 million of Westland's loans are outstanding
8 with Fannie Mae, and that it is economically advantageous for Westland to have access to lender
9 funds in order to refinance its properties.

10 395. Grandbridge committed intentional acts intended or designed to disrupt the
11 contractual loan agreements that Westland has with Fannie Mae, and Westland's ability to
12 refinance those loan agreements with Fannie Mae.

13 396. Grandbridge knew that by manufacturing the purported default, Fannie Mae would
14 blacklist Westland, by placing a "lending hold" on any Westland loan, which would have the effect
15 of limiting, delaying, and/or disrupting Westland's ability to refinance a loan with Fannie Mae.

16 397. Grandbridge manufactured the Default in an attempt to put financial pressure on
17 Westland, despite that it knew it would cause disruption to Westland's business, and preclude it
18 from obtaining favorable rates from one of only two primary lenders in the multifamily housing
19 loan market, and upon information and belief, Grandbridge intended to cause harm to the
20 contractual relationship between Westland and Fannie Mae.

21 398. There was, and continues to be, actual disruption of the written loan agreements
22 that Westland has with Fannie Mae, as Grandbridge's actions have in fact resulted in Westland
23 being placed on Fannie Mae's blacklist, which has caused Westland harm.

24 399. As a direct and proximate result of Fannie Mae's breach, Westland has suffered
25 damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

26 400. By reason of the foregoing, Grandbridge acted with oppression, fraud and malice,
27 and therefore, Westland is entitled to exemplary and punitive damages in excess of \$15,000.
28

1 **h. EIGHTH CAUSE OF ACTION (CONVERSION)**

2 401. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
3 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

4 402. Westland has submitted several prior reserve reimbursement requests that went
5 unanswered by Grandbridge, including before its November 2019 demand for additional reserve
6 funding.

7 403. Westland and its predecessor submitted funds related to two fire insurance claims
8 to Grandbridge, which earmarked funds were to be held in escrow until the two fire-damaged
9 building were rebuilt.

10 404. The fire-damaged buildings were completely rebuilt with Westland's funds.

11 405. Westland has submitted reserve disbursement requests for the release of those
12 funds, and other reserve disbursement requests for work that was completed, each of which was
13 accompanied by invoices, proof of payment, and documentation showing approval of all required
14 permits, but Grandbridge has failed to respond to those requests.

15 406. As such, Grandbridge has wrongfully exerted dominion over Westland's personal
16 property, including, without limitation, the funds that Grandbridge is holding in reserve accounts,
17 that were earmarked for reconstruction of two fire damaged buildings at the Liberty Property, and
18 Grandbridge has thereby wrongly converted the funds to their own use and benefit.

19 407. Grandbridge's continued dominion over Westland's personal property was
20 unauthorized and inconsistent with Westland's property rights.

21 408. Grandbridge's dominion over Westland's personal property deprived Westland of
22 all of their property rights relating thereto.

23 409. Grandbridge's acts constitute conversion.

24 410. As a direct and proximate result of Grandbridge's conversion, Westland has
25 suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

26 411. Further, due to the wanton, malicious, and intentional conduct of Grandbridge,
27 Westland is entitled to an award of exemplary and punitive damages against Grandbridge.
28

1 412. Grandview knew that by refusing to return the converted proceeds after just
2 demand, Borrowers would have to hire counsel to have those funds returned. Thus, it was
3 foreseeable that Borrowers would incur attorney's fees as special damages. Borrowers have
4 incurred these fees and request same as part of their special damages for conversion.

5 **i. NINTH CAUSE OF ACTION (INJUNCTIVE RELIEF)**

6 413. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
7 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

8 414. On or about July 15, 2020, two NODs that were filed against the Liberty Property
9 and the Square Property and served on Westland.

10 415. Upon information and belief, in Nevada, the typical period for a foreclosure sale to
11 occur after a borrower receives a NOD is 120 days.

12 416. As Westland has made all debt service payments, and complied with the terms of
13 the Loan Agreements, the Properties rightfully belong to Westland.

14 417. Fannie Mae and Grandbridge are attempting to utilize Nevada's non-judicial
15 foreclosure process to improperly seize and sell Westland's Liberty Property and Square Property.

16 418. Real property is a unique asset, and on that basis, in the event that a wrongful
17 foreclosure sale occurs, Westland will suffer extreme hardship and actual and impending
18 irreparable loss and damage.

19 419. Westland has no adequate or speedy remedy at law to prevent the sale of the
20 Properties, and injunctive relief is therefore Westland's only means for securing relief.

21 420. Westland is likely to succeed in this lawsuit on the merits of its claims.

22 421. Based on the foregoing, Westland is entitled to temporary restraining orders and
23 preliminary and permanent injunctive relief to preserve the status quo, to mitigate its damages, and
24 to prevent further irreparable injury to Westland, including, without limitation by: (a) enjoining
25 Fannie Mae and/or Grandbridge from any further attempts to foreclose on the Properties related to
26 their baseless requests to adjust the reserve deposits, and (b) enjoining Fannie Mae and/or
27 Grandbridge from any further attempts to coerce Westland into providing additional reserves or to
28 pay for the expenses related to the default that Grandbridge manufactured.

1 422. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
2 improper demands to adjust reserves, their filing of the NOD, and the filing of their Complaint
3 seeking appointment of a receiver, Westland has had to hire counsel to prosecute this matter by
4 reason of which it is entitled to reasonable attorney's fees.

