IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator for the Federal National Mortgage Association, Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT, Clark County, Nevada; and, THE HONORABLE KERRY EARLEY, Judge Respondents, WESTLAND LIBERTY VILLAGE, LLC; WESTLAND VILLAGE SQUARE, LLC; and FEDERAL NATIONAL MORTGAGE ASSOCIATION Real Parties in Interest.	Case No. _____

PROPOSED INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S

APPENDIX – VOLUME I OF III

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. WESTLAND LIBERTY VILLAGE, LLC, WESTLAND VILLAGE SQUARE, LLC, Defendants.	Case No. Dept No. **APPLICATION FOR APPOINTMENT OF RECEIVER ON ORDER SHORTENING TIME** **HEARING REQUESTED**

Plaintiff Federal National Mortgage Association ("Plaintiff" or "Fannie Mae"), by and through its undersigned counsel, hereby submits this Application for Appointment of Receiver ("Motion") over property located at 5025 Nellis Oasis Lane, Las Vegas, Nevada 89115 ("Village Square Apartments") and 4807 Nellis Oasis Lane, Las Vegas, Nevada 89115 ("Liberty Village Apartments") and the personal property which are currently owned or controlled by Defendants Westland Liberty Village, LLC ("Liberty Village") and Westland Village Square, LLC ("Village Square") (collectively, "Defendants").

Defendants are in default of their loan obligations for, among other things, failing to provide additional escrow and reserve amounts based on the condition of the property. The property is in danger of waste, loss, dissipation, or impairment due to Defendants' failure to deposit adequate reserves as required. Accordingly, the appointment of a receiver is necessary to protect Plaintiff's interest in its collateral, including the property.

In addition, Plaintiff respectfully requests that the Court appoint The Madison Real Estate Group LLC, a Nevada limited liability company ("Madison"), acting by and through Jacqueline Kimaz, as receiver due to Madison and Ms. Kimaz's experiences in property management and as a receiver in Nevada. Information regarding Ms. Kimaz's background, experience, and willingness to serve as receiver in this matter is attached as **Exhibit 1** ("Kimaz Declaration"). It is also respectfully requested that the receiver be appointed without the requirement of the posting of any bond or only requiring a de minimus bond.

Based on the Verified Complaint on file herein, Declaration in Support of Application for Appointment of Receiver (the "Fannie Mae Declaration") attached as **Exhibit 2**, Declaration of Servicer in Support of Application for Appointment of Receiver ("Servicer Declaration") attached as **Exhibit 3**, the Declaration of Nathan G. Kanute, Esq., following below, and the following memorandum of points and authorities, Fannie Mae respectfully requests the Court hold a hearing on this Application on an order shortening time and enter an Order appointing Madison, through Ms. Kimaz as receiver of the above-described property in accordance with the proposed form of Order attached as **Exhibit 4**.

Dated this 12th day of August, 2020.

SNELL & WILMER L.L.P.

By: _____

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Attorneys for Plaintiff Federal National Mortgage Association

DECLARATION OF NATHAN G. KANUTE, ESQ.

Nathan G. Kanute, Esq. declares as follows:

1. I am an attorney with the law firm of Snell & Wilmer L.L.P., counsel of record for

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Fannie Mae in the above-titled action. I have personal knowledge of all matters stated herein and would be able to competently testify to them and make this declaration under the penalty of perjury.

2. I make this declaration in support of Fannie Mae's Application for Appointment of Receiver.

3. Defendants have defaulted on their loans with Fannie Mae by, among other things, failing and refusing to fund a repair reserve account. The demand to fund the reserve was based on property condition assessments that showed issues with the conditions of the property.

4. Fannie Mae has previously given notice to Defendants that their license to collect the rents from the properties has terminated and has initiated foreclosure proceedings under its deeds of trust.

5. Unless the Court hears Fannie Mae's Application as soon as possible, there is a risk that Fannie Mae will be deprived of the rents from the properties and the deficiencies noted in the property condition assessments will continue to worsen and damage Fannie Mae's security interest.

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

EXECUTED this 12th day of August 2020.

Nathan G. Kanute, Esq.

ORDER SHORTENING TIME

Good cause appearing therefore, it is hereby ordered that the foregoing **APPLICATION FOR APPOINTMENT OF RECEIVER** will be heard on the ____ day of _____, 2020, at the hour of _____a.m./p.m., in Department ____, in the above-mentioned Court.

DATED this _____ day of August 2020.

DISTRICT COURT JUDGE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

A. The Loan Documents and Related Agreements

i. Village Square Loan

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 $9,366,00.00. *See* Verified Compl. ¶ 7 and its Ex. 1. Shamrock VII also 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. *See* Verified Compl. ¶ 8 and its Ex. 2. On or about November 2, 2017, Shamrock VII also 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 known as the "Village Square Apartments" located at 5025 Nellis Oasis Lane, Las Vegas, Nevada 89115 and situated on the real property described in Exhibit A of the Village Square Deed of Trust. *See* Verified Compl. ¶ 9 and its Ex. 3. Collectively, the Village Square Loan Agreement, the Village Square Note, the Village Square Deed of Trust, and the documents related thereto are hereinafter referred to as the "Village Square Loan Documents".

The Village Square Loan Documents were assigned by SunTrust to Plaintiff. As evidence of that assignment, on November 3, 2017, an Assignment of Security Instruments from SunTrust to Plaintiff was recorded with the Clark County Recorder wherein SunTrust assigned and conveyed its rights in the Village Square Property and its rights and interests under the Village Square Deed of Trust to Plaintiff. *See* Verified Compl. ¶ 11 and its Ex. 4. On August 29, 2018, Shamrock VII,

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as transferor, and Ellen Weinstein ("Weinstein"), as original guarantor, and Village Square LLC, as transferee, and Alevy Descendants Trust Number 1 ("Alevy Trust"), as new guarantor, executed an Assumption and Release Agreement ("Village Square Assumption"). Pursuant to the Village Square Assumption, Village Square LLC and Alevy Trust assumed all of the obligations of Shamrock VII and Weinstein under the Village Square Loan Documents. *See* Verified Compl. ¶ 12 and its Ex. 5.

ii. Liberty Village Loan

On or about November 2, 2017, Shamrock Properties VI LLC ("Shamrock VI"), as predecessor-in-interest to Liberty Village LLC, and SunTrust Bank ("SunTrust"), as predecessor-in-interest to Plaintiff, executed a Multifamily Loan and Security Agreement ("Liberty Village Loan Agreement") setting forth the terms and obligations of the parties with respect to a mortgage loan in the amount of $29,000,000.00. The Liberty Village Loan Agreement has been amended six times relating to repairs that were required to restore the Liberty Village Property, as defined below, after two different events that damaged the property. *See* Verified Compl. ¶ 13 and its Ex. 6. On or about November 2, 2017, Shamrock VI executed a Multifamily Note ("Liberty Village Note") in favor of SunTrust in the original principal amount of $29,000,000.00, together with interest as detailed therein. *See* Verified Compl. ¶ 14 and its Ex. 7. On or about November 2, 2017, Shamrock VI entered into a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Liberty Village Deed of Trust") to secure, among other things, repayment of the indebtedness under the Liberty Village Note. The Liberty Village Deed of Trust was recorded with the Clark County Recorder on November 3, 2017. The Liberty Village Deed of Trust encumbers, among other things, certain real and personal property more specifically defined therein as the "Mortgaged Property" (hereinafter, the "Liberty Village Property"). The Liberty Village Property includes an apartment complex known as the "Liberty Village Apartments" located at 4807 Nellis Oasis Lane, Las Vegas, Nevada 89115 and situated on the real property described in Exhibit A of the Liberty Village Deed of Trust. *See* Verified Compl. ¶ 15 and its Ex. 8. Collectively, the Liberty Village Loan Agreement, the Liberty Village Note, the

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Liberty Village Deed of Trust, and the documents related thereto are hereinafter referred to as the "Liberty Village Loan Documents".

The Liberty Village Loan Documents were assigned by SunTrust to Plaintiff. As evidence of that assignment, on November 3, 2017, an Assignment of Security Instruments from SunTrust to Plaintiff was recorded with the Clark County Recorder wherein SunTrust assigned and conveyed its rights in the Liberty Village Property and its rights and interests under the Liberty Village Deed of Trust to Plaintiff. *See* Verified Compl. ¶ 17 and its Ex. 9. On or about August 29, 2018, Shamrock VI, as transferor, and Weinstein, as original guarantor, and Liberty Village LLC, as transferee, and Alevy Trust, as new guarantor, executed an Assumption and Release Agreement ("Liberty Village Assumption"). Pursuant to the Liberty Village Assumption, Liberty Village LLC and Alevy Trust assumed all of the obligations of Shamrock VI and Weinstein under the Liberty Village Loan Documents. *See* Verified Compl. ¶ 18 and its Ex. 10.

B. Plaintiff's Rights Under the Loan Documents

Pursuant to the terms of the Village Square Deed of Trust and Liberty Village Deed of Trust, the Plaintiff has a lien in, on, and to, among other things, the "Mortgaged Property" specifically defined therein, which includes, without limitation: (i) the "Land;" (ii) the "Improvements", "Fixtures", and "Personalty;" (iii) all "Rents" and "Leases;" and (iv) any and all other property interests and rights related to the Village Square Property and Liberty Village Property, as more particularly described in the Village Square Deed of Trust and Liberty Village Deed of Trust. *See* Verified Compl. ¶¶ 9, 15, 19 and its Exs. 3 and 8.

Defendant also made an absolute and unconditional assignment and transfer to Plaintiff of all "Leases and Rents" from the Village Square Property and Liberty Village Property. *See* Verified Compl. ¶¶ 19, 20 and its Exs. 3 and 8, § 3(a). Defendants were granted a revocable license to collect the "Rents" until the occurrence of an "Event of Default" under the Village Square Loan Documents or Liberty Village Loan Documents, at which time such license automatically terminated. *See* Verified Compl. ¶ 20 and its Exs. 3 and 8, § 3(b).

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

> … regardless of the adequacy of [Plaintiff's] security or Borrower's solvency, and without the necessity of giving prior notice (oral or written) to Borrower, [Plaintiff] may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in Section 3. If [Plaintiff] elects to seek the appointment of a receiver for the 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.

Verified Compl., Exs. 3 and 8, § 3(e).

C. Defendants' Defaults Under the Agreements

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 Verified Compl., Exs. 1 and 6, § 13.02(a)(4).

Pursuant to Section 14.01 of the Village Square Agreement and the Liberty Village Agreement (collectively, the "Agreements"), the following events constitute events of default:

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

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> "(b) **Events of Default Subject to a Specified Cure Period**. Any of the following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents: . . . (4) any failure by 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."

See Verified Compl., Exs. 1 and 6, § 14.01.

Defendants breached the Village Square Loan Documents and Liberty Village Loan Documents by, among other things, failing to increase the reserve amounts as required by Plaintiff and as authorized by the Village Square Loan Agreement and Liberty Village Loan Agreement. *See* Verified Compl. at ¶ 24, 25. The demand was based upon the results of the property condition assessment conducted for Plaintiff in September 2019. *See* Verified Compl. at ¶¶ 23, 24. Therefore, an event of default has occurred under the Village Square Loan Documents and Liberty Village Loan Documents. As of the date of filing of this Motion, Defendants have failed to remedy their defaults.

Plaintiff needs a receiver to ensure the integrity of the Village Square Property and Liberty Village Property and to ensure that its interests therein, including, but not limited to, its right to the accelerated loan repayments and all rents, are not transferred, damaged, devalued, stolen, or otherwise altered. Unless a receiver is appointed, the Village Square Property and Liberty Village may continue to suffer significant damage and, due to Defendants failure to maintain adequate insurance, the Real Property (and Plaintiff's interest) is not insured against any unexpected damage. Unless a receiver is appointed, Plaintiff is in imminent danger of suffering irreparable injury from the diminution in the value of the Real Property.

II. PLAINTIFF IS ENTITLED TO THE APPOINTMENT OF A RECEIVER

A. Plaintiff is Entitled to a Receiver Pursuant to NRS § 107A.260

As set forth in NRS § 107A.260(1), an assignee of rents such as Plaintiff is entitled to the appointment of a receiver if: (1) the assignor is in default; and (2) at least one of the four conditions identified in NRS §§ 107A.260(1)(a)(1) – (4) is present. Specifically, NRS § 107A.260(1) provides, in pertinent part, that:

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> An assignee ***is entitled to the appointment of a receiver*** for the real property subject to the assignment of rents if (a) the assignor is in default and; (1) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default; … [or] (3) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; … (emphasis supplied).

In this case, it cannot be disputed that the statutory conditions set out in NRS §§ 107A.260(1) for the appointment of a receiver have been met. As set forth above and in the Verified Complaint on file herein, the facts in this case plainly demonstrate that Defendants are in "default" of their obligations under the terms of the Liberty Village Loan Documents and Village Square Loan Documents. Next, Defendants expressly agreed in a signed document – the Liberty Village Deed of Trust and Village Square Deed of Trust – that in the event of a default, it was Plaintiff's right to have a receiver appointed. *See* Verified Compl., Exs. 3 and 8, § 3(e). In addition, Defendants continues to receive rents from the Liberty Village Property and Village Square Property, which Plaintiff is entitled to collect. *See* Verified Compl., Exs. 3 and 8, § 3(e), and *Servicer's Declaration*, at ¶ 6. Based on the foregoing, it is plain that Plaintiff has satisfied the requirements for the appointment of a receiver pursuant to NRS § 107A.260(1).

B. Alternatively, a Receiver Should be Appointed Pursuant to NRS 107.100.

In Nevada, the power of a court to appoint a receiver pursuant to the provisions of a deed of trust is derived from NRS 107.100 which provides, in part:

> 1. At any time after the filing of a notice of breach and election to sell real property under a power of sale contained in a deed of trust, the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property.
>
> 2. A receiver shall be appointed where it appears that personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, that real property subject to the deed of trust is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

NRS 107.100 requires that, following the filing of a notice of breach and election to sell, Plaintiff only has to show that one of the three following things enumerated by NRS 107.100(2)[1]:

[1] The use of the disjunctive "or" rather than the conjunctive "and" generally requires a demonstration of one or the other but not both. *Anderson v. State*, 109 Nev. 1129, 1134, 865 P.2d 318, 321 (1994). The use of a disjunctive phrase does not, however, mean that they are mutually exclusive. *Desert Irrigation, Ltd.*

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(1) that the personal property is subject to being lost, removed, materially injured or destroyed; (2) that the real property is in danger of substantial waste or that the income therefrom is in danger of being lost, or (3) that the property is or may become insufficient to discharge the debt which it secures. Upon making this showing, the Court has no discretion but to appoint a receiver because NRS 107.100(2) provides that a "receiver shall be appointed."[2]

In the instant case, Plaintiff has recorded a "Notice of Default and Election to Sell Under Deed of Trust" on the Liberty Village Property and Village Square Property. The income from the Liberty Village Property and Village Square Property subject to the Liberty Village Deed of Trust and Village Square Deed of Trust is in danger of being lost. Specifically, Defendants continue to receive rent from the Liberty Village Property and Village Square Property, liens have attached to the Liberty Village Property and Village Square Property, and Plaintiff has no controls in place to assure how such funds are used. *See Fannie Mae Declaration* ¶ 8. Accordingly, personal property subject to the deeds of trust are in danger of being lost.

Additionally, the circumstances described above may only be addressed through the appointment of a receiver. As set forth above and in the Complaint, the property condition assessment for the Liberty Village Property and Village Square Property has indicated significant issues with the condition of the properties. Despite these issues, Defendants have failed and refused to deposit required funds to protect against damages and further deterioration, and now refuse to repay the accelerated loans and all rents due, plus interest. Unless a receiver is appointed, the Liberty Village Property and Village Square Property is in danger of suffering additional material injury or destruction. Thus, this Court should appoint a receiver to protect the Liberty Village Property and Village Square Property.

C. A Receiver Should Be Appointed Pursuant to NRS 32.010.

Under NRS § 32.010(6), Nevada law provides that a receiver may be appointed in all other cases where receivers have heretofore been appointed by the courts of equity. The use of the

v. State 113 Nev. 1049, 1055, 944 P.2d 835, 839 (1977). Thus, Plaintiff may show that it is entitled to relief under this statute for one or more of the reasons contained in the statute.

[2] "In construing statutes, "shall" is presumptively mandatory." *State v. American Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990).

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receiver to collect the rents and profits from real property and to maintain the assets relating to such property in conjunction with a contractual default is consistent with Nevada law. *See, e.g., Lynn v. Ingalls*, 100 Nev. 115, 119, 676 P.2d 797, 800-801 (1984).

NRS 32.010 was taken virtually verbatim from Section 564 of the California Code of Civil Procedure. *See Ex rel. Nenzel v. District Court*, 49 Nev. 145, 156, 241 P. 317, 320 (1925). The Nevada Supreme Court pointed out in *Nenzel* that the interpretation of Section 564 of the California Code of Civil Procedure by the courts of California is given great weight by Nevada when interpreting NRS 32.010. *Id.* at 156.

A leading California case interpreting Section 564 is *Mines v. Superior Court*, 16 P.2d 732 (Cal. 1932). *Mines* involved a proceeding for the enforcement of a deed of trust provision giving the trustee the right to collect income, rents, issues and profits upon default by the trustor. Although there appeared to be no express deed of trust provision for the appointment of the receiver, the lower court appointed a receiver to collect the rents, issues and profits from the property. In upholding the appointment of the receiver, the California Supreme Court stated:

> Specific performance being a proceeding within the cognizance of a court of equity, the court had jurisdiction in such a proceeding to appoint a receiver, under Section 564, subdivision 7, of the Code of Civil Procedure.

Id. at 733. NRS 32.010(6) contains language virtually identical to Section 564(7).

The Liberty Village Deed of Trust and Village Square Deed of Trust in this case are more favorable to Plaintiff than the deed of trust in *Mines*. The portion of the Liberty Village Deed of Trust and Village Square Deed of Trust quoted above expressly authorizes the appointment of a receiver following an event of default.

In a subsequent California case, *Lovett v. Point Loma Dev. Corp.*, 71 Cal. Rptr. 709 (Cal. Ct. App. 1968), which followed the *Mines* decision, the court stated:

> Where the lienholder seeks an enforcement of a provision in the lien agreement conferring the right to collect rents and apply such upon the secured indebtedness, the authority to appoint a receiver is conferred by Code of Civil Procedure, Section 564, subd. 7.

Id. at 712.

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In this case, the Liberty Village Deed of Trust and Village Square Deed of Trust expressly allow the appointment of a receiver following an event of default "regardless of the adequacy of Lender's security or Borrower's solvency." This clear and unambiguous language authorizes the appointment of a receiver.

III. PLAINTIFF NOMINATES MADISON TO ACT AS RECEIVER

Plaintiff nominates Madison to act as receiver in this proceeding. Madison and Ms. Kimaz have considerable experience acting as a receiver or property manager. Madison and Ms. Kimaz are familiar with the issues that will arise related to the Liberty Village Property and Village Square Property and it would be in the best interest of the Liberty Village Property and Village Square Property for Madison to serve as the receiver.

III. CONCLUSION

Pursuant to NRS §§ 32.010(6), 107.100, or 107A.260, the Court should appoint a receiver to protect the Liberty Village Property and Village Square Property and Plaintiff's interest thereto. Due to her extensive experience as a receiver, Plaintiff requests that this Court appoint The Madison Real Estate Group, LLC, a Nevada limited liability company, by and through Jacqueline Kimaz, as receiver in this case, and that it authorize the receiver to exercise the powers set forth more specifically in the proposed order attached hereto.

Dated this 12th day of August, 2020.

SNELL & WILMER L.L.P.

By: 

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TO
APPLICATION FOR
APPOINTMENT OF RECEIVER

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EXHIBIT 1 - Kimaz Declaration

EXHIBIT 1 - Kimaz Declaration

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DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. WESTLAND LIBERTY VILLAGE, LLC, WESTLAND VILLAGE SQUARE, LLC, Defendants.	Case No. Dept No. **DECLARATION OF JACQUELINE KIMAZ IN SUPPORT OF PLAINTIFF'S APPLICATION FOR APPOINTMENT OF RECEIVER**

I, Jacqueline Kimaz, declare as follows:

1. I am Vice President of The Madison Real Estate Group LLC, a Nevada limited liability company ("Madison"). I understand that Madison, acting by and through myself, has been nominated to act as the receiver in this action. I have personal knowledge of the facts stated herein and, if sworn as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of my current curriculum vitae. All of the information contained in the curriculum vitae is true and complete.

3. I have extensive property management experience, including serving as a receiver and otherwise managing, preserving, and protecting various multifamily residential properties. Specifically, I have managed the following properties in Nevada: (a) Park 200, Las Vegas; (b) 3600-3660 N. Rancho Road, Las Vegas; (c) Buena Vista Apartments, Las Vegas; (d) Saratoga Palms, Las Vegas; (e) 2417 Morton Avenue, Las Vegas; and (f) Meadows Mobile Homes, Las

Vegas.

4. Madison's proposed fees for acting as receiver would be as follows: (1) One-Time Setup Fee - $8,000 ($4,000 per property); and (2) Property Management Fee – the greater of $15/unit or 3.5% of effective total income.

5. There has been no contract, agreement, arrangement or understanding between the Plaintiff and Madison as to:

a. what the role of the receiver will be during or after the appointment;

b. whether the receiver will receive any listing or right to manage the property that is the subject of this action after termination of the appointment;

c. how the receiver will administer the appointment or who the receiver will hire to provide services; and

d. what capital expenditures will be made to the property.

6. Madison and I are entirely impartial and disinterested with respect to the parties and subject matter of this action and are otherwise qualified to act as the receiver in this case. Madison and I are not disqualified under the provisions of NRS 32.265.

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

Executed this 20 day of July 2020 at Los Angeles, California.

Jacqueline Kimaz

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EXHIBIT A -

EXHIBIT A -

Jacqueline E. Kimaz
THE MADISON REAL ESTATE GROUP, LLC.

CURRICULUM VITAE

Jacqueline is a Principal with The Madison Real Estate Group, LLC with more than 30 years of experience in commercial property management. Her areas of expertise include profitability, management and marketing strategy, risk management, internal auditing, budgeting and implementation of information systems.

Over the last three decades, Jacqueline had overseen the property management operations of more than 800 multifamily properties and 2,500,000 square feet of retail space, as well as construction development, including more than 150 staff and field employees. She is also a Court Appointed Receiver.

Jacqueline's result-oriented management style has earned her a reputation for effectiveness, efficiency and creativity. Her clients include: Ocwen, Bayview, Berkadia, Deutsche Bank, HSBC Bank, US Bank, Bank of America, Fannie Mae, PNC Bank, Aegon, Trimont, CIII, City National Bank, City of North Las Vegas, Keybank, and City National Bank.

Recent Achievements:

- Removal of over 75 squatters – A saving of $1,500,000, not including legal fees ($2,000 per eviction) and relocation fees ($18,000 per household).
- Collected over $1,700,729 in rental income and back rent.
- Corrected more than 9,502 code, health and safety violations and closed over 58 REAP cases – A saving of $1,994,400.
- 62 Illegal units – A saving of $1,350,000 – We have been able to relocate families residing in illegal units with substandard condition, without having to evict them or pay relocation fees.
- Completed over 166 evictions, thus stopping further deterioration of the properties, and enhancing their marketability.
- REAP Recaptured Revenue– To-date, we have collected $250,510 in REAP revenue. These funds would have remained with the City if not claimed on behalf of the ownership.

Notable Assignments:

- Binford Lofts, Los Angeles – 37 lofts and 7,000 square feet of office.
- Park 2000, Las Vegas – 77,605 sf.
- 3600-3660 N. Rancho Road, Las Vegas – 32,000 sf.
- Pinnacle Apartments, Las Vegas – 60 units
- Buena Vista Apartments, Las Vegas – 280 units.
- Linda Vista Apartments, Phoenix – 96 units.
- San Joaquin Shopping Centre, San Joaquin – 12,000 sf
- Saratoga Palms, Las Vegas – 56 units
- Vulcan Self Storage, Lompoc – 373 units
- Sherwood Garden Apartments, Tucson - 199 units
- Highland Hotel, Bullhead City – 51 rooms
- Riverfront Resort/Colorado River Resort, Bullhead – 68 rooms
- 2417 Morton Avenue, Las Vegas – 217 unit
- Kimberly Woods Apartments, Tucson – 279 units
- Meadows Mobile Homes, Las Vegas – 64 spaces

EXHIBIT 2 - Fannie Mae Declaration

EXHIBIT 2 - Fannie Mae Declaration

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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. **DECLARATION OF JAMES NOAKES IN SUPPORT OF PLAINTIFF'S APPLICATION FOR APPOINTMENT OF RECEIVER**

I, James Noakes, declare as follows:

1. I am a Senior Asset Manager for Federal National Mortgage Association ("Plaintiff"). I make this affidavit in support of Plaintiff's Application for Appointment of Receiver.

2. All documents attached as exhibits to the Verified Complaint on file herein are business records kept by Plaintiff in the ordinary course of its business, and which contemporaneously and accurately record the agreements set forth therein.

3. As to the facts in this declaration, I know them to be true of my own knowledge or have obtained knowledge of them from employees who I supervise or work with and from my review of the business records of Plaintiff concerning the loan documents with Westland Village Square, LLC ("Village Square LLC") and Westland Liberty Village, LLC ("Liberty Village LLC", collectively with Village Square LLC, "Defendants"). If called upon to testify as to the matters set

forth in this declaration, I could and would competently testify thereto. As to those matters stated in this declaration on information and belief, I believe them to be true.

4. I have reviewed the "Verified Complaint" and the exhibits attached thereto, and affirm that, to the best of my knowledge, the contents of the "Verified Complaint" are true and accurate and that the following exhibits attached thereto are true and correct copies of the loan documents identified therein:

a. November 2, 2017 "Multifamily Loan and Security Agreement" ("Village Square Loan Agreement") executed by Shamrock Properties VII LLC ("Shamrock VII"), as predecessor-in-interest to Westland Village Square, LLC ("Village Square LLC"), and SunTrust Bank ("SunTrust"), as predecessor-in-interest to Plaintiff, attached to the Verified Complaint at Exhibit 1;

b. November 2, 2017 "Multifamily Note" ("Village Square Note") executed by Shamrock VII, attached to the Verified Complaint at Exhibit 2

c. November 2, 2017 "Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing" ("Village Square Deed of Trust") executed by Shamrock VII and recorded with the Clark County Recorder, attached to the Verified Complaint at Exhibit 3;

d. November 2, 2017 "Assignment of Security Instruments" from SunTrust to Plaintiff, recorded with the Clark County Recorder, attached to the Verified Complaint at Exhibit 4;

e. August 29, 2018 "Assumption and Release Agreement" ("Village Square Assumption") executed by Shamrock VII, as transferor, and Ellen Weinstein ("Weinstein"), as original guarantor, and Village Square LLC, as transferee, and Alevy Descendants Trust Number 1 ("Alevy Trust"), attached to the Verified Complaint at Exhibit 5;

f. November 2, 2017 "Multifamily Loan and Security Agreement" ("Liberty Village Loan Agreement") executed by Shamrock Properties VI LLC

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("Shamrock VI"), as predecessor-in-interest to Westland Liberty Village, LLC ("Liberty Village LLC"), and SunTrust, as predecessor-in-interest to Plaintiff, attached to the Verified Complaint at Exhibit 6;

g. November 2, 2017 "Multifamily Note" ("Liberty Village Note") executed by Shamrock VI, attached to the Verified Complaint at Exhibit 7;

h. November 2, 2017 "Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing" ("Liberty Village Deed of Trust") executed by Shamrock VI and recorded with the Clark County Recorder, attached to the Verified Complaint at Exhibit 8;

i. November 2, 2017 "Assignment of Security Instruments" from SunTrust to Plaintiff, recorded with the Clark County Recorder, attached to the Verified Complaint at Exhibit 9;

j. August 29, 2018 "Assumption and Release Agreement" ("Liberty Village Assumption") executed by Shamrock VI, as transferor, and Weinstein, as original guarantor, and Village Square LLC, as transferee, and Alevy Descendants Trust Number 1 ("Alevy Trust"), attached to the Verified Complaint at Exhibit 10;

k. The September 2019 Property Condition Assessments of the Village Square Property and Liberty Village Property, as defined in the Verified Complaint, from f3 Incorporated, attached to the Verified Complaint at Exhibit 11;

l. October 19, 2019 Notice of Demand to Defendants, attached to the Verified Complaint at Exhibit 12;

m. December 17, 2019 Notice of Default and Acceleration of Note to Defendants, attached to the Verified Complaint at Exhibit 13;

n. December 17, 2019 Demand and Notice Pursuant to Nevada Revised Statutes ("NRS") 107A.270 to Defendants, attached to the Verified Complaint at Exhibit 14;

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o. Recorded "Notice of Default and Election to Sell Under Deed of Trust" for the Liberty Village Property, attached to the Verified Complaint at Exhibit 15; and

p. Recorded "Notice of Default and Election to Sell Under Deed of Trust" for the Village Square Property, attached to the Verified Complaint at Exhibit 16.

5. Defendants are in breach of the terms of the Village Square Loan Documents and the Liberty Village Loan Documents for, among other things, failing to comply with Plaintiff's request to increase the Replacement Reserve Account in accordance with Section 13.02(a)(4) of the Liberty Village Loan Agreement and Village Square Loan Agreement, and, as a result, Defendants are in default under the loan documents.

6. Defendants obligations under the loan documents have been accelerated, and the entire balance is presently due and owing. Defendants have not paid the obligations under the loan documents.

7. Prior to the filing of the Verified Complaint, Plaintiff filed a "Notice of Default and Election to Sell Under Deed of Trust" in the Clark County Recorder's Office for each of the Liberty Village Property and Village Square Property.

8. Upon information and belief, Defendants have entered into one or more leases on the Village Square Property and Liberty Village Property. Defendants rights to collect the rents on the Village Square Property and Liberty Village Property have terminated. On information and belief, Defendants have not turned over the rents to Plaintiff. If any rents due under such lease are not collected and turned over to Plaintiff or other lease obligations not enforced, then Plaintiff may lose income from the Village Square Property and Liberty Village Property and otherwise have its collateral threatened. Presently, Plaintiff has no controls in place to assure how rents from the Property are being collected and used.

9. Unless a receiver is appointed, I believe Plaintiff may be deprived of the rents that are securing, in part, the deeds of trust, and that Plaintiff otherwise may be deprived of a substantial part of the security provided for in the loan documents.

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10. I also believe that a receiver is necessary to address the deficiencies with the Village Square Property and Liberty Village Property identified in the Property Condition Assessments to avoid further harm to the Village Square Property and Liberty Village Property and to avoid deprivation of a substantial part of the security for the Village Square Loan Documents and Liberty Village Loan Documents.

11. I have otherwise reviewed the foregoing Application for Appointment of Receiver, know the contents thereof, and affirm that, to the best of my knowledge, its factual statements are true and accurate.

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

Executed this 3rd day of August 2020 at Collin County, Texas.

James Noakes

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EXHIBIT 3 - Servicer Declaration

EXHIBIT 3 - Servicer Declaration

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Attorneys for Plaintiff Federal National Mortgage Association

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. WESTLAND LIBERTY VILLAGE, LLC, WESTLAND VILLAGE SQUARE, LLC, Defendants.	Case No. Dept No. **DECLARATION OF JOE GREENHAW, JR. IN SUPPORT OF PLAINTIFF'S APPLICATION FOR APPOINTMENT OF RECEIVER**

I, Joe E. Greenhaw, Jr, declare as follows:

1. I am a Senior Vice President of Grandbridge Real Estate Capital, LLC ("GREC"), formerly Truist Agency, a division of Truist Bank. Truist Bank was formed through the merger of SunTrust Bank and Branch Banking and Trust Company. GREC is the servicer ("Servicer") for Federal National Mortgage Association ("Plaintiff") on the loans which are the subject of this lawsuit. On behalf of the Servicer, I am familiar with the "Village Square Loan Documents" and "Liberty Village Loan Documents" identified in and attached to the Verified Complaint on file in this matter, the amounts due and owing under the Liberty Village Loan Documents and Village Square Loan Documents, and other facts relating to the property which secures Plaintiff's loans. I make this affidavit in support of Plaintiff's Application for Appointment of Receiver.

2. Westland Liberty Village, LLC and Westland Village Square, LLC (collectively, "Defendants") are presently in default under the Loan Documents for, among other things,

failing to comply with SunTrust's October 19, 2019 demand, on behalf of Plaintiff, for Defendants to deposit additional funds into the Repair Escrow Account pursuant to Section 13.02(a)(4) of the Liberty Village Loan Agreement and Village Square Loan Agreement.

3. On information and belief, the amounts due to Plaintiff under the Liberty Village Loan Documents and the Village Square Loan Documents have been accelerated and are currently due and payable in full.

4. Pursuant to the terms of the Liberty Village Loan Documents, approximately $29,000,000.00 in unpaid principal is due and owing to Plaintiff, and additional fees, costs, interest, and other damages continue to accrue under the terms of the Liberty Village Loan Documents.

5. Pursuant to the terms of the Village Square Loan Documents, approximately $9,366,000.00 in unpaid principal is due and owing to Plaintiff, and additional fees, costs, interest, and other damages continue to accrue under the terms of the Village Square Loan Documents.

6. On information and belief, Defendants have entered into one or more leases on the Liberty Village Property and the Village Square Property, as defined in the Verified Complaint, and continue to receive rents on those leases.

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

Executed this 4th day of August 2020 at Tarrant County, Texas.

Joe E. Greenhaw, Jr.

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EXHIBIT 4 - Proposed Order Appointing Receiver

EXHIBIT 4 - Proposed Order Appointing Receiver

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DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. WESTLAND LIBERTY VILLAGE, LLC, WESTLAND VILLAGE SQUARE, LLC, Defendants.	Case No. Dept No. **ORDER APPOINTING RECEIVER**

Pursuant to the Application for Appointment of Receiver ("Motion"), Declaration of James Noakes in Support of Plaintiff's Application for Appointment of Receiver ("Fannie Mae Declaration"), Declaration of Servicer in Support of Plaintiff's Application for Appointment of Receiver ("Servicer Declaration"), the Verified Complaint ("Complaint") of Plaintiff Federal National Mortgage Association ("Plaintiff" or "Fannie Mae"), the Court having reviewed the pleadings and papers on file herein, including any filed by Defendants Westland Liberty Village, LLC ("Liberty Village LLC"), Westland Village Square, LLC ("Village Square LLC", collectively "Defendants") and having heard the arguments presented by the parties at any hearing scheduled for this matter, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. APPOINTMENT OF RECEIVER: The Madison Real Estate Group LLC, a Nevada limited-liability company, acting by and through Jacqueline Kimaz ("Receiver") is hereby

appointed as receiver in this action, such appointment shall be effective upon the filing of this Order along with the filing by the Receiver of the Oath and Bond, as set forth below.