5 **j. TENTH CAUSE OF ACTION (EQUITABLE RELIEF/RESCISSION/
6 REFORMATION)**

7 423. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
8 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

9 424. On or about August 29, 2018, Westland entered into two assumption agreements
10 for the loans applicable to the Liberty Property and the Square Property.

11 425. Prior to signing the assumption, Grandbridge individually, and on behalf of Fannie
12 Mae, forwarded Westland a loan assumption agreement letter, which contained the terms under
13 which it would permit Westland's assumption of the Liberty Loan and Square Loan.

14 426. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
15 Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed Borrower's
16 [Liberty LLC's] financial and managerial capacity, the Assumption has been approved on the
17 following terms: . . . No change to the Replacement Reserve monthly deposit or established
18 schedule identified on Exhibit B attached hereto; No Change to the Required Repair Reserve of
19 \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.) Further, Exhibit
20 C, Required Reserve Schedule, listed all items as completed, except for a \$9,375.00 holdback for
21 "Misc. Concrete and Fence Repairs. Sports Court Resurfacing" that was shown as having already
22 been fully funded. (Exhibit J, at 7.)

23 427. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
24 Fannie Mae to Square LLC that, "after a thorough review and analysis of the Proposed Borrower's
25 [Square LLC's] financial and managerial capacity, the Assumption has been approved on the
26 following terms: . . . No change to the Replacement Reserve monthly deposit or established
27 schedule identified on Exhibit B attached hereto . . ." (Exhibit K.) Further, Exhibit C, Required
28

1 Repair Reserve Schedule, simply stated "N/A" indicating that no repair reserve was required for
2 that loan. (Exhibit K, at 7.)

3 428. When the loan assumption agreements were signed, the above-referenced Required
4 Repair Reserve Schedule and Required Replacement Reserve Schedule, for each Property, were
5 specifically included as part of the assumption agreement.

6 429. The statements made by Grandbridge, on behalf of itself and on behalf of Fannie
7 Mae, were either false or amounted to a mutual mistake by both parties, because Grandbridge and
8 Fannie Mae later attempted to obtain additional reserve payments in excess of the schedules that
9 were provided to Westland, and those requests for additional reserve deposits included requests to
10 deposit \$2.7 million of funds related to physical conditions that were not of the same type or
11 category as the expenses included in the schedules.

12 430. In making those statements, Fannie Mae and Grandbridge knew that Westland
13 would rely upon the amounts and types of conditions requiring reserve deposits when entering into
14 the Loan Agreements, and intended for Westland to do so, to ensure that the loans would close.

15 431. Westland did rely on the amounts and types of conditions requiring reserve deposits
16 that were listed in the schedules attached to the loan assumption letters, and as such Westland
17 justifiably relied upon the information Grandbridge and Fannie Mae provided.

18 432. If Grandbridge or Fannie Mae would have had f3 or another inspection company
19 perform a PCA as thorough and with the same criteria before the assumption as it did a year later,
20 and told Westland that an additional reserve deposit would be required, then Westland would have
21 demanded that the Shamrock Entities met the additional reserve funding requirement prior to
22 agreeing to assume the loan, that the terms of the purchase and/or loan assumption be amended,
23 and/or other relief from the Shamrock Entities, Fannie Mae and/or Grandbridge, and without such
24 relief, would not have entered into the two assumption agreements.

25 433. As such, to the extent that that a finding is made that the loan agreements would
26 permit Grandbridge and Fannie Mae to demand additional reserve deposits, then the loan
27 documents should be reformed consistent with the statements contained in the loan assumption
28 letters and its attached reserve schedules due to irregularities in assumption process amounting to

1 fraud, unfairness or oppression, and if not reformed, other appropriate equitable relief to rectify
2 the inequities and unfairness of this situation, and if not, then rescinded altogether.

3 434. Based on the foregoing, Westland is entitled to reformation, other equitable relief,
4 or rescission of the loan agreements consistent with Grandbridge's and Fannie Mae's statements
5 that no additional reserve deposits were required for the loans.

6 435. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
7 improper demands to adjust reserves and related actions, Westland has had to hire counsel to
8 prosecute this matter and obtain reformation of the loan documents by reason of which it is entitled
9 to reasonable attorney's fees.

10 **WHEREFORE**, Third Party Plaintiffs pray for judgment against Third Party Defendant,
11 as follows:

- 12 1. For declaratory relief acknowledging that no default has occurred and that Third
13 Party Defendant improperly sought a property condition assessment;
- 14 2. For injunctive relief, including without limitation, precluding any non-judicial
15 foreclosure against either the Liberty Property or the Square Property;
- 16 3. For equitable relief as demanded herein;
- 17 4. For compensatory damages in excess of \$15,000;
- 18 5. For punitive damages;
- 19 6. For prejudgment interest at the statutory rate;
- 20 7. For attorney's fees and costs of suit, including as special damages for conversion;
21 and
- 22 8. For such other relief as the Court deems appropriate.

23 Dated: August 31, 2020

LAW OFFICES OF JOHN BENEDICT

/s/ John Benedict

John Benedict (NV Bar No. 5581)

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Las Vegas, NV 89123

Telephone: (702) 333-3770

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Party Plaintiffs Westland Liberty Village, LLC &
Westland Village Square LLC*

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Party Plaintiffs Westland Liberty Village, LLC &
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a
Nevada Limited Liability Company; and
WESTLAND VILLAGE SQUARE, LLC, a
Nevada Limited Liability Company

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

**ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION AND DENYING
APPLICATION FOR APPOINTMENT OF
RECEIVER**

Hearing Date: October 13, 2020

Hearing Time: 10:30 a.m.

AND ALL RELATED ACTIONS

Defendants' Counter-Motion for a Preliminary Injunction having come before the Court on
October 13, 2020, and John Benedict, Esq. appearing on behalf of Defendants Westland Liberty
Village LLC and Westland Village Square LLC, and Bob Olson, Esq. appearing on behalf of
Plaintiff Federal National Mortgage Association.

Pursuant to Westland Liberty Village LLC's and Westland Village Square LLC's (in
combination "Westland") Counter-Motion for a Temporary Restraining Order and/or Preliminary
Injunction ("Motion"), the Affidavit of Yanki Greenspan, the Affidavit of Shimon Greenspan,

1 Westland’s Counterclaim and Third Party Complaint, and the Court having reviewed the pleadings
2 and papers on file herein, including any filed by Plaintiff Federal National Mortgage Association
3 (“Fannie Mae”), as well as Fannie Mae’s Application for Appointment of Receiver and supporting
4 papers (the “Application”), and having heard the arguments presented by Counsel, after considering
5 and relying upon only admissible evidence, this Court in part applying its discretion including
6 weighing the credibility of the declarations and other proof submitted in support of and in opposition
7 to the Motions, enters the following findings of fact, conclusions of law, and Orders the following:

8 ***FINDINGS OF FACT***

9 1. Fannie Mae admits conducting a property condition assessment at the multi-family
10 apartment communities owned by Westland and located at 4870 Nellis Oasis Lane, Las Vegas, NV
11 89115 [Assessor’s Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] (the “Liberty
12 Village Property”) and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor’s Parcel Nos. 140-
13 08-702-002 and 140-08-702-003] (the “Village Square Property,” or in combination the
14 “Properties”) in September 2018.

15 2. Westland has submitted evidence that it has spent over \$1.7 million in capital
16 improvements since the property condition assessment was conducted, \$3.5 million in capital
17 improvements since the Properties were purchased, \$1,573,000 in security costs at the Properties,
18 that it employs an on-site staff of 32 employees, all of which support that the condition of the
19 Properties has not deteriorated.

20 3. Westland submitted 2300 pages of work orders and related documents for renovations
21 it performed on vacant units from September 2019 through June 2020, which further supports that
22 the condition of the Properties has not deteriorated.

23 4. Statements from unbiased third-parties, including the Office of the Clark County
24 Commissioner and the Nevada State Apartment Association, support that the condition of the
25 Properties has not deteriorated.

5. The Court finds Westland has submitted substantial evidence that no deterioration of the condition of the Liberty Village Property and Village Square Property has occurred.

6. The two loan agreements both contain terms, including in Section 6.03(c), requiring a showing of deterioration in order to perform a property condition assessment or take further action related to the Repair Reserve or Replacement Reserve accounts. Without Fannie Mae showing there was deterioration at the Properties, there can be no default by Westland's not placing additional funds into those two accounts. Fannie Mae has not shown deterioration of the Properties. In fact, Westland has shown the opposite at this early stage, even without any formal discovery. The lack of demonstrated deterioration is enough to warrant a preliminary injunction as set forth herein.

7. Fannie Mae admits that in August 2018 when the loan agreement for the Liberty Village Property was assumed the parties agreed to a combined total of \$105,032.03 for the Repair Reserve and Replacement Reserve, which was fully funded on the date of the date the loan was assumed, plus an additional monthly Replacement Reserve payment of \$18,600.00.

8. Fannie Mae admits that in August 2018 when the loan agreement for the Village Square Property was assumed the parties agreed to a combined total of \$38,287.25 for the Repair Reserve and Replacement Reserve, which was fully funded on the date of the date the loan was assumed, plus additional monthly Replacement Reserve payments of \$10,259.08.

9. The undisputed facts establish that Westland paid \$18,600.00 each month for the Liberty Village Replacement Reserve and \$10,259.08 each month for the Village Square Replacement Reserve consistent with the schedules to the loan agreements as executed in August 2018, as well as the principal and interest payments that were required by the loan agreements.

10. Fannie Mae admits that its servicer, Grandbridge Real Estate Capital, LLC (“Grandbridge”) forwarded a Notice of Demand, dated October 18, 2019, on its behalf that sought a combined \$2.85 million additional reserve deposit from Westland for the Liberty Village Property and Village Square Property, which necessarily was based on a modification of the reserve amounts listed in the loan agreements.

11. By relying on the Notice of Demand, Fannie Mae admits that Grandbridge transferred all funds it held on Westland's behalf for each Property from the interest bearing Replacement Reserve account to the non-interest bearing Repair Reserve account.

12. Fannie Mae admits forwarding a Notice of Default and Acceleration of Note, dated December 17, 2019, which sought to hold Westland in default under the loan agreements that were assumed with Fannie Mae for not depositing the additional \$2.85 million Fannie Mae demanded, sought acceleration of the note for each Property, and sought not only the full principal balance but also default interest and costs. Fannie Mae further admits that, due to the asserted default, it holds \$1,000,000.00 in insurance proceeds from work Westland had performed, and paid for, at the Properties. Based solely on that purported default, Fannie Mae has refused to turn those funds over to Westland.

13. Fannie Mae admits forwarding a Demand and Notice Pursuant to NRS 107A.270, dated December 17, 2019, which sought to revoke Westland’s license to collect rents at the Properties, which is based solely on the purported default arising from not depositing an additional \$2.85 million into reserves.

14. Fannie Mae admits pursuing a foreclosure against Westland's Properties by filing a Notice of Default and Election to Sell under Deed of Trust, dated July 8, 2020, and taking actions in furtherance of foreclosure against each of the Properties, which is based solely on the purported default arising from not depositing an additional \$2.85 million into reserves.