2. POSSESSION OF RECEIVER: The Receiver shall have and take possession of all the real and personal, tangible and intangible property (including, without limitation, all land, buildings and structures, leases, rents, fixtures and movable personal property) more specifically defined as the "Village Square Property" and "Liberty Village Property" in the Verified Complaint. The Village Square Property and Liberty Village Property are referred to collectively herein as the "Property." The Property includes, without limitation, the interests of Plaintiff in any "Leases" and "Rents" and all other "Mortgaged Property" as identified in each "Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing" (the "Deeds of Trust") attached as Exhibits 3 and 8 to the Verified Complaint on file herein. Included within the Property is those certain apartment complex commonly known as "Village Square Apartments" and "Liberty Village Apartments" located in Las Vegas, NV and on the land more particularly described in the legal description attached as "Exhibit A" to each of the Deeds of Trust.

3. RECEIVER'S OATH AND BOND. Before performing her duties, the Receiver shall execute an Oath of Receiver. Within three days of this appointment, the Receiver shall also post a bond from an insurer in the sum of $_____, conditioned upon the faithful performance of the Receiver's duties. The Receiver's Bond and the Oath of the Receiver may be filed by electronic transmission and this Order shall become effective upon the Court's receipt of such electronic transmission provided, however, that the Receiver replace the facsimiles with originals within seven days of filing. The cost of the Receiver's Bond shall be an expense of the receivership estate. Pursuant to NRS 32.275(3), the Receiver is authorized to act before posting the Receiver's Bond.

4. NRS 32.305 INJUNCTION. Pursuant to NRS 32.305, the entry of this Order operates as a stay, applicable to all persons, of an act, action or proceeding: (a) to obtain possession of, exercise control over or enforce a judgment against the Property; and (b) to enforce a lien against the Property to the extent the lien secured a claim against the owner which arose before entry of this Order; provided, however, that this does not prohibit Plaintiff from proceeding to

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foreclose or otherwise enforce its Deeds of Trust against the Property.

5. DUTIES, RIGHTS, AND POWERS OF RECEIVER: The Receiver is hereby granted the following duties, rights, and powers:

a. To enter on and take possession of the Property;

b. To give notice of the appointment of the Receiver to all known creditors of the Defendants in the manner described in NRS 32.335 (the "Receivership Notice"). The Receivership Notice must advise creditors of their right to file creditors' claims within ninety (90) days following the date of the Receivership Notice. The Receiver is excused from publishing the Receivership Notice pursuant to NRS 32.335(1)(b);

c. Pursuant to NRS 32.295(3)(c), to immediately record a copy of this Order in the Office of the Recorder of Records for Clark County, Nevada and in any other jurisdiction where any portion of the Property is located;

d. To care for, preserve, and maintain the Property pending this Court's determination of any issues relating to the ownership or title to such Property and for the duration of this receivership;

e. To incur all expenses necessary for the care, preservation, maintenance of the Property;

f. To lease the Property, or portions thereof;

g. To, with the consent of Plaintiff and pursuant to NRS 32.295(c) and 32.315(2), to market the Property for sale and pursue a private sale, and incur the reasonable expenses related thereto; provided, however, the closing of any sale of the Property requires prior Court approval;

h. To employ or terminate the employment of any Nevada licensed person or firm to perform maintenance and repairs on the improvements and buildings on or with respect to the Property and to manage such work with respect to the Property;

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i. To operate, manage, control and conduct the Property and its business and incur the expenses necessary in such operation, management, control, and conduct in the ordinary and usual course of business, and do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar properties, and no such risks or obligations so incurred shall be the personal risk or obligation of Receiver, but shall be a risk or obligation of the receivership estate;

j. To notify all local, state and federal governmental agencies, all vendors and suppliers, and any and all others who provide goods or services to the Property of his or her appointment as Receiver. No utility may terminate service to the Property as a result of non-payment of pre-receivership obligations without prior order of this Court. No insurance company may cancel its existing current-paid policy as a result of the appointment of the Receiver, without prior order of this Court;

k. To either open new utility accounts or continue existing utility accounts for the Property at the Receiver's discretion in the name of the Receiver or the name of Plaintiff. In the event the Receiver continues existing utility accounts, the Receiver shall be entitled to maintain such accounts without providing any new deposit. In the event the Receiver opens new utility account, he shall be entitled to do so without paying any new deposit;

l. To maintain adequate insurance over the Property to the same extent and in the same manner as it has heretofore been insured (including maintaining any current policies on the Property), or as in the judgment of Receiver may seem fit and proper, and to cause all presently existing policies to be amended by adding Receiver and the receivership estate as an additional insured within ten (10) days of the entry of this Order. If there is inadequate insurance or insufficient funds in the receivership estate to procure adequate insurance, Receiver is directed to immediately petition this Court for instructions. During

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the period in which the Property is uninsured or underinsured, Receiver shall not be personally responsible for any claims arising therefore;

m. To pay all necessary insurance premiums for such insurance and all taxes and assessments levied on the Property during the receivership;

n. Subject to Plaintiff's rights under the Deeds of Trust, as to any insurance claims, to make proof of loss, intervene in, or assert a claim, to adjust and compromise any insurance claims, to collect, and to receive any insurance proceeds;

o. To demand, collect and receive all rents derived from the Property, or any part thereof, including all proceeds in the possession of the Defendants or other third parties which are or were derived from the rents generated by the Property;

p. To bring and prosecute all proper actions for the (i) collection of rents derived from the Property, (ii) removal from the Property of persons not entitled to entry thereon, (iii) protection of the Property, (iv) damage caused to the Property; and (v) recovery of possession of the Property;

q. Any security or other deposits which tenants have paid to Defendants or their agents and which are not paid to the Receiver, and over which the Receiver has no control, shall be obligations of the Defendants and may not be rendered by the Receiver without further order of the Court. Any other security or other deposits which the tenants or other third parties have paid or may pay to the Receiver, if otherwise refundable under the terms of their leases or agreements with the Receiver, shall be expenses of the subject property and refunded by the Receiver in accordance with the leases or agreements;

r. To hire, employ, retain, and/or terminate attorneys, certified public accountants, investigators, security guards, consultants, property management companies, brokers, construction management companies, brokers, appraisers, title companies, licensed construction control companies, and any other

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personnel or employees which the Receiver deems necessary to assist her in the discharge of her duties;

s. To retain environmental specialists to perform environmental inspections and assessments of the Property if deemed necessary and, if deemed necessary and advisable in the discretion of the Receiver, to remediate the Property or remove any dispose of contaminates, if any, affecting the Property;

t. To, pursuant to NRS 32.320, utilize her discretion to continue in effect or reject any contracts presently existing and not in default relating to the Property. In exercising such discretion, the Receiver does not have an obligation to pay prior liabilities of Defendants to third parties or to continue any contract which the Receiver determines is not in the best interest of the Property;

u. To utilize her discretion to enter into, exercise the powers, rights and remedies of the Defendants, and/or modify any and all contracts, agreements, or instruments affecting any part or all of the Property, including, without limitation, leases, property management agreements, property owner association agreements, or common area association agreements. In addition, the Receiver shall have the authority to immediately terminate any existing contract, agreement, or instrument which is not, in Receiver's sole discretion, deemed commercially reasonable or beneficial to the Property. The Receiver shall not be bound by any contract between any Defendant and any third party that the Receiver does not expressly assume in writing;

v. To make any repairs to the Property that the Receiver, in her discretion deems necessary or appropriate;

w. To pay and discharge out of the funds coming into her possession all the expenses of the receivership and the costs and expenses of operation and maintenance of the Property, including all Receiver's and related fees and expenses as well as taxes, governmental assessments, and other charges lawfully imposed upon the Property;

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x. To have the power to advance funds to keep current any liens, if any, taxes and assessments encumbering the Property which are senior to any lien arising under the Deeds of Trust;

y. To expend funds to purchase merchandise, construction and other materials, supplies and services as the Receiver deems necessary and advisable to assist her in performing her duties hereunder and to pay therefore the ordinary and usual rates and prices out of the funds that may come into the possession of the Receiver;

z. To apply, obtain and pay any reasonable fees for any lawful license, permit or other governmental approval relating to the Property or the operation thereof; confirm the existence of and, to the extent permitted by law, exercise the privileges of any existing license or permit or the operation thereof, and do all things necessary to protect and maintain such licenses, permits and approvals;

aa. To open and utilize bank accounts for receivership funds. Defendants shall provide to the Receiver their taxpayer identification number. As to any existing accounts relating to the Property, the Receiver shall be entitled to manage and modify such accounts, including, without limitation, the ability to change existing signature cards to identify the Receiver as the authorized party for such accounts, limit the use of such accounts by others, and/or to close such accounts as the Receiver deems appropriate. The Receiver shall manage any accounts to avoid overdrawn checks;

bb. To present for payment any checks, money orders or other forms of payment made payable to the Defendants which constitute rents of the Property, endorse same and collect the proceeds thereof, such proceeds to be used and maintained as elsewhere provided herein;

cc. After expending the necessary funds to operate the Property and pay all reasonable and necessary costs and expenses associated with such operation, the Receiver shall maintain any remaining funds for distribution to Plaintiff,

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and, upon request of Plaintiff, may distribute to Plaintiff during the receivership any excess funds which Receiver, in his or her discretion, determines are not necessary for the receivership. The Receiver shall identify any interim distributions made to Plaintiff in its monthly report submitted to the Court;

dd. Pursuant to NRS 32.325, any lawsuit or claims filed against the Receiver or the Property in the receivership estate shall be resolved by this Court. The Receiver shall be entitled to file an appropriate pleading or motion in any other action to effectuate the consolidation or transfer of such other matters into this case;

ee. To have the status of a lien creditor pursuant to NRS 32.280;

ff. Pursuant to *Commodities Futures Trading Commission v. Weintraub*, 471 U.S. 343 (1985), and *United States v. Plache*, 913 F.2d 1375, 1381 (9th Cir. 1990) (holding a receiver may waive the attorney-client privilege), to waive the attorney-client privilege and other privileges held by Defendants;

gg. To generally do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities and take actions relating to the Property beyond the scope contemplated by the provisions set forth above, provided the Receiver obtains prior court approval for any actions beyond the scope contemplated herein; and

hh. Nothing provided for herein shall entitle the Receiver to have *ex parte* communications with the Court.

6. DUTIES OF DEFENDANT: Defendants, including without limitation, Defendants' agents, affiliates, representatives, officers, managers, directors, shareholders, members, partners, trustees and other persons exercising or having control over the affairs of the Defendants shall, pursuant to NRS 32.300:

a. Assist and cooperate with the Receiver in the administration of the receivership and the discharge of the Receiver's duties;

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b. Preserve and turn over to the Receiver all receivership property in their possession, custody or control as specified in Section 2;

c. Identify all records and other information relating to the receivership property, including a password, authorization or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in their possession, custody or control;

d. On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities and financial condition of the owner or any matter relating to the Property or the receivership; and

e. Perform any other duty imposed by this Order, any other order issued by the Court or any law of this State.

7. NON-INTERFERENCE WITH RECEIVER: Defendants, including, without limitation, Defendants' agents, affiliates, representatives, officers, managers, directors, shareholders, members, partners, trustees and other persons exercising or having control over the affairs of the Defendants, are enjoined from the following:

a. Interfering with the Receiver, directly or indirectly, in the management and operation of the Property;

b. Interfering with the Receiver, directly or indirectly, in the collection of rents derived from the Property;

c. Collecting or attempting to collect the rents derived from the Property;

d. Extending, dispersing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in or disposing of the whole or any part of the Property (including the rents thereof) without the prior written consent of the Receiver;

e. Terminating any existing insurance policies relating to the Property;

f. Negotiating any modifications to any liens against the Property;

g. Selling or attempting to purchase, sell or negotiate the sale of any liens against

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the Property; and

h. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property (including the leases and rents thereof) or the interest of Plaintiff in the Property and in said leases and rents.

8. TURNOVER: Defendants and their partners, agents, affiliates, representatives, officers, managers, directors, shareholders, members, partners, trustees, property managers, architects, contractors, subcontractors, and employees, and all other persons with actual or constructive knowledge of this Order and its agents and employees shall use commercially reasonable efforts to do the following:

a. Turn over to the Receiver the possession of the Property, including all keys to all locks on the Property, and the records, books of account, ledgers and all business records for the Property (including, without limitation, construction contracts and subcontracts, the plans, specifications and drawings relating to or pertaining to any part or all of the Property), wherever located in and whatever mode maintained (including, without limitation, information contained on computers and any and all passwords to any software, if any, relating thereto as well as all banking records, statements and canceled checks);

b. Turn over to the Receiver all documents which constitute or pertain to all licenses, permits or governmental approvals relating to the Property;

c. Turn over to the Receiver all documents which constitute or pertain to insurance policies, whether currently in effect or lapsed which relate to the Property;

d. Turn over to the Receiver all contracts, leases and subleases, royalty agreements, licenses, assignments or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to any interest in the Property;

e. Turn over to the Receiver all documents pertaining to past, present or future construction of any type with respect to all or any part of the Property;

f. Turn over to the Receiver all documents of any kind pertaining to any and all toxic chemicals or hazardous material, if any, ever brought, used and/or

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remaining upon the Property, including, without limitation, all reports, surveys, inspections, checklists, proposals, orders, citations, fines, warnings and notices;

g. Turn over to the Receiver all rents derived from the Property (including, without limitation, all security deposits, advances, prepaid rents, storage fees, and parking fees) wherever and whatsoever mode maintained;

h. Turn over to the Receiver all mail relating to the Property. The Receiver is further authorized and empowered to take any and all steps necessary to receive, collect and review all mail addressed to Defendants including, but not limited to, mail addressed to any post office boxes held in the name of Defendants, and the Receiver is authorized to instruct the U.S. Postmaster to reroute, hold, and or release said mail to said Receiver. Mail reviewed by the Receiver in the performance of his or her duties will promptly be forwarded to Defendants after review by the Receiver; and

i. Use commercially reasonable efforts to effectuate the turnover of the Property to the Receiver.

9. CLAIM PROCEEDINGS. Pursuant to NRS 32.335, creditors and claimants holding claims against Defendant that arose prior to the entry of this Order shall file submit their claims to the Court and the Receiver in writing and upon oath within ninety (90) days after the date of the Receivership Notice required under Section 5(b) of this Order. Creditors and claimants failing to do so within ninety (90) days from the date of the Receivership Notice shall by the discretion of the court be barred from participating in the distribution of the assets of the company. The procedures for all claims submitted to the Receiver shall be governed by NRS 32.335.

10. RECEIVERSHIP REPORTS.

a. The Receiver shall prepare, as soon as practicable but not more than thirty (30) days after the entry of this order, an initial receivership report (the "Initial Report") describing all the: (1) real property in the receivership estate; (2) personal property in the receivership estate: (3) all cash accounts and other liquid assets of the receivership estate; (4) all known claims secured by the Property,

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such as consensual deeds of trust and tax liens, the identity of the creditors holding those secured claims and the amount of those claims; (5) if applicable, the identity of any real estate broker engaged by the Receiver to market the Property; (6) if applicable, the terms upon which the real estate broker will be engaged; and (7) any other matter the Receiver believes is relevant to the performance of her duties under this Order.

b. Pursuant to NRS 32.330, the Receiver shall prepare interim monthly reports (the "Interim Reports"), by no later than five (5) business days after the end of each month, so long as the Property shall remain in her possession or care, a report setting forth: (1) the activities of the Receiver since the filing of the last receiver's report, including a summary of Receiver's efforts to market and sell the Property, if any; (2) all receipts, disbursements, and cash flow; (3) changes in the assets in her charge; (4) claims against the assets in her charge; (5) the fees and expenses of the Receiver, including payment of any professional fees incurred by the Receiver, along with the request for payment; and (6) other relevant operational issues that have occurred during the preceding calendar quarter.

c. Upon completion of the Receiver's duties under this Order, the Receiver shall also prepare a Final Report (the "Final Report") in compliance with NRS 32.350 which sets forth: (1) a description of the activities of the Receiver in the conduct of the Receivership; (2) A list of the receivership property at the commencement of the receivership and any receivership property received during the receivership; (3) a list of disbursements, including payments to professionals engaged by the receiver; (4) a list of dispositions of the receivership property; (5) a list of distributions make or proposed to be made from the receivership for creditor claims; (6) if not filed separately, a request for approval of the payment of fees and expenses of the Receiver, including payment of any professional fees incurred by the Receiver; and (7) any other information the Court may later

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require. The Receiver shall mail a copy of the monthly reports and the Final Report to the attorneys of record for the parties, for any party not represented by any attorney to the address set forth in the notice provision contained in the Deeds of Trust, and to any other interested parties who make a written request to the Receiver for such reports. The Final Report shall be filed with the Court, served on the parties, and served on any other interested party who makes a written request for the Final Report to the Receiver.