CONCLUSIONS OF LAW

1. NRC 65(b) provides the Court with the authority to issue a preliminary injunction;
2. NRS 33.010 provides that an injunction may be granted in the following cases:
 - a. “When it shall appear by the [pleadings] that the [requesting party] is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of an act complained of, either for a limited period or perpetually.”

b. “When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the [requesting party].”

c. “When it shall appear, during the litigation, that the [non-requesting party] is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the [requesting parties’] rights respecting the subject of the action, and tending to render the judgment ineffectual.”

3. A preliminary injunction is available upon a showing that the party seeking the injunction enjoys a “reasonable probability of success on the merits” and that the non-moving party’s “conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy.” *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446 (1986); *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 924 P.2d 716, 719 (1996). The Court “may also weigh the public interest and relative hardships of the parties ...” *Id.* (citing *Pickett v. Commanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)).

4. The ultimate purpose of the preliminary injunction is to preserve the status quo so as to prevent irreparable harm. *Dixon v. Thatcher et al.*, 103 Nev. 414, 415, 742 P2d 1029 (1987).

5. Westland has shown a reasonable probability of success on the merits for the relief it seeks via Counterclaim in this case. This element is thus satisfied in Westland's Counter-Motion for a Preliminary Injunction because Fannie Mae has failed to establish that any default has occurred, and even viewing the evidence and arguments Fannie Mae presented in the best light for it, at best for Fannie Mae there are substantial factual disputes related to whether any default occurred. Fannie Mae's papers admit pursuing a foreclosure against Westland's Properties by filing a Notice of Default and Intent to Sell, and such actions may amount to a breach of contract, failure to service the loan in good faith, and may support the other claims and damages in Westland's Counterclaim.

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6. Westland would suffer irreparable harm to its interests in real property, to its personnel, and to an ongoing business in the absence of such an order to enjoin Fannie Mae's actions. First, real property is unique. Second, Westland has invested millions of dollars into the Properties, has substantial equity in them, and has significantly improved the living conditions at the Properties. Westland has been recognized by independent third parties for these successes, including lowering the crime rate at the Properties. Specifically, Westland has received various commendations from the Las Vegas Metropolitan Police Department, housing authorities, and the local governments. Third, Westland has invested heavily in personnel for the Properties, including paying in excess of \$1.5M for salaries and related expenses for security personnel. All told, Westland has over thirty people working at the Property, and part of the irreparable harm will be those people losing their jobs if Fannie Mae's foreclosure is allowed to proceed or if the Court appoints a receiver.

7. Based upon the above, and all evidence and documentation submitted, and here specifically applying the Court's discretion, the prejudice to Westland is much greater than the prejudice to Fannie Mae if no injunction is issued in this case.

8. Issuance of a preliminary injunction as requested by Westland would preserve the status quo until this matter is fully resolved on the merits.

9. Westland has met their burden of proof to support this Preliminary Injunction through competent evidence.

10. Westland has made a substantial investment in the collateral securing the loan and continue to maintain substantial funds within the Repair Escrow Account and Replacement Escrow Account that render the need for a bond for a preliminary injunction to be de minimus.

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1 11. Fannie Mae's has not shown good cause for its Application for Appointment of a
2 Receiver because it has not carried its burden to show any default occurred and based on the lack of
3 evidence of irreparable harm or substantial loss to collateral to Fannie Mae.

4 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that
5 Defendant's Countermotion for a Preliminary Injunction is **GRANTED**;

6 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff's Application for
7 Appointment of a Receiver is **DENIED**;

8 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that:

9 (1) Fannie Mae, including, without limitation, Fannie Mae's servicers, agents, affiliates,
10 representatives, officers, managers, directors, shareholders, members, partners, trustees, and other
11 persons exercising or having control over the affairs of Fannie Mae, (collectively the "Enjoined
12 Parties") are enjoined from taking any and all actions to foreclose or continue the foreclosure
13 process upon Westland's Properties, and may not conduct any foreclosure proceeding or foreclosure
14 sale on Properties until further order of this Court;

15 (2) The Enjoined Parties may not continue to maintain the Liberty Village Notice of Default
16 and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed
17 from the title of the Liberty Village Property;

18 (3) The Enjoined Parties may not continue to maintain the Village Square Notice of Default
19 and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed
20 from the title of the Village Square Property;

21 (4) The Enjoined Parties may not interfere with Westland's enjoyment of the Properties
22 pending a final determination of the rights and obligations of the parties pursuant to the Multifamily
23 Loan and Security Agreement entered by and between Lenders and Westland on August 29, 2018;

24 //

25 //

1 (5) Fannie Mae's Application to appoint a receiver is denied, and the Enjoined Parties are
2 further enjoined from and may not do the following acts:

3 a) appoint a receiver;

4 b) take possession of any real or personal property, which prohibition extends to both
5 tangible or intangible property, including, without limitation, all land, buildings and
6 structures, leases, rents, fixtures, and movable personal property that may be
7 identified as "Leases," "Rents" or "Mortgaged Property" in any "Multifamily Deed of
8 Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing,"
9 located at or related to the Village Square Property and Liberty Village Property
10 (hereinafter the "Property") referenced in both parties pleadings;

11 c) obtain possession of, exercise control over, enforce a judgment, enforce a lien,
12 foreclose, enforce a Deed of Trust, or otherwise take any action against the Property,
13 without specific permission from or a further determination of this Court;

14 d) interfere with Westland, directly or indirectly, in the management and operation of
15 the Property, the collection of rents derived from the Property, or do any act which
16 will, or which will tend to, impair, defeat, divert, prevent, or prejudice Westland's use
17 or preservation of the Property (including the leases, rents and reserve-escrow
18 accounts related thereto) or the interest of Westland in the Property and in said leases,
19 rents, and reserve-escrow accounts;

20 e) fail to turn over to Westland the monthly debt service invoices for the Property,
21 which have been withheld between February 2020 and present, and on a going
22 forward basis, Fannie Mae or its servicer will forward the monthly statements Fannie
23 Mae's servicers produce for any borrower who is not in default;

24 f) fail to process loan payments consistent with the terms of the loan agreement,
25 including that Fannie Mae, or its servicer, will return to the ordinary practice of auto-
26 debiting Westland's account for the amount of the non-default normal monthly debt

1 service payment each month;

2 g) retain possession of any funds paid in excess of the non-default monthly debt
3 service payments, which excess funds Westland paid between February 2020 and the
4 present based on the refusal of Fannie Mae's servicer to produce monthly statements
5 to Westland;

6 h) fail to disburse or turn over to Westland any funds currently held or initially held in
7 the Restoration Reserve Account, which funds were earmarked for the repair of the
8 fire-damaged buildings, Buildings 3426 and 3517, regardless of whether Fannie Mae
9 continues to maintain those funds in the same account or has transferred those funds
10 to another account;

11 i) continue to improperly maintain the funds designated to be held in the interest
12 bearing Replacement Reserve Account for each of the Properties in the non-interest
13 bearing Repair Reserve Account for each of the Properties, to restore any balance that
14 has already been transferred, and to credit the Replacement Reserve Account for the
15 interest that Westland would have earned;

16 j) continue to refuse to respond to Reserve Disbursement Requests for more than 10
17 days, or to fail to disburse funds held in the Repair Reserve and Replacement Reserve
18 escrow accounts in response to requests submitted consistent with the terms of the
19 loan agreements;

20 k) continue to maintain the Notice of Demand, dated October 18, 2019, which will be
21 held to be retracted and stricken;

22 l) continue to maintain the Notice of Default and Acceleration of Note, dated
23 December 17, 2019, which will be deemed retracted and stricken;


24 m) continue to maintain the Demand and Notice Pursuant to NRS 107A.270, dated
25 December 17, 2019, which will be deemed retracted and stricken;

26 n) otherwise displace Westland from the operation or management of the Property;

1 o) take any adverse action against any Westland entity in relation to other loans,
2 discriminate against or blacklist any Westland entity on new loan or loan refinancing
3 applications, including by placing Westland on “a-check,” adding a fee to any loan
4 quoted or adding an interest rate surcharge to such applications, based on the
5 purported default that arose from failing to deposit the additional \$2.85 million into
6 escrow as requested.

7 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bond amount related to this
8 preliminary injunction shall be \$1,000.00 for Defendants, which Defendants may also meet by
9 depositing \$1000.00 cash with this Court. **IT IS SO ORDERED.**

10 Dated: November __, 2020



The Honorable Kerry Earley
DISTRICT COURT JUDGE
Kerry Earley
District Court Judge

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12 //
13 //

1 Agreed as to Form and Content:
2

3 SNELL & WILMER L.L.P.
4

5 By: **DOES NOT APPROVE**
6 Nathan G. Kanute, Esq.
7 Bob L. Olson, Esq.
8 David L. Edelblute, Esq.
9 3883 Howard Hughes Parkway, Suite 1100
10 Las Vegas, NV 89169

11 *Attorneys for Plaintiff Federal National*
12 *Mortgage Association*

13 LAW OFFICES OF JOHN BENEDICT

14 By: **/s/ John Benedict**
15 John Benedict, Esq.
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17 Las Vegas, Nevada 89123

18 *Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village,*
19 *LLC & Westland Village Square LLC*

20 *Respectfully Submitted:*
21

22 Dated: November 16, 2020

23 LAW OFFICES OF JOHN BENEDICT

24 By: **/s/ John Benedict**
25 John Benedict, Esq.
26 2190 E. Pebble Road, Suite 260
27 Las Vegas, Nevada 89123

28 *Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village,*
LLC & Westland Village Square LLC

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Federal National Mortgage,
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/20/2020

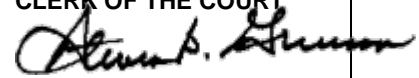
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17 Sydney Gambee	srgambee@hollandhart.com
18 Brian Dziminski	brian@dziminskilaw.com
19 John Benedict	john@benedictlaw.com
20 Lara Taylor	ljtaylor@swlaw.com
21 Nathan Kanute	nkanute@swlaw.com
22 Mary Full	mfull@swlaw.com
23 Docket Docket	docket_las@swlaw.com
24 Bob Olson	bolson@swlaw.com
25 Jacqueline Gaudie	jacqueline@benedictlaw.com

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Angelyn Cayton	Angelyn@benedictlaw.com
Office Admin	office.admin@benedictlaw.com
David Edelblute	dedelblute@swlaw.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/23/2020

John Benedict	2190 E. Pebble Road Suite 260 Las Vegas, NV, 89123
---------------	--



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4 Nevada Bar No. 005581
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9 Email: John@Benedictlaw.com
10 Attorneys for Defendants

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 *****

11)
12 FEDERAL NATIONAL MORTGAGE)
13 ASSOCIATION,)

14 Plaintiffs,)
15 vs.)

16 WESTLAND LIBERTY VILLAGE, LLC and)
17 WESTLAND VILLAGE SQUARE, LLC,)

18 Defendants,)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO.: A-20-819412-C
DEPT. NO.: 4

NOTICE OF ENTRY OF ORDER

AND ALL RELATED ACTIONS

PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANTS' MOTION**
FOR PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR
APPOINTMENT OF RECEIVER,

//

//

1 was entered in the above-entitled matter on November 20, 2020. A true and correct copy is attached
2 hereto.