11. RECEIVER COMPENSATION AND FUNDING FOR THE RECEIVERSHIP: The Receiver shall be compensated, and the receivership shall be entitled to funding as follows:

a. The Receiver shall charge the rates and/or fees: (1) a one-time "Setup Fee" of $8,000.00; plus (2) a "Monthly Property Management Fee" of the greater of (i) 3.5% of monthly revenues or (ii) $15/unit. The Receiver, her management company, her consultants, agents, employees, legal counsel, and professionals shall be paid on a monthly basis. To be paid on a monthly basis, the Receiver must file the Interim Reports with the Court and serve a copy on all parties each month for the time and expenses incurred in the preceding calendar month. If no objection thereto is filed and served on or within ten (10) days following service thereof, such fees and expenses set out in the Interim Reports may be paid. If an objection is timely filed and served, such fees set out in the Interim Reports shall not be paid absent further order of the Court. In the event objections are timely made to fees and expenses, those specific fees and expenses objected to will be paid within ten (10) days of an agreement among the parties or the entry of an order by this Court adjudicating the matter. In the event there are any additional fees, expenses, or claims for compensation claimed by the Receiver which are not set forth herein, then the Receiver shall request approval for such amounts by filing a motion with this Court;

b. At Plaintiff's request or upon order of the Court, the Receiver shall prepare and deliver to Plaintiff a comprehensive monthly budget (the "Budget")

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providing for all fees and costs expected to be incurred by the Receiver in the performance of her duties prescribed herein, as well as income expected to be generated from operation of the Property. The Receiver shall revise the budget from time to time or upon request from Plaintiff. The Receiver shall immediately inform Plaintiff if monthly fees and costs are expected to exceed the budgeted amount, or if income from operations will be insufficient to compensate the Receiver for fees and costs incurred;

c. Notwithstanding anything in this Order to the contrary, the Receiver shall not expend or disburse more than $10,000.00 of the monthly amount set forth in the Budget without obtaining prior written approval of Plaintiff and filing a notice of additional expenditure with this Court, to be served on all parties. If Defendants do not file an objection to the additional expenditure within five (5) business days of service of the notice of additional expenditure, then the Receiver may expend the additional funds. Provided, however, that if the additional expenditure is required on an emergency basis, and the process outlined in this section cannot be reasonably followed without endangering the lives or safety of persons on the Property, then the Receiver may expend or disburse more than $10,000.00 without following the process outlined herein; and

d. Prior to the termination of the receivership, the Receiver shall file her Final Report. If an objection is timely filed and served, such fees and costs that the Receiver has requested approval of in the Final Report shall not be paid absent further order of the Court. In the event objections are timely made to such fees and expenses, those specific fees and expenses objected to will be paid within ten (10) days of an agreement among the parties or the entry of an order by this Court adjudicating the matter.

12. RECEIVERSHIP CERTIFICATES. To the extent that the net rents or other monies derived from the Property are insufficient to satisfy the costs and expenses of the receivership, the

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Receiver shall have the right to request and borrow such additional funds from Plaintiff as may be necessary to satisfy such costs and expenses in accordance with the terms of the Deeds of Trust. The decision to lend additional monies for the costs and expenses of the Receivership shall be within the sole discretion of Plaintiff. If in its sole discretion, Plaintiff lends additional monies to the receivership estate, such loans shall be deemed secured advances to be added to Plaintiff's loan and secured by the Deeds of Trust. The Deeds of Trust encumbering the Property shall retain their lien priority as to the entire loans, including said advances, notwithstanding the fact that said advances shall increase the outstanding indebtedness of Plaintiff's loan. The Receiver is further authorized to issue and execute such documents as may be necessary to evidence the obligation to repay the advances, including but not limited to, the issuance of a receiver's "Certificates of Indebtedness" or "Receivership Certificates" evidencing the obligation of the receivership estate (and not the Receiver individually) to repay such sums. The principal sum of each such certificate or document, together with reasonable interest thereon, shall be payable out of the next available funds which constitute rents. In the event any funds advanced to the Receiver by the Plaintiff remain at the termination of the receivership, such funds shall be returned to Plaintiff.

13. DEFENSES AND IMMUNITIES OF RECEIVER. The Receiver is entitled to all defenses and immunities provided by the law of this State other than NRS 32.100 to 32.370, inclusive, for an act or omission within the scope of the Receiver's appointment. The Receiver may be sued personally for an act or omission in administering receivership property only with approval of this Court.

14. DISCHARGE OF RECEIVER AND DISMISSAL OF CASE: Without further order of this Court, upon the occurrence of any of the following events, the Receiver shall relinquish possession and control of the Property to the appropriate person or entity: (a) upon written notice from Plaintiff that Defendants have cured the defaults existing under Plaintiff's loan documents; (b) reinstatement of the loans secured by the Deeds of Trust as evidenced by written proof of payment from Plaintiff; (c) the completion of the valid trustee's sale of the Property by Plaintiff or any assignee as evidenced by a recorded trustee's sale deed; (d) the completion of a sale of the Property by the Receiver pursuant to an order of this Court; or (e) the acquisition of the

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Property by Plaintiff or any assignee as evidenced by a written deed in lieu of foreclosure. Upon relinquishment or possession and control of the Property, the Receiver shall be relieved of any further duties, liabilities and responsibilities relating to the Property set forth in this Order. As soon as practicable after the Receiver relinquishes possession and control of the Property, the Receiver shall serve on all parties, their successors in interest as applicable, or any other party entitled to notice and file with this Court the Receiver's Final Report and Final Statement of Account relating to the receivership. Upon the Court's review of the Final Report and Final Statement of Account and any objections thereto, the Court shall enter an appropriate order which closes out the receivership and dismisses this receivership action. Nothing contained herein shall prevent application of NRS 32.345 in appropriate circumstances.

15. BANKRUPTCY. If Defendants, or either of them, files a bankruptcy case during the receivership, Plaintiff shall give notice of the bankruptcy case to the Court, to all parties, and to the Receiver. If the Receiver receives notice that the bankruptcy has been filed and part of the bankruptcy estate includes property that is the subject of this Order, the Receiver shall have the following duties:

a. The Receiver shall immediately contact the party who obtained the appointment of the Receiver and determine whether that party intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and/or (2) relief from the Receiver's obligation to turn over the Property (11 U.S.C. § 543). If the party has no intention to make such a motion, the Receiver shall immediately turn over the property to the appropriate entity – either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession – and otherwise comply with 11 U.S.C. § 543.

b. Unless otherwise ordered by the Bankruptcy Court, remain in possession pending resolution. If the party who obtained the receivership intends to seek relief immediately from both the automatic stay and the Receiver's obligation to turn over the Property, the Receiver may remain in possession and preserve the Property pending the ruling on those motions (11 U.S.C. § 543(a)). The

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Receiver's authority to preserve the Property shall be limited as follows: (1) the Receiver may continue to collect Rents and other income; (2) the Receiver may make only those disbursements necessary to preserve and protect the Property; (3) the Receiver shall not execute any new leases or other long-term contracts; and; (4) the Receiver shall do nothing that would effect a material change in the circumstances of the Property.

c. Turn over the Property, if no motion for relief is filed within thirty (30) court days after notice of the Bankruptcy. If the party who obtained the receivership fails to file a motion within thirty (30) court days after his or her receipt of notice of the bankruptcy filing, the receiver shall immediately turn over the Property to the appropriate entity (either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession) and otherwise comply with 11 U.S.C. § 543.

d. Retain bankruptcy counsel. The Receiver may petition the court to retain legal counsel to assist the receiver with issues arising out of the bankruptcy proceedings that affect the receivership.

16. CONTACTING THE RECEIVER: Individuals or entities interested in the Property, including, without limitation, tenants may contact the Receiver directly by and through the following individual: Jacqueline Kimaz, c/o The Madison Real Estate Group, 16250 Ventura Boulevard, Suite 265, Los Angeles, CA 91436; Telephone: 213-620-1010.

17. MOTIONS FOR INSTRUCTIONS. The Receiver, Plaintiff, or any other party who maintains an interest in any property subject to this receivership, may at any time apply to this court for any further or other instructions and powers necessary to enable the Receiver to perform its duties properly and/or modify this order as to such property.

IT IS SO ORDERED.

Dated: _____, 2020

_____
DISTRICT COURT JUDGE

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Respectfully submitted,

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Perez, Rikki M.

Subject: FW: Filing Accepted for Case: A-20-819412-C; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s)vs.WESTLAND LIBERTY VILLAGE LLC, Defendant(s); Envelope Number: 6421089

From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
Sent: Wednesday, August 12, 2020 12:25 PM
To: Taylor, Lara <ljtaylor@swlaw.com>
Subject: Filing Accepted for Case: A-20-819412-C; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s)vs.WESTLAND LIBERTY VILLAGE LLC, Defendant(s); Envelope Number: 6421089

[EXTERNAL] efilingmail@tylerhost.net

Filing Accepted

Envelope Number: 6421089
Case Number: A-20-819412-C
Case Style: FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s)
vs.
WESTLAND LIBERTY VILLAGE LLC, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
Court	Clark District Criminal/Civil
Case Number	A-20-819412-C
Case Style	FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s) vs. WESTLAND LIBERTY VILLAGE LLC, Defendant(s)
Date/Time Submitted	8/12/2020 12:10 PM PST
Date/Time Accepted	8/12/2020 12:24 PM PST
Accepted Comments	Auto Review Accepted
Filing Type	Application - APPL (CIV)
Filing Description	Application for Appointment of Receiver on Order Shortening Time - Hearing Requested
Activity Requested	EFile
Filed By	Lara Taylor
Filing Attorney	Nathan Kanute

Document Details

Lead Document	Fannie Mae_Liberty Village - Application for Appointment of Receiver 4849-4197-1127 v.3.pdf
Lead Document Page Count	46
File Stamped Copy	Download Document
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Attorneys for Plaintiff Federal National Mortgage Association

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

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.

4. The real and personal property that is the subject matter of this Complaint is located in Clark County, Nevada, and certain acts and events given rise to Plaintiff's claims are based upon Defendants' conduct that occurred in Clark County, Nevada. In addition, Defendants expressly agreed to jurisdiction and venue with this Court in the loan documents which are the subject of this action.

5. The Court otherwise has subject matter jurisdiction over this matter and personal jurisdiction over Defendants.

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

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known as the "Village Square Apartments" located at 5025 Nellis Oasis Lane, Las Vegas, Nevada 89115 and situated on the real property described in Exhibit A of the Village Square Deed of Trust. A true and correct copy of the Village Square Deed of Trust is attached as **Exhibit 3**.

10. Collectively, the Village Square Loan Agreement, the Village Square Note, the Village Square Deed of Trust, and the documents related thereto are hereinafter referred to as the "Village Square Loan Documents".

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

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

ii. <u>Liberty Village Loan</u>

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

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

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

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

16. Collectively, the Liberty Village Loan Agreement, the Liberty Village Note, the Liberty Village Deed of Trust, and the documents related thereto are hereinafter referred to as the "Liberty Village Loan Documents".

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

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

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

B. Plaintiff's Rights Under the Loan Documents

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

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

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

> ... regardless of the adequacy of [Plaintiff's] security or Borrower's solvency, and without the necessity of giving prior notice (oral or written) to Borrower, [Plaintiff] may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in Section 3. If [Plaintiff] elects to seek the appointment of a receiver for the 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.

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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

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

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

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

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

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

> "(a) **Automatic Events of Default**. Any of the following shall constitute an automatic Event of Default: (1) any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document . . .."
>
> -and-
>
> "(b) **Events of Default Subject to a Specified Cure Period**. Any of the following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents: . . . (4) any failure by 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."

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

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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.**

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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.

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

SECOND CAUSE OF ACTION
(Petition for Appointment of Receiver)

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Plaintiff prays for relief as follows:

(a) For specific performance of the receivership and assignment of rents provisions contained in the Liberty Village Deed of Trust and Village Square Deed of Trust;

(b) For an order appointing a receiver and allowing the receiver, after taking possession of Liberty Village and Village Square, to perform such duties as set forth in the order appointing a receiver;

(c) For Plaintiff's reasonable attorneys' fees and costs incurred for bringing this action; and

(d) For such other and further relief as the Court may deem just and appropriate.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby certify that the foregoing document does not contain the social security number of any person.

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Dated: August 12, 2020

SNELL & WILMER L.L.P.

By: _____

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Reno, NV 89501
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3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200

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

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Perez, Rikki M.

Subject: FW: Filing Accepted for Case: A-20-819412-C; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s)vs.WESTLAND LIBERTY VILLAGE LLC, Defendant(s); Envelope Number: 6421089

From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
Sent: Wednesday, August 12, 2020 12:25 PM
To: Taylor, Lara <ljtaylor@swlaw.com>
Subject: Filing Accepted for Case: A-20-819412-C; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s)vs.WESTLAND LIBERTY VILLAGE LLC, Defendant(s); Envelope Number: 6421089

[EXTERNAL] efilingmail@tylerhost.net

Filing Accepted

Envelope Number: 6421089
Case Number: A-20-819412-C
Case Style: FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s)
vs.
WESTLAND LIBERTY VILLAGE LLC, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
Court	Clark District Criminal/Civil
Case Number	A-20-819412-C
Case Style	FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff(s) vs. WESTLAND LIBERTY VILLAGE LLC, Defendant(s)
Date/Time Submitted	8/12/2020 12:10 PM PST
Date/Time Accepted	8/12/2020 12:24 PM PST
Accepted Comments	Auto Review Accepted
Filing Type	Complaint - COMP (CIV)
Filing Description	VERIFIED COMPLAINT - ARBITRATION EXEMPTION REQUESTED: EQUITABLE RELIEF SOUGHT
Activity Requested	EFile
Filed By	Lara Taylor
Filing Attorney	Nathan Kanute

Document Details

Lead Document	to file Verified Complaint for Appointment of Receiver - Liberty Village and Village Square Las Vegas NV (002).pdf
Lead Document Page Count	13
File Stamped Copy	Download Document
This link is active for 180 days.	

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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-charted 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

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

Third Party Plaintiffs,

vs.

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

Third Party Defendant.

ANSWER

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

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

I. PARTIES, JURISDICTION AND VENUE

1. In response to the allegations contained in Paragraph 1 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.

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

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

4. In response to the allegations contained in Paragraph 4 of the Complaint, Defendants admit the allegations related to the location of the properties and regarding expressly 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.

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

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

II. GENERAL ALLEGATIONS

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

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

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

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

11. In response to the allegations contained in Paragraph 11 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.

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

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

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

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

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

17. In response to the allegations contained in Paragraph 17 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.

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

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

20. In response to the allegations contained in Paragraph 20 of the Complaint, Defendants admit only that each Deed of Trust speaks for itself, and Defendants deny the remaining allegations contained in paragraph 20 of the Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Specific Performance)

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

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

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

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

39. In response to the allegations contained in Paragraph 39 of the Complaint, 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

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

COUNTERCLAIM

Defendants/Counterclaimants, 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 Counterclaim against Plaintiff/Counter-Defendant Federal National Mortgage Association ("Fannie Mae") allege as follows[1]:

I. STATEMENT OF THE CASE

1. This case arises because Fannie Mae and its agents, including 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"),[2] have filed an improper Notice of Default and Intent to Sell ("NOD"), and have thus caused improper non-judicial foreclosure proceedings to be commenced. This illegal conduct *threatens to foreclose on Westland's two multifamily housing communities (the "Properties") based on insupportable non-financial defaults,* which, despite multiple requests by Westland, have never been substantiated, *and to be put simply, were manufactured, by Fannie Mae's Servicer*. To be clear, all monthly debt service payments have been timely made on this loan. In fact, since February 2020, when Servicer abruptly ceased sending loan statements, Counterclaimants have actually overpaid their monthly debt service obligation payments by over $100,000. Moreover, Counterclaimants have over $20 million of equity in the Properties, and therefore, there is absolutely no good faith basis the noticed foreclosure sales or for any assertion that Fannie Mae or Grandbridge has a risk of loss of assets or the need for an appointment of a receiver.

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[1] As noted in the Third Party Complaint below, the general allegations contained in this Counterclaim also form the 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.

[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.

2. Instead, in reality, the Properties were only in a distressed condition, *prior* to Westland's acquisition of the two properties in August 2018.[3] Immediately before Westland bought the Properties, the Properties were in disrepair, had management that misrepresented the true occupancy rates at the properties, and had such a high rate of serious crimes that the Las Vegas Metropolitan Police Department even sent a Notice and Declaration of Chronic Nuisance (the "Nuisance Notice") to address the criminal activity *at that time*.[4] Still, in late 2017, despite the poor condition of the Properties, Delegated Underwriting and Servicing ("DUS") lender/loan servicer Grandbridge[5] made an initial loan on the properties. Upon information and belief that loan never should have been made under Fannie Mae's lending guidelines.

3. Compounding matters, when the initial loan documents were signed, Grandbridge used a local office of CBRE to conduct a property condition assessment ("PCA") and based thereon, only required a combined total deposit of $560,187.00 for the replacement reserve and repair reserve accounts at both Properties, plus a small addition to the monthly debt service. In August 2018, those reserve accounts were reduced to approximately $143,000[6] when the loan was assumed by Westland, and the same monthly debt service additions were maintained. At that point Grandbridge also made an explicit representation in its loan assumption letter that "after a thorough review and analysis of the Proposed Borrower's financial and managerial capacity, the Assumption has been approved on the following terms: . . . No change to the Replacement Reserve" and "No Change to the Required Repair Reserve." The statement was either a negligent misrepresentation based on absence of any adequate review, or made fraudulently to induce Westland to sign the

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

[4] The Nuisance Notice (Exhibit A) provides it was sent because the two properties had generated over 1,000 calls for 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.

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

[6] While there was approximately an additional $545,000 in escrow for the Liberty Property, those funds were 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.

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

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

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

[8] In July 2019, a Westland associated entity, AF Properties 2015 LLC, signed a purchase and sale agreement for the adjacent retail properties at 3435-3455 N. Ellis Blvd. The parcels are largely undeveloped, with only a bar and liquor store onsite, and based on our management team's assessment were a magnet that drew the criminal element to the 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.

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

II. PARTIES

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

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

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

8. Third Party Defendant, Grandbridge Real Estate Capital, LLC, is a North Carolina Limited Liability Company (formerly known as 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"), which at all times mentioned herein has done business in the State of Nevada.

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

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III. FACTS COMMON TO ALL CAUSES OF ACTION

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

Westland's Real Estate Wherewithal

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

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

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

a. Westland Real Estate Group associated entities focus on ownership of properties in the Las Vegas and Southern California multifamily housing markets.

b. Westland Real Estate Group associated entities own and manage approximately 100 multifamily residential properties and a limited number of manufactured home sites, for a combined 13,000 residential units, *over 10,000 of which are located at 38 different multifamily housing communities in all sections of the Las Vegas metropolitan area*.

c. Westland Real Estate Group associated entities have approximately $300 million of loans outstanding with Fannie Mae, and approximately $800 million of loans with all lenders.

d. *Prior to the present matter*, over the course of the 50 years that Westland Real Estate Group has been in operation, its associated entities have had an unblemished lending reputation, in that *no entity associated with Westland Real*

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

e. The primary tenant base associated with Westland Real Estate Group are working class families of modest means. With its major investments in these communities, Westland is able to provide housing to tenants of all protected classes and socio-economic groups, and build local communities.

f. The mission of Westland Real Estate Group entities is to provide those working class families a safe, stable and pleasant living environment within its communities. Unlike most real estate investors, Westland invests the time and financial resources to do so.

g. In order to provide those safe and stable communities, Westland Real Estate Group entities employ approximately 500 employees, such as onsite managers, maintenance personnel, a dedicated "turn" team that rehabilitates vacant units, accounting staff, marketing staff, leasing representatives, and call center personnel, who have attained substantial experience in addressing the needs of its tenant base. The majority of that staff is located in Las Vegas.

h. Westland Real Estate Group employees give the group a competitive advantage by allowing the combined entities to function in a cost-effective manner, which efficiencies cannot be replicated by other property management entities that operate primarily by employing outside contractors.

i. Westland Real Estate Group's associated entities and employees are able to create safe and stable communities by their established productive relationships with law enforcement officers and providers of specialized services.

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

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The Westland Liberty Property & Square Property Ownership

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

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

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

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

The Shamrock Purchase

19. Prior to Liberty LLC's and Square LLC's purchase of the Liberty Property and the Square Property, the Properties were owned by Shamrock Properties VI LLC and Shamrock Properties VII LLC (in combination the "Shamrock Entities").

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

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

22. It is commonly known in the real estate industry that lenders sell REO properties "as is" and do not make repairs to the properties before the properties are sold, and on that basis 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

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

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

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

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

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

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

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

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

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

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

Shamrock's Exit Strategy & The Loan Agreements

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

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

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

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

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

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

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

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

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

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

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

Grandbridge's & Fannie Mae's Reserve Requirements for the Shamrock Entities

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

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

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

[9] To be clear, as stated in Paragraph 36-39, the LVMPD's letter was sent in response to conduct between September 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.

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

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

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

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

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

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

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

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

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

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

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Westland's Purchase of the Properties & Loan Assumption

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Westland's Rehabilitation of the Properties and Community Building

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

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

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

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

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

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

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

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

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

a) a standard term in purchase and sale agreements, including the purchase and sale agreement applicable to the sale of the Properties, requires a property seller to restore all vacant units to rent ready condition and disclosing the true occupancy rate would disclose that additional units were vacant,

b) processing evictions is costly in terms of time and money, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Grandbridge's Servicing of the Loans since the Assumption

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

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

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

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

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

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

The Loan Agreements' Requirements for Adjustments to Deposits

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

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

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

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

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

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

The Loan Terms for Property Condition Assessments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[10] Upon information and belief, Grandbridge and Fannie Mae recognized that the physical conditions listed in the f3, Inc. PCAs were not the types of items previously listed in the repair schedules, and on that basis at the time of default attempted to recast those amount as an addition to the replacement reserve in the Notice of Default and Acceleration 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].)

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

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

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

The Loan Terms for Additional Lender Reserves and Replacements

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

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

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

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[11] For instance, at the time of acquisition of the Properties, two buildings at Liberty Village were damaged by fires, which rendered them complete losses. The insurance carrier issued joint checks for the nearly $1 million that it cost to restore those buildings. All of the funds from the carrier have been held by Grandbridge since that time, and 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.*

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

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

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

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

163. Nonetheless, the PCA conducted by f3, Inc., demands a deposit of approximately $2.7 million dollars for "immediate repairs."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Abandoned Default

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

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

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

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

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

The Purported Default

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. COUNTERCLAIMS

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

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

215. 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.

216. 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.

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

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

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

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

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

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

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

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

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

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

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

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

228. The assumption agreement utilized the general provisions of the Multifamily Loan and Security Agreement entered into between Square 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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d. FOURTH CAUSE OF ACTION (DECLARATORY RELIEF)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. SEVENTH CAUSE OF ACTION (CONVERSION)

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

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

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

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

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

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

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

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

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

293. Fannie Mae's acts constitute conversion.

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

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

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

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h. EIGHTH CAUSE OF ACTION (INJUNCTIVE RELIEF)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: August 31, 2020

LAW OFFICES OF JOHN BENEDICT

/s/ John Benedict
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Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village, LLC & Westland Village Square LLC

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.

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

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

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

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

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

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

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

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

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

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

332. 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.

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

334. The assumption agreement utilized the general provisions of the Multifamily Loan and Security Agreement entered into between Liberty Square 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.

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

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

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

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

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

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

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

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

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

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

344. 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.

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

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

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

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

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

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

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

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

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

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

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

d. FOURTH CAUSE OF ACTION (DECLARATORY RELIEF)

355. 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.

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

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

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

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

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

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

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

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

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

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

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

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

366. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

381. 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.

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

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

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

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

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

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

388. Westland justifiably relied upon the information Grandbridge provided.

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

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

390. 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.

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

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

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

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

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

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

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

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

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

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

h. EIGHTH CAUSE OF ACTION (CONVERSION)

401. 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.

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

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

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

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

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

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

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

409. Grandbridge's acts constitute conversion.

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

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

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

i. NINTH CAUSE OF ACTION (INJUNCTIVE RELIEF)

413. 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.

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

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

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

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

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

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

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

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

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

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

423. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: August 31, 2020

LAW OFFICES OF JOHN BENEDICT
/s/ *John Benedict*
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Telephone: (702) 333-3770
Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village, LLC & Westland Village Square LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of August 2020, I served a true and correct copy of the foregoing **ANSWER TO PLAINTIFF'S COMPLAINT, COUNTERCLAIM AND THIRD PARTY COMPLAINT** via electronic service through Odyssey to the following:

Nathan G. Kanute, Esq. and/or David L. Edelblute, Esq.
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 110
Las Vegas, Nevada 89169
Email: nkanute@swlaw.com; dedelblute@swlaw.com
Attorneys for Plaintiff

/s/ Igor Makarov
An Employee of the Law Offices of John Benedict

Blacksmith, Ashley

From: Taylor, Lara
Sent: Tuesday, September 1, 2020 8:43 AM
To: Blacksmith, Ashley
Subject: FW: Notification of Service for Case: A-20-819412-C, Federal National Mortgage, Plaintiff(s) vs.Westland Liberty Village, LLC, Defendant(s) for filing Answer and Counterclaim - AACC (CIV), Envelope Number: 6555385

Lara J. Taylor
Legal Administrative Assistant to Tom Burton, Nathan Kanute, Wayne Klomp, Kiah Beverly-Graham, and Stevie Casteel
775-785-5434

From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
Sent: Monday, August 31, 2020 5:02 PM
To: Taylor, Lara <ljtaylor@swlaw.com>
Subject: Notification of Service for Case: A-20-819412-C, Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s) for filing Answer and Counterclaim - AACC (CIV), Envelope Number: 6555385

[EXTERNAL] efilingmail@tylerhost.net

Notification of Service

Case Number: A-20-819412-C
Case Style: Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s)
Envelope Number: 6555385

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-20-819412-C
Case Style	Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s)
Date/Time Submitted	8/31/2020 5:00 PM PST
Filing Type	Answer and Counterclaim - AACC (CIV)
Filing Description	Answer to Plaintiff's Complaint, Counterclaim and Third Party Complaint
Filed By	John Benedict
Service Contacts	Federal National Mortgage:

	Lara Taylor (ljtaylor@swlaw.com) Nathan Kanute (nkanute@swlaw.com) Docket Docket (docket_las@swlaw.com) D'Andrea Dunn (ddunn@swlaw.com) David Edelblute (dedelblute@swlaw.com)

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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

OPPOSITION TO PLAINTIFF'S APPLICATION FOR APPOINTMENT OF RECEIVER ON ORDER SHORTENING TIME; COUNTER-MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES

Hearing Date: September 22, 2020
Hearing Time: 9:00 a.m.

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-charted corporation,

Counter-Defendant.

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

Third Party Plaintiffs,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation,

Counter-Defendant.

OPPOSITION TO PLAINTIFF'S APPLICATION FOR APPOINTMENT OF RECEIVER ON ORDER SHORTENING TIME & CROSS-MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that Westland will bring this Counter-Motion for Temporary Restraining Order and Request for Preliminary Injunction before the District Court, Department 4 (Courtroom 12D) located at Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV, on the 22nd day of September 2020, at 9:00 a.m., or as soon thereafter as counsel may be heard.

Additionally, Defendants/Counterclaimants/Third Party Plaintiffs, Westland Liberty Village, LLC ("Liberty LLC") and Westland Village Square, LLC ("Square LLC" and in combination with Liberty LLC, "Westland"), by and through its counsel of record, the Law Offices of John Benedict, hereby files this Opposition to Plaintiff's Application for Appointment of Receiver on Order Shortening Time, and Counter-Motion for Temporary Restraining Order and Preliminary Injunction pursuant to NRCP 65(b), to prevent and enjoin Counter-Defendant Federal National Mortgage Association ("Fannie Mae") and/or Third Party Defendant Grandbridge Real Estate Capital, LLC ("Grandbridge," or in combination with Fannie Mae, "Lenders") from: (1) conducting any foreclosure proceeding or foreclosure sale on the multi-family apartment communities owned by Westland and located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's

Parcel Nos. 140-08-702-002 and 140-08-702-003] (individually each is referred to as the "Property" or in combination the "Properties"); (2) interfering with Westland's enjoyment of the Properties pending a determination of the rights and obligations of the parties pursuant to the Multifamily Loan and Security Agreement entered by and between Lenders and Westland on August 29, 2018, (the "Loan Agreements"), or (3) using a receiver to displace Westland at the Properties.

On August 29, 2018, Westland purchased the Properties and has recorded its deeds with the Clark County Recorder's office as Instrument Nos. 20180830-0002684 and 20180830-0002651 (the "Deeds"). Thus, Liberty LLC and Square LLC are title owners of the Properties that are facing an improper and illegal non-judicial foreclosure sale by Lenders. Westland seeks a preliminary injunction to stop Lenders from improperly foreclosing on the Properties or interfering with Westland's enjoyment of the Properties until Westland's Counterclaim and Third Party Complaint are heard on the merits.

The Rules of Practice for the Eighth Judicial District permit the granting of orders shortening time when good causes exists. See EDCR 2.26. In this case, Plaintiff has made an Application for Appointment of Receiver on Order Shortening Time, as such to the extent that Plaintiff's request to shorten time is granted, Westland requests that this Counter-Motion be rescheduled to the same date and time based on EDCR 2.20(f), because its request for a restraining order relates to the same subject matter, and requires to consider the same facts, documents, law and equity as it will in considering Plaintiff's Application. If Plaintiff's Application is advanced on the order shortening time, but the Counter-Motion is not, it may render Westland's motion moot and cause immediate and irreparable injury, loss, and damage to Westland if Lenders' appointment of a receiver or foreclosure sale is allowed to go forward prior to the hearing of this motion.

///

///

This Counter-Motion is made pursuant to NRCP 65(b), NRS 33.010, EDCR 2.10 & 2.20(f), and is further based on the pleadings on file herein, the attached Memorandum of Points and Authorities, the declarations in support thereof, anything of which the Court should, or must take Judicial Notice, and any arguments of counsel that this Court may allow at the time of the hearing.

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/Third Party Plaintiffs Westland Liberty Village, LLC & Westland Village Square LLC

MEMORANDUM OF POINTS AND AUTHORITY

I. INTRODUCTION

This Opposition and Counter-Motion are filed to respond to a non-existent non-monetary default that was manufactured by Fannie Mae's unscrupulous loan servicer, Grandbridge Real Estate Capital, LLC – despite Westland never having missed a single payment of debt service. Instead, the Motion is based solely on the demonstrably false and unsupported assertion that Westland "failed to maintain the mortgaged property and failed to increase reserves pursuant to the Loan Documents." The facts are that Westland has invested millions in increased security, repairs and renovation and has spent countless hours and efforts on site and with the local community to remove a notorious criminal element from the properties, going so far as to purchase an adjoining commercial property to remove a liquor store and bar where a criminal element could "hang out," as well as working to replace it with community based services and other critically needed resources for this underserved low income area.

To exacerbate matters, Lenders have attempted to use this specious "Default" to attempt to appoint a receiver which would displace 32 Westland employees who have poured great efforts into rehabilitating the Property and forming a new community with the residents, many of whom are new and replaced the former criminal element (which continued to thrive, by the way, while Grandbridge was the asset manager for both Properties under prior ownership). And despite Westland's millions in investment and over $20,000,000 in equity, Lenders have filed a Notice of Default on this trumped-up "Default" to foreclose on Westland's Properties, thus depriving Westland of all of its investment in this community.[1] Of course, neither equity nor the law should countenance such a result - the Motion for Receiver should be denied, and the Counter-Motion for a TRO and preliminary injunction should be granted.

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[1] Plaintiff's Complaint, Exhibit 12, at 3 & 12 [Servicer's October 2019 demand to deposit an extra $2.7 million into reserves]; Plaintiff's Complaint, Exhibit 15, at 1 & Plaintiff's Complaint, Exhibit 16, at 1 [each Property's July 14, 2020 Notice of Default and Election of Sell] (the "NODs").

Factually, the statements that Westland failed to maintain the Properties and that a receiver is needed, are not only disputed but outlandish when considering the following facts:

- After purchasing the Properties in August 2018, Westland invested over $1.8 million in capital expenditures before the September 2019 PCA by f3, and after only two years spent a total of $3.5 million on capital expenditure improvements at the Properties.[2]
- To overcome crime, Westland has paid $1,573,600 for private security guards, and made physical improvements for security, to transform the Properties into stable communities for at-risk working families, in place of the housing cited by the Las Vegas Metropolitan Police Department as a violent crime-infested nuisance under prior ownership which was overseen by Grandview as the Properties' asset manager.[3]
- Unbiased third parties, such as the Office of the County Commissioner for Clark County and the Nevada State Apartment Association, have recognized the vast improvements Westland has made at the Properties, its more effective and hands-on management and oversight, and the resultant sharp reduction in crime.[4]
- Lenders have more than adequate security for the Loans, because Westland's has over $20 million of equity in the Properties, not from increased value, but form cash it paid at Closing.[5]

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[2] Counterclaim, ¶¶ 4, 99, 154 & 213; Exhibit 1, Affidavit of Yaakov Greenspan, dated August 27, 2020 ("Greenspan Aff."), at ¶ 25.

[3] Counterclaim, ¶¶ 92-98; Counterclaim, Exhibit A; Exhibit 1, Greenspan Aff. at ¶ 35.

[4] Counterclaim Exhibit L, Letter of Nevada State Apartment Association Executive Director, dated November 22, 2019; Counterclaim, Exhibit M, Letter of County Commissioner, dated August 20, 2020.

[5] The Properties' purchase price was $60.3 million, the outstanding Loans are approximately $38.4 million, and based on Westland's efforts the Properties' value has only increased. Counterclaim, ¶¶ 1, 4 & 214; Counterclaim Exhibit F, Purchase and Sale Agreement for Liberty Village, dated June 22, 2018, at Page 4, Article 1.18 & Page 5, Article 1.33; Counterclaim, Exhibit G, Purchase and Sale Agreement for Village Square, dated June 22, 2018, at Page 4, Article 1.12 & Page 5, Article 1.25.

- Lenders are holding nearly $1 million of reserves to which they are no longer entitled, which they obtained from insurance funds earmarked for construction of two buildings at the Liberty Property, which instead had to be completed with cash fronted by Westland. Grandbridge has failed to respond to Westland's reimbursement requests.[6]
- Westland has never missed a monthly debt service payment on this Loan and has actually overpaid the debt service obligation by more than $150,000.[7]
- Westland Real Estate Group has 50 years of multi-family housing experience and is one of the most experienced housing providers in Nevada, with over 10,000 apartment units in 38 apartment communities in the Las Vegas area, and more than 500 employees.[8]
- Westland employs leasing, management, maintenance, accounting, and administrative staff in Las Vegas, including 32 employees onsite at the Properties, who have invested in relationships with tenants and local officials to create communities at the Properties, and who would be terminated if a receiver is appointed.[9]
- During its 50-year history, Westland Real Estate Group has never had a Notice of Default and Election to Sell filed against one of the Properties in its portfolio.[10]
- The sole basis for Lenders' claim that Westland has not maintained the Properties is f3, Inc.'s PCA, which Lenders improperly obtained and which employs a noticeably different standard and approach than the CBRE PCA which was relied upon by Lenders at the time Westland assumed the Loans. This is a straightforward tale of two property inspectors using totally different scopes, breadth, thresholds, details, and pricing for what repairs claimed as necessary.

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[6] Counterclaim, ¶¶ 155 n.11 & 288-290; Exhibit 1, Greenspan Aff. at ¶ 26.

[7] Counterclaim, ¶¶ 1, 4, 104, 202-205, 209, 301, 417; Exhibit 1, Greenspan Aff. at ¶ 18.