3 **DATED** this_24th_ day of November, 2020.

4 **LAW OFFICES OF JOHN BENEDICT**

5
6 By: /s/ John Benedict
7 John Benedict, Esq. (SBN 5581)
8 2190 East Pebble Road, Suite 260
9 Las Vegas, Nevada 89123
10 Email: John@Benedictlaw.com
11 Attorneys for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on this_24th_ day of November, 2020, a copy of the foregoing
**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR APPOINTMENT
OF RECEIVER** were served on the parties listed below via electronic service through Odyssey to
the following:

Bob Olson, Esq.
Nathan G. Kanute, Esq.
David L. Edelblute, Esq.
Snell & Wilmer L.L.P.
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Email: nkanute@swlaw.com; dedelblute@swlaw.com
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Holland & Hart LLP
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Email: jgwent@hollandhart.com
Attorney for Third Party Defendant

_____/s/ Igor Makarov_____
An Employee of the Law Offices of John Benedict

ORDR

JOHN BENEDICT, ESQ.

Nevada Bar No. 005581

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Attorneys for Defendants/Counterclaimants/ Third
Party Plaintiffs Westland Liberty Village, LLC &
Westland Village Square LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a
Nevada Limited Liability Company; and
WESTLAND VILLAGE SQUARE, LLC, a
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Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

**ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION AND DENYING
APPLICATION FOR APPOINTMENT OF
RECEIVER**

Hearing Date: October 13, 2020

Hearing Time: 10:30 a.m.

AND ALL RELATED ACTIONS

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Pursuant to Westland Liberty Village LLC's and Westland Village Square LLC's (in
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1 Westland's Counterclaim and Third Party Complaint, and the Court having reviewed the pleadings
2 and papers on file herein, including any filed by Plaintiff Federal National Mortgage Association
3 ("Fannie Mae"), as well as Fannie Mae's Application for Appointment of Receiver and supporting
4 papers (the "Application"), and having heard the arguments presented by Counsel, after considering
5 and relying upon only admissible evidence, this Court in part applying its discretion including
6 weighing the credibility of the declarations and other proof submitted in support of and in opposition
7 to the Motions, enters the following findings of fact, conclusions of law, and Orders the following:

8 ***FINDINGS OF FACT***

9 1. Fannie Mae admits conducting a property condition assessment at the multi-family
10 apartment communities owned by Westland and located at 4870 Nellis Oasis Lane, Las Vegas, NV
11 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] (the "Liberty
12 Village Property") and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-
13 08-702-002 and 140-08-702-003] (the "Village Square Property," or in combination the
14 "Properties") in September 2018.

15 2. Westland has submitted evidence that it has spent over \$1.7 million in capital
16 improvements since the property condition assessment was conducted, \$3.5 million in capital
17 improvements since the Properties were purchased, \$1,573,000 in security costs at the Properties,
18 that it employs an on-site staff of 32 employees, all of which support that the condition of the
19 Properties has not deteriorated.

20 3. Westland submitted 2300 pages of work orders and related documents for renovations
21 it performed on vacant units from September 2019 through June 2020, which further supports that
22 the condition of the Properties has not deteriorated.

23 4. Statements from unbiased third-parties, including the Office of the Clark County
24 Commissioner and the Nevada State Apartment Association, support that the condition of the
25 Properties has not deteriorated.

5. The Court finds Westland has submitted substantial evidence that no deterioration of the condition of the Liberty Village Property and Village Square Property has occurred.

6. The two loan agreements both contain terms, including in Section 6.03(c), requiring a showing of deterioration in order to perform a property condition assessment or take further action related to the Repair Reserve or Replacement Reserve accounts. Without Fannie Mae showing there was deterioration at the Properties, there can be no default by Westland's not placing additional funds into those two accounts. Fannie Mae has not shown deterioration of the Properties. In fact, Westland has shown the opposite at this early stage, even without any formal discovery. The lack of demonstrated deterioration is enough to warrant a preliminary injunction as set forth herein.

7. Fannie Mae admits that in August 2018 when the loan agreement for the Liberty Village Property was assumed the parties agreed to a combined total of \$105,032.03 for the Repair Reserve and Replacement Reserve, which was fully funded on the date of the date the loan was assumed, plus an additional monthly Replacement Reserve payment of \$18,600.00.

8. Fannie Mae admits that in August 2018 when the loan agreement for the Village Square Property was assumed the parties agreed to a combined total of \$38,287.25 for the Repair Reserve and Replacement Reserve, which was fully funded on the date of the date the loan was assumed, plus additional monthly Replacement Reserve payments of \$10,259.08.

9. The undisputed facts establish that Westland paid \$18,600.00 each month for the Liberty Village Replacement Reserve and \$10,259.08 each month for the Village Square Replacement Reserve consistent with the schedules to the loan agreements as executed in August 2018, as well as the principal and interest payments that were required by the loan agreements.

10. Fannie Mae admits that its servicer, Grandbridge Real Estate Capital, LLC (“Grandbridge”) forwarded a Notice of Demand, dated October 18, 2019, on its behalf that sought a combined \$2.85 million additional reserve deposit from Westland for the Liberty Village Property and Village Square Property, which necessarily was based on a modification of the reserve amounts listed in the loan agreements.