[8] Counterclaim, ¶¶ 4, 11, 12, 13; Exhibit 1, Greenspan Aff. at ¶ 5.

[9] Counterclaim, ¶¶ 13g, 13h, 13i & 90; Exhibit 1, Greenspan Aff. at ¶ 24.

[10] Counterclaim, ¶¶ 4, 13d, 273, 283, 379, 389; Exhibit 1, Greenspan Aff. at ¶ 5.

- If the f3 report is taken at face value, then even though Westland spent almost $2,000,000 on repairs in a year, the physical condition of the Properties actually *deteriorated* by $2.7 million in just one year. Of course, that is not possible and did not happen.
- Based on the completely overstated and unreliable f3 report, Lenders demanded that reserves be raised from $143,000 in August 2018 to over $3 million a year later - more than a twentyfold increase.[11]
- The f3, Inc. PCA has inflated many of its cost figures.[12]
- Even if the same standard had been used as when Westland bought the Properties, the f3, Inc, PCA report is now stale and invalid, because Lenders chose to wait approximately a year after the September 2019 PCA inspection to bring this action for a receiver on order shortening time.
- Since the September 2019 PCA, the Properties' occupancy rate has risen from 44% to over 80% occupancy, so even assuming arguendo, the vast majority of Lender's demand to adjust reserves based on the cost of turning vacant units is invalid.[13]
- Westland recently produced documentation of the work performed in vacant units since the stale f3, Inc. report, which included *2,343 pages of work orders showing only repairs completed to "make ready" or "turn" vacant units* at the Properties between September 2019 and mid-June 2020 – there are even more repairs. The Westland entity, Las Vegas Residential Prop, LLC, has a dedicated "turn team" that performed a large portion of the work. Those attached work orders do *not* include work that Westland's staff performed

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[11] Tellingly, Fannie Mae failed to attach the 2017 PCA by CBRE, which shows only approximately 10% of the units were inspected, including but a handful of vacant units, and that no reserves were found necessary for the vacant units. In contrast, hired gun f3, Inc., inspected approximately 50% of the units, including nearly every vacant unit, and Fannie Mae based approximately $1.7 million of its demand for adjusted reserves on the vacant units. See Counterclaim Exhibits D & E; *cf*. Plaintiff's Complaint, Exhibit 11; see also Counterclaim Exhibit J, at 2, 5-7; Counterclaim Exhibit K, at 2, 5-7.

[12] Counterclaim Exhibit N, Liberty Village-Village Square Plan, at 6-7.

[13] Counterclaim, ¶¶ 101 & 104-106; Exhibit 1, Greenspan Aff. at ¶ 23.

to maintain occupied units.[14]

- The proposed receiver would not be able to duplicate the effort or efficiencies of Westland's staff, as the receiver's curriculum vitae shows it would be forced to use subcontractors to perform all work – that would be at a substantially higher cost.[15]
- During 2014, prior to an REO sale, the Properties were previously owned by Fannie Mae, which put a receiver in place. Upon information and belief, even with the receiver in place at that time, the Properties were troubled and crime-ridden.[16]

Based on the foregoing facts, Westland wholly denies Lender's allegations and believes instead that the manufactured "Defaults" are a strategic approach orchestrated by Grandbridge to: (1) evade its own underwriting shortcomings,[17] (2) generate default interest, default fees, and default costs, and (3) harass Westland.[18] Such actions are all the more troubling because Westland engaged in good faith discussions regarding the status of the Properties, which Fannie Mae and/or Grandbridge took advantage of by scheduling an inspection that was not permitted by the terms of the Loan Agreements.

Still, despite the ongoing dispute over whether Westland has or has not properly maintained the Properties and whether Westland is in breach of any provision of the Loan Agreements - in any way (which Westland wholly denies), ultimately Fannie Mae has recorded an illegal Notice of

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[14] Exhibit 2, Make Ready Work Orders, completed between September 2019 and June 2020.

[15] Counterclaim, ¶¶ 120, 211; Exhibit 1, Greenspan Aff. at ¶ 24.

[16] Counterclaim, ¶¶ 2 n.3 & 33-38; Exhibit 1, Greenspan Aff. at ¶ 24.

[17] Grandbridge was a DUS lender on this Loan, and was able to underwrite the underlying loan without Fannie Mae's approval. DUS lenders are required to follow Fannie Mae's guidelines, but must retain a portion of the underwriting risk and undergo periodic audits. Counterclaim, ¶¶ 2 n.5 & 46-51. It is Westland's informed belief that Grandbridge's underwriting was questioned by Fannie Mae for the loan to Westland's predecessor, and on that basis retaliated against Westland.

[18] Tellingly, Westland has reason to believe that Grandbridge regards the notices as a way to generate extra fees, because due to Fannie Mae's monolithic nature, borrowers typically simply acquiesce; and in fact Westland has reason to believe only one other borrower has ever legally challenged Fannie Mae's non-financial notice of default related to reserves. In that case, *Federal National Mortgage Association v. Brookville Schoolhouse Road Estates, LLC*, Case No. 1:17-CV-00170-DAS (N.D. Miss.), Fannie Mae did not prevail.

Default and Election to Sell Under Deed of Trust, which will result in an imminent sale of the Properties.

To prevent irreparable harm to Westland based on Fannie Mae's hasty and wrongful appointment of a receiver and foreclosure proceedings, Westland files this Opposition and Counter-Motion.

II. STATEMENT OF FACTS

Liberty LLC and Square LLC are single-purpose entities that each hold title to one of the Properties, which are adjoining multi-family apartment communities, located in Las Vegas, Nevada. *See* Greenspan Aff., at ¶ 4. Liberty LLC and Square LLC are entities affiliated with Westland Real Estate Group, which has 50 years of multi-family housing experience and is one of the most experienced housing providers in Nevada, with over 10,000 apartment units in 38 apartment communities the Las Vegas area, and more than 500 employees. *See* Greenspan Aff., at ¶ 5. During its 50-year history, Westland Real Estate Group has never had a Notice of Default and Election to Sell filed against one of the properties in its portfolio. *See* Greenspan Aff., at ¶ 5.

On August 29, 2018, Liberty LLC and Square LLC purchased the two Properties located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-702-002 and 140-08-702-003] from sellers Shamrock Properties VI LLV and Shamrock Properties VII LLC. *See* Greenspan Aff., at ¶ 6. To purchase the Properties, Liberty LLC and Square LLC assumed two loan agreements from the Shamrock Entities in the amount of $29,000,000 and $9,366,000, respectively (the "Loans") that were issued by Grandbridge (the successor to SunTrust Bank) in August 2018. *See* Greenspan Aff., at ¶ 7. Westland paid the remainder of the combined $60.3 million purchase price in cash, which resulted in Westland establishing over $20 million in equity in the Properties. *See* Greenspan Aff., at ¶ 7; see also Counterclaim, Exhibits F & G. The Loans and Loan Agreements were assigned by sellers Shamrock Properties VI LLC and Shamrock Properties VII LLC to Westland. Pursuant to the Loan Agreements, Westland was

responsible for a monthly debt service obligation of approximately $162,000 for the Liberty Property, and $52,000 for the Village Property, which includes taxes, insurance, and a replacement reserve escrow deposit. *See* Greenspan Aff., at ¶ 8. At all times relevant to this lawsuit, Defendant has been and continues to remain, current on all payments required under the Loan Agreements.[19] *See* Greenspan Aff., at ¶ 9.

Of particular relevance, at the time that the Loan was assumed, Lenders reduced the repair and replacement reserves for both Properties to approximately $143,319.30 Counterclaim, Exhibit J, at 5 (replacement reserve maintained at $65,657.03, and repair reserve reduced to $39,375); Counterclaim, Exhibit K, at 5 (replacement reserve set at $38,287.25, with no repair reserve) & 7. Additionally, the Loan Agreements require that Westland make a monthly deposit into a Replacement Reserve Escrow account in the amount of $18,800.80 per month for Liberty LLC and $10,259.06 per month for Square LLC, the purpose of which is to provide the Lenders with additional security in the amount of estimated repairs that may be necessary in the future for the Properties. *See* Greenspan Aff., at ¶ 8. As such, at the time of the filing of this Motion, Westland has deposited a total of approximately $432,418.40 for the Liberty Property and $235,958.38 for the Square Property with Lenders in the Replacement Reserve Escrow Account.[20] *See* Greenspan Aff., at ¶ 9. Notably, those deposits do not include the nearly $1 million of reserves to which Lenders are no longer entitled but continue to hold, which Lenders obtained from insurance payments earmarked for reconstruction of two buildings at the Liberty Property. The reconstruction was completed with cash fronted by Westland, but Lenders refuse to turn over this nearly $1,000,000 and Grandbridge will not even respond to Westland's reimbursement requests. *See* Greenspan Aff., at ¶ 9.

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[19] Even when Lenders shut down the automatic ACH payments that had been the method of payment from the time Westland bought the Properties, and then refused payment from Westland, Westland began overnighting check payments each and every month – payments Lenders admits it received. Further, rather than the base amount due of approximately $162,000, Liberty LLC has forwarded $180,621.79 each month for its Property, and rather than the base amount of approximately $52,000, Square LLC has forwarded $58,471.94 each month for its Property. *See* Greenspan Aff., at 11. As such, Westland overpaid the loans by approximately $200,000, or even utilizing the most conservative estimates, because the loan is subject to slight rate variations, Westland would have overpaid the loans by at least $150,000.

[20] Upon information and belief, even more than that has been paid into the Replacement Reserve Escrow Account over the term of the Loan, which started with a balance because the Loan was assumed.

On October 18, 2019, Grandbridge sent Westland a Notice of Demand (the "Notice") demanding that certain alleged maintenance deficiencies, as set forth in a September 2019 PCA report (the "Property Report") prepared by f3, Inc., be addressed and that Westland deposit additional sums in the Replacement Reserve Account amounting to $2.7 million. See Plaintiff's Complaint, Exhibit 12. Such an assessment would necessarily mean one of two things: 1) the condition of the Properties deteriorated by $2.7 million in one year, despite Westland spending $1.8 million on capital expenditures during the same period, or 2) Lenders employed f3, Inc. to game the system by utilizing a differing standard that artificially inflated its PCA. While Fannie Mae chose not to include the PCA conducted by CBRE at the inception of the Loan, Westland is providing a copy for the Court's side-by-side consideration. See Counterclaim Exhibits D & E; *cf*. Plaintiff's Complaint, Exhibit 11, at 24 & 332.

The alleged maintenance issues cited included increased monthly deferred maintenance charges for asphalt paving, painting, roofing, water heater, HVAC repairs, and appliances, as well as the immediate walkway, roofing, swimming pool repairs, fitness center/sport court repairs, and renovation of vacant units on the Property. See Plaintiff's Complaint, Exhibits 11 & 12. However, by far the highest immediate cost at each Property was purportedly for the repair of vacant units, which was estimated at a value of $1.9 million for both Properties. Notably, even though f3 inspected vacant units, and the Lenders included those amounts in their calculus to raise reserves by twenty times, the cost to "turn" those units was not even a type of cost included in the Loan Agreements' schedules as derived from the CBRE PCA report.[21] See Counterclaim, Exhibit D, at 7-9 & Counterclaim, Exhibit E at 7-9; *cf*. Plaintiff's Complaint, Exhibit 11, at 24 & 332.

Also, as it had been before ever receiving the Notice of Demand, Westland has continued with ongoing repairs and remediation of the Properties including, but not limited to, the issues identified in the f3 report and have made most, if not all, of these repairs. See Greenspan Aff., at ¶

[21] While one "down unit" was noted on CBRE's report, the unit is clearly distinguishable, because that unit was down due to a fire-related loss, and Westland does not contest that units out of service based on an insurable event would need a reserve established until such repairs are completed.

12. The repairs were made despite Lenders' refusal to honor its contractual obligations to release money from the Reserve Accounts to fund the work. Instead, the repairs were funded out of an additional infusion of Westland's own cash. This practically means all the Replacement Reserve Account funds serve as further security for Lenders. See Greenspan Aff., at ¶ 13. Despite the passage of over a year, Lenders never re-inspected the Properties prior to filing their NODs or requesting the appointment of a receiver. See Greenspan Aff., at ¶ 14.

On November 13, 2019, Westland, in good faith, responded to Grandbridge's Notices by contesting the demand. Counterclaim, Exhibit Q. Westland's reasons for objecting included that: 1) the requested $2.7 million adjustment to the reserves would defeat the purpose of the parties' $38.3 million Loan Agreements, 2) many of the issues identified by Lenders in the PCA report pre-existed the Loans, i.e., the Property was already dilapidated at the time of the initial loan to the Shamrock Entities, and that was how things were at the time of the Loan assumption, 3) Westland had already spent $1.8 million to engage in substantial renovations of the Properties and continues to do so, 4) the PCA inspections were slanted through the use of out-of-state vendor f3, Inc., varied from the original assessment of the Properties, and included items that were not "of the type listed" on the original schedules as required by the Loan Agreements, 5) Grandbridge had no right under the Loan Agreements to demand the PCA be performed in the first place, 6) the PCA was both inflated and included the full value of work that was in progress at the time of the inspection, 7) Lenders never made a demand to perform the maintenance, as required by the Loan Agreements, prior to their demand to fund twenty times higher reserves, and 8) the requested repair reserve increased was duplicative of the request to increase monthly replacement reserve deposits for deferred maintenance. *Id.*

Notwithstanding the Lenders' bad act, and breaches of contract, Westland offered to engage in a good faith open dialogue with Lenders. *Id.* Additionally, Westland provided Lenders a copy of its Westland Strategic Improvement Plan for Liberty Village and Village Square, dated November 27, 2019. Counterclaim, Exhibit N. The plan discussed Westland's plan for continuing to improve

the Properties' condition, provided timelines for remaining renovations to be made, and addressed deficiencies that had already been corrected. *Id.* The report also included an operational assessment providing that vacancies at Properties would be filled at a rate of 3% per month, and more detailed estimates with the true and accurate repair costs that Westland actually incurs for turning all remaining vacant units. *Id*.

In response, on December 17, 2019, through their counsel Snell & Wilmer LLC, Lenders forwarded a boilerplate Notice of Default and Acceleration of Note, rejecting Westland's good-faith proposal and sharing of strategic information, ignoring the substantial renovations that Westland had already made at the Properties, and failing to address any of the substantive issues that Westland had raised. Plaintiff's Complaint, Exhibit 13. Lenders refused to address the actual factual circumstances and simply continued to demand payment in full, plus interest, including exceedingly high and manufactured default interest, fees and costs of all sums due under the Loan Agreements and stated that Westland was able to contact Grandbridge to discuss the same. *Id.* However, in reality, after Westland contacted Grandbridge, the asset manager refused to engage in any discussions by stating the matter had already been assigned to counsel. See Greenspan Aff., at ¶ 15.

On the same date, through counsel, Lenders also sent its Demand and Notice Pursuant to Nevada Revised Statutes 107A.270, which effectively sought for Westland to pay over "the proceeds of any and all 'Rents" and again designated the Loans as being "in default." Plaintiff's Complaint, Exhibit 14.

In an effort to resolve these claims, in addition to its prior offer to engage in a good faith discussion, and promptly to undertake any additional remediation of any maintenance issues identified, Westland sought clarification of its purported failure to maintain the Properties, as the Notice lacked any real clarity and provided no explanation, only referring to "Article 6 of the Loan Agreement." Counterclaim, Exhibits R & S. Westland also noted that to that point, the NRS 107A.270 demand did not seem appropriate, because there had not been any Loan *proceeds*, because any rents collected were not even sufficient to cover the monthly debt service obligation. Westland

had to inject cash each month to meet the Properties' financial obligations, including the monthly Loans' payments. *Id*. Finally, Westland again offered to engage in a good faith dialogue to discuss the matter with Lenders, but no response was ever received to the communication. *Id*.

Instead, Grandbridge waited one month, then without prior notice, and unilaterally changing how Westland had been making payment on the Loans since it assumed them, Grandbridge stopped drawing the monthly ACH payment out of Westland's account. This was seemingly done to manufacture a financial default where none had existed. *See* Greenspan Aff., at ¶ 17. Westland responded by forwarding monthly payments to the meet the Loan obligations by check plus approximately 10% to account for any variance in payment that occurred because Grandbridge failed to submit monthly debt service statements even after Westland requested those statements. *See* Greenspan Aff., at ¶ 18; *see also* Counterclaim, Exhibit T (Nonwaiver letters showing continuing debt service payments being made each month). This means Westland has overpaid the debt service payments by more than $150,000. *See* Greenspan Aff., at ¶ 9, 11, 18 (see also fn. 19 above).

In June 2020, Fannie Mae's counsel represented that Lenders would agree to discuss the matter, but placed several conditions on such a meeting, including that Westland pay the f3 PCA cost (which Grandbridge previously represented Westland would not be charged for) and that Westland pay for all attorney fees to date. *See* Greenspan Aff., at ¶ 19. As Grandbridge had manufactured the purported default, Westland refused to agree to pay such fees and costs as a condition to engaging in a good faith discussion, especially since fees and costs were only incurred by Lenders as a result of their illegal, overreaching and insupportable misconduct. *Id*.

On July 14, 2020, Fannie Mae filed the NODs alleging a default of the Loan Agreements based on Westland's alleged failure properly to maintain the Properties and to deposit additional funds into the Replacement Reserve Escrow Account upon demand. Plaintiffs' Complaint, Exhibits 15 & 16. Fannie Mae followed the NODs with this action, in part which seeks the appointment of a receiver.