11. By relying on the Notice of Demand, Fannie Mae admits that Grandbridge transferred all funds it held on Westland's behalf for each Property from the interest bearing Replacement Reserve account to the non-interest bearing Repair Reserve account.

12. Fannie Mae admits forwarding a Notice of Default and Acceleration of Note, dated December 17, 2019, which sought to hold Westland in default under the loan agreements that were assumed with Fannie Mae for not depositing the additional \$2.85 million Fannie Mae demanded, sought acceleration of the note for each Property, and sought not only the full principal balance but also default interest and costs. Fannie Mae further admits that, due to the asserted default, it holds \$1,000,000.00 in insurance proceeds from work Westland had performed, and paid for, at the Properties. Based solely on that purported default, Fannie Mae has refused to turn those funds over to Westland.

13. Fannie Mae admits forwarding a Demand and Notice Pursuant to NRS 107A.270, dated December 17, 2019, which sought to revoke Westland’s license to collect rents at the Properties, which is based solely on the purported default arising from not depositing an additional \$2.85 million into reserves.

14. Fannie Mae admits pursuing a foreclosure against Westland's Properties by filing a Notice of Default and Election to Sell under Deed of Trust, dated July 8, 2020, and taking actions in furtherance of foreclosure against each of the Properties, which is based solely on the purported default arising from not depositing an additional \$2.85 million into reserves.

CONCLUSIONS OF LAW

1. NRC 65(b) provides the Court with the authority to issue a preliminary injunction;
2. NRS 33.010 provides that an injunction may be granted in the following cases:
 - a. “When it shall appear by the [pleadings] that the [requesting party] is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of an act complained of, either for a limited period or perpetually.”

b. “When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the [requesting party].”

c. “When it shall appear, during the litigation, that the [non-requesting party] is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the [requesting parties’] rights respecting the subject of the action, and tending to render the judgment ineffectual.”

3. A preliminary injunction is available upon a showing that the party seeking the injunction enjoys a “reasonable probability of success on the merits” and that the non-moving party’s “conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy.” *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446 (1986); *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 924 P.2d 716, 719 (1996). The Court “may also weigh the public interest and relative hardships of the parties ...” *Id.* (citing *Pickett v. Commanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)).

4. The ultimate purpose of the preliminary injunction is to preserve the status quo so as to prevent irreparable harm. *Dixon v. Thatcher et al.*, 103 Nev. 414, 415, 742 P2d 1029 (1987).

5. Westland has shown a reasonable probability of success on the merits for the relief it seeks via Counterclaim in this case. This element is thus satisfied in Westland's Counter-Motion for a Preliminary Injunction because Fannie Mae has failed to establish that any default has occurred, and even viewing the evidence and arguments Fannie Mae presented in the best light for it, at best for Fannie Mae there are substantial factual disputes related to whether any default occurred. Fannie Mae's papers admit pursuing a foreclosure against Westland's Properties by filing a Notice of Default and Intent to Sell, and such actions may amount to a breach of contract, failure to service the loan in good faith, and may support the other claims and damages in Westland's Counterclaim.

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6. Westland would suffer irreparable harm to its interests in real property, to its personnel, and to an ongoing business in the absence of such an order to enjoin Fannie Mae's actions. First, real property is unique. Second, Westland has invested millions of dollars into the Properties, has substantial equity in them, and has significantly improved the living conditions at the Properties. Westland has been recognized by independent third parties for these successes, including lowering the crime rate at the Properties. Specifically, Westland has received various commendations from the Las Vegas Metropolitan Police Department, housing authorities, and the local governments. Third, Westland has invested heavily in personnel for the Properties, including paying in excess of \$1.5M for salaries and related expenses for security personnel. All told, Westland has over thirty people working at the Property, and part of the irreparable harm will be those people losing their jobs if Fannie Mae's foreclosure is allowed to proceed or if the Court appoints a receiver.

7. Based upon the above, and all evidence and documentation submitted, and here specifically applying the Court's discretion, the prejudice to Westland is much greater than the prejudice to Fannie Mae if no injunction is issued in this case.

8. Issuance of a preliminary injunction as requested by Westland would preserve the status quo until this matter is fully resolved on the merits.

9. Westland has met their burden of proof to support this Preliminary Injunction through competent evidence.

10. Westland has made a substantial investment in the collateral securing the loan and continue to maintain substantial funds within the Repair Escrow Account and Replacement Escrow Account that render the need for a bond for a preliminary injunction to be de minimus.

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1 11. Fannie Mae's has not shown good cause for its Application for Appointment of a
2 Receiver because it has not carried its burden to show any default occurred and based on the lack of
3 evidence of irreparable harm or substantial loss to collateral to Fannie Mae.

4 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that
5 Defendant's Countermotion for a Preliminary Injunction is **GRANTED**;

6 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff's Application for
7 Appointment of a Receiver is **DENIED**;

8 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that:

9 (1) Fannie Mae, including, without limitation, Fannie Mae's servicers, agents, affiliates,
10 representatives, officers, managers, directors, shareholders, members, partners, trustees, and other
11 persons exercising or having control over the affairs of Fannie Mae, (collectively the "Enjoined
12 Parties") are enjoined from taking any and all actions to foreclose or continue the foreclosure
13 process upon Westland's Properties, and may not conduct any foreclosure proceeding or foreclosure
14 sale on Properties until further order of this Court;

15 (2) The Enjoined Parties may not continue to maintain the Liberty Village Notice of Default
16 and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed
17 from the title of the Liberty Village Property;

18 (3) The Enjoined Parties may not continue to maintain the Village Square Notice of Default
19 and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed
20 from the title of the Village Square Property;

21 (4) The Enjoined Parties may not interfere with Westland's enjoyment of the Properties
22 pending a final determination of the rights and obligations of the parties pursuant to the Multifamily
23 Loan and Security Agreement entered by and between Lenders and Westland on August 29, 2018;

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1 (5) Fannie Mae's Application to appoint a receiver is denied, and the Enjoined Parties are
2 further enjoined from and may not do the following acts:

3 a) appoint a receiver;

4 b) take possession of any real or personal property, which prohibition extends to both
5 tangible or intangible property, including, without limitation, all land, buildings and
6 structures, leases, rents, fixtures, and movable personal property that may be
7 identified as "Leases," "Rents" or "Mortgaged Property" in any "Multifamily Deed of
8 Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing,"
9 located at or related to the Village Square Property and Liberty Village Property
10 (hereinafter the "Property") referenced in both parties pleadings;

11 c) obtain possession of, exercise control over, enforce a judgment, enforce a lien,
12 foreclose, enforce a Deed of Trust, or otherwise take any action against the Property,
13 without specific permission from or a further determination of this Court;

14 d) interfere with Westland, directly or indirectly, in the management and operation of
15 the Property, the collection of rents derived from the Property, or do any act which
16 will, or which will tend to, impair, defeat, divert, prevent, or prejudice Westland's use
17 or preservation of the Property (including the leases, rents and reserve-escrow
18 accounts related thereto) or the interest of Westland in the Property and in said leases,
19 rents, and reserve-escrow accounts;

20 e) fail to turn over to Westland the monthly debt service invoices for the Property,
21 which have been withheld between February 2020 and present, and on a going
22 forward basis, Fannie Mae or its servicer will forward the monthly statements Fannie
23 Mae's servicers produce for any borrower who is not in default;

24 f) fail to process loan payments consistent with the terms of the loan agreement,
25 including that Fannie Mae, or its servicer, will return to the ordinary practice of auto-
26 debiting Westland's account for the amount of the non-default normal monthly debt

1 service payment each month;

2 g) retain possession of any funds paid in excess of the non-default monthly debt
3 service payments, which excess funds Westland paid between February 2020 and the
4 present based on the refusal of Fannie Mae's servicer to produce monthly statements
5 to Westland;

6 h) fail to disburse or turn over to Westland any funds currently held or initially held in
7 the Restoration Reserve Account, which funds were earmarked for the repair of the
8 fire-damaged buildings, Buildings 3426 and 3517, regardless of whether Fannie Mae
9 continues to maintain those funds in the same account or has transferred those funds
10 to another account;

11 i) continue to improperly maintain the funds designated to be held in the interest
12 bearing Replacement Reserve Account for each of the Properties in the non-interest
13 bearing Repair Reserve Account for each of the Properties, to restore any balance that
14 has already been transferred, and to credit the Replacement Reserve Account for the
15 interest that Westland would have earned;

16 j) continue to refuse to respond to Reserve Disbursement Requests for more than 10
17 days, or to fail to disburse funds held in the Repair Reserve and Replacement Reserve
18 escrow accounts in response to requests submitted consistent with the terms of the
19 loan agreements;

20 k) continue to maintain the Notice of Demand, dated October 18, 2019, which will be
21 held to be retracted and stricken;

22 l) continue to maintain the Notice of Default and Acceleration of Note, dated
23 December 17, 2019, which will be deemed retracted and stricken;


24 m) continue to maintain the Demand and Notice Pursuant to NRS 107A.270, dated
25 December 17, 2019, which will be deemed retracted and stricken;

26 n) otherwise displace Westland from the operation or management of the Property;

1 o) take any adverse action against any Westland entity in relation to other loans,
2 discriminate against or blacklist any Westland entity on new loan or loan refinancing
3 applications, including by placing Westland on “a-check,” adding a fee to any loan
4 quoted or adding an interest rate surcharge to such applications, based on the
5 purported default that arose from failing to deposit the additional \$2.85 million into
6 escrow as requested.

7 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bond amount related to this
8 preliminary injunction shall be \$1,000.00 for Defendants, which Defendants may also meet by
9 depositing \$1000.00 cash with this Court. **IT IS SO ORDERED.**

10 Dated: November __, 2020



The Honorable Kerry Earley
DISTRICT COURT JUDGE
Kerry Earley
District Court Judge

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12 //
13 //

1 Agreed as to Form and Content:
2

3 SNELL & WILMER L.L.P.
4

5 By: **DOES NOT APPROVE**
6 Nathan G. Kanute, Esq.
7 Bob L. Olson, Esq.
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14 By: **/s/ John Benedict**
15 John Benedict, Esq.
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18 *Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village,*
19 *LLC & Westland Village Square LLC*

20 *Respectfully Submitted:*
21

22 Dated: November 16, 2020

23 LAW OFFICES OF JOHN BENEDICT

24 By: **/s/ John Benedict**
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28 *Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village,*
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Federal National Mortgage,
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/20/2020

16 Joseph Went	jgwent@hollandhart.com
17 Sydney Gambia	srgambia@hollandhart.com
18 Brian Dziminski	brian@dziminskilaw.com
19 John Benedict	john@benedictlaw.com
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David Edelblute	dedelblute@swlaw.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/23/2020

John Benedict	2190 E. Pebble Road Suite 260 Las Vegas, NV, 89123
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