Westland does not dispute it has obligations under the Loan Agreements, but Westland has met those obligations, improved the conditions at the Properties, and continues to timely pay its Loan obligation, never missing a single payment to date. *See* Greenspan Aff., at ¶ 20. Notably, in the nine (9) months since its November 2019 strategic report presented to the Lenders, Westland has met its benchmarks, has improved the physical condition of the Properties, has repaired virtually all of the vacant units in need of repairs, has worked with the community, the Las Vegas Metropolitan Police Department, and local government to cut crime to a fraction of what it was under the prior owner,(and when Grandview was the asset manager and did not move for appointment of a receiver nor, from all outward appearances, did it do anything to even address this dangerous problem). Westland's efforts have increased occupancy from 52% to over 80% consistent with Westland's strategic estimates (which in itself means that many of the previously vacant units have been renovated), achieved an occupancy rate exceeding the real occupancy rate at the Properties at the time the Loans were assumed from Westland's predecessor, has implemented its more stringent rental criteria, and has improved the finances of the Properties while continuing to serve local hardworking families. See Greenspan Aff., at ¶ 23. Westland has only been able to achieve those results because it employs leasing, management, maintenance, accounting, and administrative staff in Las Vegas, including 32 employees onsite at the Properties. These dedicated folks have invested in relationships with tenants and local officials to create safer, better, and more engaged communities at the Properties. If a receiver is appointed, these 32 employees, all of whom were kept on during the COVID-19 Pandemic, would have to be terminated. See Greenspan Aff., at ¶ 24. Moreover, during Westland's ownership of the Properties, it invested $1.8 million in the Properties prior to the f3, Inc. PCA, invested $3.5 million in capital expenditures in the Properties to date, and an additional $1,573,000 in security costs. See Greenspan Aff., at ¶ 25.

Westland's accomplishments are the reason why unbiased third parties, including the Office of the County Commissioner and the Nevada State Apartment Association, have verified the substantial improvements in the condition of the Properties, the more effective management, and the

sharp reduction in crime. *See* Counterclaim, Exhibits L & M. However, Westland's verification of repairs at the Properties is not limited to unbiased recognition, Westland recently produced documentation of the work performed in vacant units since the stale f3, Inc. report, which included 2,343 pages of work orders showing only the repairs completed to "make ready" or "turn" vacant units at the Properties between September 2019 and mid-June 2020. The large number of turns was possible because the Westland entity, Las Vegas Residential Prop, LLC, has a dedicated "turn team" that performed a large portion of the work. *See* Exhibit 2, Make Ready Work Orders, completed between September 2019 and June 2020. Those attached work orders do not include work that Westland's staff performed to maintain occupied units. Respectfully, as was the case when Fannie Mae last had a receiver at the Properties in 2014, and the Properties were crime-ridden, the proposed receiver would not be able to duplicate the effort or efficiencies of Westland's staff, as the receiver's curriculum vitae shows it would likely be forced to use subcontractors to perform all work at a substantially higher cost.

In summary, the Properties are safer, better managed, and better maintained than at any point in at least the past decade. Lenders have more than enough security, both under industry underwriting standards, and consistent with the Loan Agreements between the Parties. The trumped-up "Default" has been exposed as a sham, and not only do the facts not support the appointment of a receiver, respectfully they compel injunctive relief to protect Westland, its 32 employees, the hundreds of tenants who are enjoying living at the Properties, and Westland's more than $20,000,000 investment. The facts, equity, and the law warrant this as the only just result.

III. LEGAL ARGUMENT

Defendants have served the NODs, which declare their intent to foreclose on the Properties through a non-judicial foreclosure, approximately 120 days after service of those notices on July 15, 2020, in violation of Westland's property rights and substantial financial investment. Westland is entitled to a temporary restraining order or preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure to preserve the status quo because money damages will not adequately

provide relief to protect Westland from the irreparable harm that will result if Westland's Properties are sold.

As this Court well knows, the purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm until a hearing can be held, See *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974), cited by *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir, 2006). In circumstances where immediate action is necessary, "as in the case of an application for an injunction to prevent irreparable injury which would result from delay, and where there is no plain, speedy and adequate remedy at law," a temporary restraining order should be issued. NRCP 65(b).

For the appointment of a receiver, it is notable that Fannie Mae bears the burden of proof as to each of Fannie Mae's non-monetary breach claims. Yet, it has only provided conclusory statements regarding these so-called "Defaults." Fannie Mae simply failed to obtain a PCA report at the time the Loan was assumed, has no current PCA report, and is incapable of showing the true condition of the Properties as they existed at the time it filed its Complaint. Plaintiff cannot, therefore, support its claims of a *continuing* breach of the Loan Agreements premised upon Westland's alleged failure properly to maintain the Properties that would put its security in jeopardy before seeking equity through the appointment of a receiver. At best for the Lenders, there is a dispute as to whether the maintenance issues raised by Fannie Mae were ever required to be addressed by Westland based on the Loan Agreements, and/or whether those conditions were remediated. There is also a dispute as to whether additional funds were necessary to address these alleged maintenance issues. Lenders have glossed over both shortcomings prior to and during the filing of this action. Thus, Westland submits that Fannie Mae has failed to prove or provide any evidence substantiating its claim of a Default, which must be addressed prior to jumping to the appointment of a receiver. Essentially, Lenders previously acted in bad faith and continue to act in bad faith.

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If the Lenders are allowed to wrongfully foreclose and sell the Properties, or to have a receiver appointed, Westland will suffer irreparable harm from the loss of this unique parcel of real property in which it has invested great sums of money, time and effort, and know how. Lenders' bad faith will be rewarded. Additionally, the history of these Properties has shown that they are not easily managed, as the Properties languished for years prior to Westland's onsite management. Thus, this Court appointing an off-site receiver that would manage through subcontracting would undoubtedly lead to a deterioration of the Properties.

For all of these reasons, Plaintiff should be restrained from conducting any foreclosure proceedings and/or foreclosure sale relating to the Properties pending a determination of the rights and obligations of the parties pursuant to the Loan Agreements, pursuant to the implied covenant of good faith and fair dealing, and in equity.

A. Appointment of a Receiver is Improper, Because Lenders Ignore the Need to Prove a Default Under NRS 107A.260's, the Equitable Nature of a Receiver as a Matter of Last Resort When an Adequate Legal Remedy Exists, and Their Unclean Hands

In Nevada, it is a matter of longstanding precedence that the appointment of a receiver is a matter of equitable relief, regardless of whether the relief is based on a statutory provision. *Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 839 (1954). Specifically,

> The appointment of a receiver pendente lite . . . is to a considerable extent a matter resting in the discretion of the court to which the application is made, to be governed by a consideration of the entire circumstances of the case. And since the appointment of a receiver is thus a discretionary measure . . . [the court's should exercise its] sound judicial discretion in view of all the circumstances of the case, to be exercised for the promotion of justice where no other adequate remedy exists . . . it is contended that this is not a proper case for receivership since an adequate remedy at law exists. If this be true the appointment was improper. 'Receivership is generally regarded as a remedy of last resort." law exists.

Bowler v. Leonard, 70 Nev. at 384, 269 P.2d at 839 (internal citations omitted).

Moreover, "as this court has previously recognized, any property '[e]ntrusted to a receiver's care is regarded as being *in custodia legis*'; put differently, 'the court itself [has] the care of the property by its receiver. . . Even further, a receiver is merely the court's 'creature or officer, having

no powers other than those conferred upon him by the order of his appointment." *U.S. Bank Nat'l Ass'n v. Palmilla Dev. Co.*, 131 Nev. 72, 77, 343 P.3d 603, 606 (2015) (*quoting in part Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 839 (1954)). Thus, while Fannie Mae has asserted that it is "entitled to the appointment of a receiver," the law established by the Supreme Court of Nevada establishes that the appointment of a receiver is equitable in nature, and a matter within the discretion of this Court it is not mandatory relief as Fannie Mae suggests.

Further, the inaccuracy of Fannie Mae's argument that this discretion is altered by the use of the word "shall" based on its mandatory connotation is even belied by the opinion they cite, because the *State v. American Bankers Ins. Co.* court noted an exception exists when "legislative intent demands another construction . . . [such as] in order to avoid an unconstitutional legislative interference with judicial prerogatives." *State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990). The court went on to opine that "[w]hen statutory provisions relate to judicial functions, they should be regarded as discretionary only." *Id* at 883, 802 P.2d 1278.

Moreover, in relation to NRS 107A.260, Fannie Mae's Application seeking appointment of a receiver glosses over the need for it to show that a default has occurred related to the payment of rents. Simply stated, NRS 107A.260 is part of a statute known as the Uniform Assignment of Rents Act. The preceding section, NRS 107A.250 provides that "[a]n assignee *may enforce an assignment of rents* using one or more of the methods specified in NRS 107A.260 . . ." NRS 107A.250 (emphasis added). As such, it seemingly goes without saying that NRS 107A.260 starts by stating "An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if: (a) The assignor is in default . . ." the statute is referring to a default in the payment of rents, not a purported default based on a demand to place additional reserves into escrow. Westland has made every debt service payment in full on time. Based on the foregoing, Westland disputes that the statutory conditions for NRS §§ 107A.260(1) have been met because the assignor has not defaulted in the payment of rents.

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Additionally, Westland disputes that equitable relief is appropriate under any of the three statutory provisions because Lenders have not acted in good faith, or with the clean hands required to request equitable relief. *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766 (2008). As the *Las Vegas Fetish* court noted, the unclean hands doctrine generally "bars a party from receiving equitable relief because of that party's own inequitable conduct." *Id*. (unclean hands preclude equitable relief when a party has acted in "connection with the subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith").

Moreover, in the lending context, the terms of the statutory texts clearly evidence a requirement that the property serving as a lender's security must be at risk of loss for a party to seek the appointment of a receiver. *See* NRS 107.100(2); NRS 32.010(2). Specifically, NRS 107.100 is limited to applications where after a NOD is filed, "personal property . . . is in danger of being lost, removed, materially injured or destroyed, that real property . . . is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures." Similarly, NRS 32.010(2) specifically applies to loan proceedings involving mortgage foreclosures, but again the appointment of a receiver is limited to circumstances "where it appears that the *mortgaged property is in danger of being lost*, *removed or materially injured, or* that the condition of the mortgage has not been performed, and that *the property is probably insufficient to discharge the mortgage debt*." NRS 32.010(2) (emphasis added).

Here, simply stated, Lenders have no risk to their security. There is no risk of the underlying mortgaged Properties being insufficient to discharge any obligation, as Westland had over $20 million of equity in the Properties at the time of purchase, and it is independently verifiable that the condition of the Properties has improved with the additional $3.5 million of capital improvements that Westland has performed and the $1.5 million in security it has implemented and employed there. Likewise, while Fannie Mae asserts it has "no controls" in place over the rents that are being

collected, the truth is *Fannie Mae has received every rental payment on a timely basis and has even been overpaid by at least $150,000.* Simply stated, Fannie Mae has received *more* than Lenders are entitled to receive based on the Parties' contract.

This Court should not be simply willing to accept the Grandbridge-manufactured assertion that a default has occurred, in an attempt to convert Westland's funds. Rather, Lenders have simply been more than fully paid even when the Properties were not cashflow positive. Now that the Properties have been rehabilitated and are generating income, it is absurd for Fannie Mae to assert that there is a risk of loss of rents. Moreover, as stated above, it seems beyond doubt that there has been any waste to the Properties themselves, as unbiased third parties, including entities related to the State of Nevada, have confirmed the condition of the Properties has improved, contrary to the assertions in Lenders' stale, biased report.

For all of these reasons, Fannie Mae's application for the appointment of a receiver is misplaced and should be denied.

B. The Standard For Injunctive Relief

Injunctive relief is available where (1) the moving party enjoys a reasonable likelihood of success on the merits, and (2) the non-moving party's conduct, if permitted to continue, will result in irreparable harm for which compensatory damages are an inadequate remedy. *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev, 397, 403 (2009); *Dep't of Conservation & Natural Res., Div. of Water Res. v. Foley*, 121 Nev. 77, 80 (2005). As the Nevada Supreme Court has explained, injunctions are issued to protect plaintiffs from irreparable injury, to preserve the court's power to render a meaningful decision after a trial on the merits, to restore the status quo and to restore the status quo by undoing wrongful conditions when damage appears to have already been done. *See, e.g., Ottenheimer v. Real Estate Division*, 91 Nev. 338, (1975); *see also Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 492 P.2d 123, 124 (1972); *No. One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780 (1978) (preserve status quo); *Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Mem & Gardens, Inc.*, 88 Nev. 1, 4 (1972)

(restore status quo); *Leonard v. Stoebling*, 102 Nev, 543, 550-51 (1986) (restore). Here, the injunction prayed for by Westland will preserve the status quo.

Rule 65 of the Nevada Rules of Civil Procedure and NRS 33.010 govern the issuance of injunctions. NRS 33.010 provides that injunctive relief is appropriate "when it appears by the complaint that the plaintiff is entitled to the requested relief, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually."

To the extent that the Court goes beyond a TRO to evaluate the propriety of preliminary injunctive relief, the decision to "grant or deny a preliminary injunction is within the district court's sound discretion." *Labor Comm'r of State of Nev. v. Littlefield*, 123 Nev. 35, 38 (2007). In exercising this discretion, this Court must weigh the relative interests of the parties—i.e., the damage to the non-moving party if the injunction issues versus the damage to the moving party should the injunction not issue. *Home Fin. Co. v. Balcom*, 61 Nev. 301 (1942); *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146 (1996).

As demonstrated in the sections below, Westland has more than a reasonable likelihood of success on the merits, will suffer irreparable harm without the issuance of a temporary restraining order or preliminary injunction, and the relative interests of the parties support entry of the requested injunction.

C. Allowing Lenders' premature and unsubstantiated foreclosure on the Properties, unique real estate, would cause Westland irreparable harm.

In establishing irreparable harm, the Nevada Supreme Court has held that "[g]enerally harm is 'irreparable' if it cannot adequately be remedied by compensatory damages." *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 28 (2008) (citing *Univ. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721 (2004)). If Defendants are allowed to proceed with their foreclosure sale of the Properties, Westland will be irreparably injured by the loss of its ownership therein, the rights inherent thereto, and the loss of business revenue.

1. The loss of real property constitutes irreparable harm.

The Nevada Supreme Court has recognized that real property implicates a broad range of potential rights, including "all rights inherent in ownership, including the right to possess, use, and enjoy the property," as well as security in and title to the property. *Hamm*, 124 Nev. at 298-99; *see also McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 658 (2006).

Thus, real property and its attributes are considered unique, and the loss of real property rights generally results in irreparable harm. *See Dixon v. Thatcher*, 103 Nev. 414, 416 (1987); *see also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201 (1975) (denial of an injunction to stop foreclosure reversed because legal remedy inadequate); *Pickett v. Comanche Const., Inc.*, 108 Nev. 422, 426 (1992) ("We conclude that if Comanche were allowed to sell the liened properties, the homeowners would be subjected to irreparable harm and that compensatory damages would be inadequate."). This principle has also been recognized in numerous federal courts' as well as by the Ninth Circuit. In *Sundance Land Corp. v. Cmty. First Fed. Sav. & Loan Ass'n*, the Ninth Circuit, recognized that because real property is unique, the owner has no adequate remedy at law if the real property is foreclosed upon. 840 F.2d 653, 661 (9th Cir. 1988). In that case, the Ninth Circuit held that "[d]enial of the injunction would, according to the allegations of the complaint, cause [appellant] immediate, irreparable injury" because "it would lose the orchard property if [appellee] were allowed to foreclose." *Id*. at 661.

Here, Defendants are attempting to foreclose on the Deed of Trust pursuant to NRS 107.080. A non-judicial foreclosure sale made pursuant to NRS 107.080, "vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption." NRS 107.080(5). Owner-occupied housing is subject to a redemption period; however, the same is not extended to rental properties. See NRS 107.080(2)(b). Because Westland does not have a right to redemption after the trustee sale, Westland will be irreparably harmed by transfer of the Property - the loss of which is at no fault of Westland.

Not only will Westland lose the Property if Defendants are allowed to foreclose, but Defendants' recorded documents pertaining to the extinguished Deed of Trust are impeding the marketability and transferability of Plaintiff's interests in the Property, or of re-financing the Properties, free of defects in title. The Nevada Legislature has codified Nevada's interest in the free transfer of real property within NRS 11.860, which provides that "[t]he public policy of this State favors the marketability of real property and the transferability of interests in real property free of defects in title or unreasonable restraints on the alienation of real property. . ." NRS 11.860(1). As Westland is the owner of the Properties, Defendants' actions will dispossess Westland of its security in and title to the Properties. Because the Properties are unique, losing them constitutes irreparable injury to Westland. Thus, on that basis alone, an injunction is necessary to prevent the imminent foreclosure of the Property.

However, absent emergency injunctive relief, Westland will also suffer irreparable harm insofar as the Properties, presumed unique as a matter of law, will be taken to satisfy Lenders' demand for additional, unwarranted Replacement Reserve and Repair Escrow funds predicated upon conditions that are non-existent, already addressed maintenance issues, and/or that were existing at the time that the Loan was assumed for which it would be improper for Lenders to demand any additional reserves. Moreover, Lenders would accomplish this wrongful foreclosure without offering Westland a reasonable opportunity to cure and having, in bad faith, refused Westland's overtures to address Lenders' concerns, all while costing Westland two unique, irreplaceable assets, the permanent loss of business opportunities stemming from their ownership, and damaging Westland's credit, standing in the real estate investment community, and ability to obtain financing to invest in future real estate ventures.

2. The loss of business constitutes irreparable harm.

Loss of the Properties will also cause an irreparable interference with Westland's ability to use the Properties for its business. Westland has a significant commercial interest in ensuring that its contracts are implemented correctly. The Nevada Supreme Court recognized such reputational and

business harms are immeasurable and cannot be adequately remedied later through a monetary judgment in *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446 (1986), where the court held that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize an injunction." *Id*. (citing *Guion v. Terra Mktg. of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974)); *see also Finkel v. Cashman Prof., Inc.*, 128 Nev. 68, 73 (2012); *Hosp. Int. Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016) (unpublished) ("loss of its initial investment, incalculable future losses, and damage to the goodwill and reputation of the entities"). In *Sobol*, which addressed a business's attempt to operate with a similar name as its competitor, the Nevada Supreme Court affirmed the district court's finding that the misuse of company name injured the competitor by "clearly interfer[ing] with the operation of a legitimate business by creating public confusion, infringing on goodwill, and damaging reputation in the eyes of creditors"). *Sobol*, 102 Nev. at 446.

Since Westland acquired the Properties, the rental units have been leased to a large number of tenants and are now generating rental income for the Westland. Lenders failed to act for months while leaving Westland to improve the management of the Properties and to continue to inject cash to meet the Properties need and their own debt service payments. It was only after the Properties are now profitable that Lenders seek to foreclosure and/or seek the appointment of a receiver. If the Properties are allowed to be transferred to a third-party purchaser, Westland will no longer receive the rapidly improving significant monthly income gained through the leases it has negotiated. The entire purpose of the Properties' acquisition was for investment purposes, thus if injunctive relief is not granted, Westland will have paid the Properties' purchase price, its taxes, insurance costs, employee expenses, and made over $3.5 million dollars of improvements all for naught. And 32 hard working employees will unjustifiably lose their jobs. Westland is at risk of irreparable harm if it loses these lucrative business assets, and its trusted employees, all of whom kept their jobs and survived the Pandemic, are in danger of losing their livelihoods. This must be prevented via an injunction.

Even assuming arguendo, Lenders' allegations of Westland's failure properly to maintain the Properties (which are heavily disputed) do not implicate the rights and/or obligations of the parties under the Loan Agreements, which is a valid contract entered as between them in need of declaratory relief. Lenders' allegations of default under the Loan Agreements amount to nothing more than a legal conclusion. While Lenders would simply prefer to sidestep any examination of their conclusory assertions, based on the nature of the parties' dispute, Lenders have the burden of proving the Default occurred. Then, if Plaintiff can make that prima facie showing, that conclusion is subject to adjudication before this Court. As such, this Court should grant a preliminary injunction to preserve the status quo until a determination of the parties' contractual rights can be reached, because otherwise Westland will be irreparably harmed by the loss of real property, the rights inherent thereto, and the loss of business generated from lost rent for the Properties if Defendants' foreclosure sale is allowed to proceed or a receiver is appointed.

D. Westland Has More Than A Reasonable Likelihood of Success on Its Merits

Westland has a strong likelihood of success on the merits of its claims against Lenders. The test for determining the likelihood of success is whether a party demonstrates a "reasonable probability of success on the merits." *Dixon v. Thatcher*, 103 Nev. 414, 415 (1987) (per curiam) (emphasis added) (reversing a denial of an injunction after finding that the plaintiffs presented "sufficient indicia" to make a prima facie showing before a trier of fact); *see also Dangberg Holdings Nev., L.L.C. v. Douglas Cty. & Bd. of Cty. Comm'rs*, 115 Nev. 129, 143 (1999) (upholding injunction because the plaintiff "demonstrated a reasonable probability of success" on the claim). For the purposes of brevity, Westland has only briefed the reasonable probability of success of the breach of contract, breach of duty of good faith and fair dealing, declaratory relief, and equitable relief claims, and for the reasons described below, this injunctive relief prong is satisfied here.

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1. **Westland Has a Reasonable Probability of Success on a Breach of Contract and Breach of Good Faith and Fair Dealing Claims**

Basic contract principles require that, for an enforceable contract, an offer and acceptance, a meeting of the minds, and consideration. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Further, a breach of contract claim arises when there has been "a material failure of performance of a duty arising under or imposed by agreement." *Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000). "A contract is ambiguous when it is subject to more than one reasonable interpretation. Any ambiguity, moreover, should be construed against the drafter." *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007). When interpreting a contract, it must be read as a whole while to give a reasonable and harmonious meaning and effect to all provisions, and a court should avoid negating any provision of the contract. *See National Union Fire Ins. v. Reno's Exec. Air*, 100 Nev. 360, 364, 682 P.2d 1380, 1383 (1984) (entire contract should be considered); *Phillips v. Mercer*, 94 Nev. 279, 282, 579 P.2d 174, 176 (1978) (a contract should not be interpreted to make its provisions meaningless).

Here, Westland has asserted that the parties entered into a written assumption that incorporated the terms of the assumed Loan Agreements, which were accepted and signed by the parties in August 2018. Since that time, Westland has performed its contract obligations, by paying the Loan payments that are required by Westland as consideration under the Loan, but Lenders have breached the parties agreement by declaring a default that is inconsistent with the entirety of the agreement by negating the terms of Article 13.02(a)(3). Moreover, any ambiguity must be construed against Lenders, who were the drafters of the contract, and Westland's reading of the provision is bolstered by Grandbridge's own Loan assumption letters that recounted the applicable terms for the Loans as not requiring more than the minimal scheduled $143,000 of reserves. Whereas, under Lenders' reading of the Loan Agreements, Lenders could always demand an increase of the required reserves, simply on their own whim, by employing varying standards for assessing an underlying property. Simply stated, Westland has a reasonable likelihood of success on the merits.

Further, in relation to a breach of the covenant of good faith and fair dealing:

> "[i]t is well established within Nevada that every contract imposes upon the contracting parties the duty of good faith and fair dealing. Moreover, it is recognized that a wrongful act which is committed during the course of a contractual relationship may give rise to both tort and contractual remedies. More specifically: [t]he duty not to act in bad faith or deal unfairly thus becomes a part of the contract, and, as with any other element of the contract, the remedy for its breach generally is on the contract itself. In certain circumstances, breach of contract, including breach of the covenant of good faith and fair dealing, may provide the basis for a tort claim.

Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043, 1046–47 (1993) (internal citations omitted). Even "[i]n situations where the terms of a contract are literally complied with, the covenant is breached when 'one party to the contract deliberately countervenes the intention and spirit of the contract." *Renown Health v. Holland & Hart, LLP*, 437 P.3d 1059, *2 (Nev. 2019). Moreover, "[w]hen one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith." *Hilton Hotels v. Butch Lewis Productions*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). In such cases, "[r]easonable expectations are to be 'determined by the various factors and special circumstances that shape these expectations." *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995).

Here, Westland has a valid claim of a breach of the covenant of good faith and fair dealing, because irrespective of the terms of the contract, Grandbridge's representative affirmatively represented that if a PCA were permitted that it would not be charged to Westland. Further, Westland could have never contemplated that Lenders would employ a sharply varying standard when performing a later PCA inspection, in order to bootstrap a request for an additional $2.7 million of reserve funding, when at the time of the Loan assumption, Lenders *reduced* the reserves to be only $143,319.30, plus monthly replacement reserve payments for deferred maintenance. Further, when reducing those reserves at the time of the assumption, Lenders were able to conduct a property condition assessment but failed to do so, and if Lenders had done so, Westland would have had an opportunity for recourse from the Properties' seller. In the context of those circumstances,

there is a reasonable probability that Lenders will be found to have acted in bad faith.

2. **Westland Has a Reasonable Probability of Success on a Declaratory Relief Claim**

"Declaratory relief is available only if: (1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination." *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996).

> Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Nev. Rev. Stat. § 30.040(1). The provisions of the Declaratory Judgment Act "are declared to be remedial; their purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and are to be liberally construed and administered." Nev. Rev. Stat. § 30.140. As such, under the act,"[a] contract may be construed either before or after there has been a breach thereof." Nev. Rev. Stat. § 30.050.

As addressed above, the parties clearly have different interpretations of the underlying Loan Agreements, which amount to a justiciable controversy. Westland has a legally protectable interest in the two Properties, of which it is title owner. The dispute is ripe and presently pending because the differing interpretations of the contract have resulted in Lenders filing this application for a receiver and filing a notice of default and election to sell the Properties.

3. **Westland Has a Reasonable Probability of Success on its Claim for Equitable Relief**

The Nevada Supreme Court has allowed equity to intervene, even in the face of a time of the essence clause, from a default resulting in forfeiture when performance was "later tendered without unreasonable delay and no circumstances have intervened to make it inequitable to give such relief." *Slobe v. Kirby Stone, Inc.*, 84 Nev. 700, 701–02, 447 P.2d 491, 492 (1968); *McCann v. Paul*, 90

Nev. 102, 103, 520 P.2d 610, 611 (1974) (stating specific performance would be required if a purchaser "paid a considerable portion of the purchase price, or has entered upon the property and enhanced its value by the placing of improvements thereon, or some other similar circumstance that would constitute a forfeiture of substance").

Westland assumed a loan in August 2018, paid a substantial portion of the purchase price for the Properties that was approximately 1/3 of their total value, has since made substantial enhancements and improvements to the Properties by spending another $3.5 million on capital expenses, plus operating costs and cash infusions for the monthly debt service payments. Contrary to Westland's actions, Lenders conducted a PCA in September 2019 and delayed for one year in filing NODs and this request for a receiver on shortened time, while continuing to collect the full amount of the monthly debt service payments that the Loan Agreements entitled Lenders to receive. As such, if Lenders were to foreclose, based upon the stated non-monetary defaults, which they asserted in an improper attempt to generate default interest and increased costs, it would be unfair and draconian. At this juncture, even if the remainder of Westland's claims were to fail, there is a reasonable probability that Westland would be entitled to equitable relief.

E. The Balance of Interests Supports Injunctive Relief Because the Threatened Harm to Westland outweighs any possible harm to Defendants.

"A preliminary injunction maintaining the *status quo* may properly issue whenever the questions of law or fact to be ultimately determined in a suit are grave and difficult, and injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted." *Dangberg Holdings Nevada, L.L.C. v. Douglas County & its Bd. of County Com'rs*, 115 Nev. 129, 146 (1999), *quoting Rhodes Co. v. Belleville Co.*, 32 Nev. 230, 239 (1910).

The balance of interests in this case could not be clearer. If allowed to foreclose on Westland's Properties, Lenders will severely harm Westland. The harm to Westland will be severe because it will result in actual, imminent and irreparable harm from the loss of these unique assets,

Westland's substantial equity in the Properties would be placed at risk, Westland's considerable investment of time and money improving the Properties over the past two years would be lost at the point that the Properties have begun to cover the debt service and operate at a profit, and ownership of the Properties has a strategic advantage in the Westland's property portfolio by solidifying its holdings in the North Las Vegas multi-family housing market.

Unlike Westland, which will suffer actual, imminent, and irreparable harm from the loss of this unique asset, Lenders will suffer no harm at all from the granting of an injunction. Granting an injunction would only maintain the status quo until the Court can adjudicate the rights and obligations of the parties under the Loan Agreements. Westland does not dispute that it has a maintenance obligation under the Loan Agreements but submits that it has met that maintenance obligation and more, as it has made and continues to make repairs to the Property in good faith.

Rather than harm, to the contrary, the temporary and/or preliminary injunction will continue Lenders' receipt of the full monthly payments consistent with the Loan Agreements precisely as provided for by the parties' contract. Also, Lenders would suffer no harm from the granting of an injunction because it is currently in possession of adequate security to remedy any alleged outstanding maintenance issues needed on the Properties since Lenders are holding approximately $1 million of insurance reserves to which Westland is entitled, Westland has spent an additional $3.5 million on improvements to the Properties in two years, and Westland has over $20 million of equity in the Properties. All monthly payments are being made to service both the Loan and to increase the Reserve Replacement Escrow. As stated, Westland is current in its Loan obligation to Lenders, and its timely, monthly payments have included $68,632.07 in Replacement Reserve Escrow deposits per the Loan Agreements (which continues to increase) and is in addition to all other monies spent on maintenance and repair.

As such, the temporary and/or preliminary injunction will only require Lenders to maintain their actions in compliance with the terms of the Loan Agreements, which they have no right to breach, while preventing them from improperly foreclosing on the Properties.

F. The Court Should Only Require that Westland Post A Minimal Bond Because Defendants' Interests are Already Adequately Secured and Westland has a Likelihood of Success on the Merits.

Rule 65(c) contemplates the posting of a bond as security upon issuance of an injunction "in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Notably, "[t]he expressed purpose of posting a security bond is to protect a party from damages incurred as a result of a wrongful injunction, not from damages existing before the injunction was issued." *Am. Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 591 (1993) (failing to find any amount due under an injunction bond, despite the finding that the principal was liable for damages in the underlying matter); *Glens Falls Ins. v. First Nat'l Bank*, 83 Nev. 196, 200-01 (1967). Moreover, where it was found that a party had a high likelihood of success on its claims, only a minimal bond of $1,000.00 was required. *V'Guara Inc. v. Dec*, 925 F. Supp. 2d 1120, 1127 (D. Nev. 2013).

Here, a more than a minimal bond is not necessary because Lender is not at risk of any harm from the requested injunctive relief. The Properties are not being dissipated, and Lenders continue to accrue their full interest payments, consistent with Westland's established practice of timely paying its monthly obligations under the Loan Agreements at all times. Thus, even if it is later determined that injunctive relief was not warranted, Plaintiff will have suffered no harm arising from the Court entering an order for injunctive relief.

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IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Honorable Court **GRANT** its Motion for Temporary Restraining Order and Preliminary Injunction preventing and enjoining Plaintiff from conducting any foreclosure proceedings, foreclosure sale, or appointing a receiver related to the Properties pending a determination of the rights and obligations of the parties pursuant to the Loan Agreements.

Dated this 31st day of August 2020

Respectfully submitted,

LAW OFFICES OF JOHN BENEDICT

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, a copy of the foregoing Motion was served on the parties listed below via electronic service through Odyssey to the following:

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Blacksmith, Ashley

From: Taylor, Lara
Sent: Tuesday, September 1, 2020 8:43 AM
To: Blacksmith, Ashley
Subject: FW: Notification of Service for Case: A-20-819412-C, Federal National Mortgage, Plaintiff(s) vs.Westland Liberty Village, LLC, Defendant(s) for filing Opposition - OPPS (CIV), Envelope Number: 6555633

Lara J. Taylor
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From: efilingmail@tylerhost.net <efilingmail@tylerhost.net>
Sent: Monday, August 31, 2020 5:27 PM
To: Taylor, Lara <ljtaylor@swlaw.com>
Subject: Notification of Service for Case: A-20-819412-C, Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s) for filing Opposition - OPPS (CIV), Envelope Number: 6555633

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Notification of Service

Case Number: A-20-819412-C
Case Style: Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s)
Envelope Number: 6555633

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Filing Details	
Case Number	A-20-819412-C
Case Style	Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s)
Date/Time Submitted	8/31/2020 5:25 PM PST
Filing Type	Opposition - OPPS (CIV)
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Filed By	John Benedict

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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. A-20-819412-C Dept No. 4 **FEDERAL NATIONAL MORTGAGE ASSOCIATION'S REPLY IN SUPPORT OF APPLICATION FOR APPOINTMENT OF RECEIVER ON ORDER SHORTENING TIME AND OPPOSITION TO COUNTER-MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Plaintiff Federal National Mortgage Association ("Plaintiff" or "Fannie Mae"), by and through its undersigned counsel, hereby submits this Reply in Support of Application for Appointment of Receiver on Order Shortening Time ("Reply") and Opposition to Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction ("Opposition to Counter-Motion"). The Application, this Reply and Opposition to Counter-Motion are supported by the Supplemental Declaration of James Noakes, attached hereto as Exhibit "1" (the "Supplemental Noakes Declaration").

For the following reasons, in addition to those addressed in Plaintiff's Application for

Appointment of Receiver on Order Shortening Time ("Application"),[1] the Court should appoint Jacqueline Kimaz of The Madison Real Estate Group LLC as a receiver over Liberty Village and Village Square and deny Defendants' Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction ("Counter-Motion").

Defendants would have the Court believe that their failure to pay over $2.8 million required under the Loan Documents is not a default. Yet, Defendants fail, in opposing the Application and bringing their Counter-Motion, to analyze the applicable terms of the agreements that establish the parties' rights and obligations. As detailed below, the Loan Documents clearly establish: (i) a right to inspect the Properties, (ii) a right to demand an increase in reserves to address property condition issues, and (iii) Defendants' failure to pay that demand is an automatic Event of Default. The Loan Documents further provide that Fannie Mae is entitled to an appointment of a receiver upon Defendants' default.

Defendants spend much of their Opposition and Counter-Motion discussing purported issues with the Properties at the time of their assumption of the Loans and contending that they have made many of the repairs detailed in the Property Condition Assessments ("PCAs"). Defendants fail, however, to explain how any of that discussion excuses them from their obligations under the Loan Documents or how those alleged actions cure their defaults. Defendants' assertions are irrelevant to the Application or Counter-Motion given the express terms of the Loan Documents, which are discussed in detail below.[2]

If the Court believes, however, that the Defendants' evidence of recent repairs is relevant, Fannie Mae must be permitted access to the Properties to confirm that repairs were in fact made, ascertain the quality of those repairs, and to obtain updated PCAs. Plaintiff was only provided with documentation of purported repairs after it filed the Complaint and Application. The Opposition is the first time that the purported repair work has been attested to under penalty of perjury. Since receiving the information, Plaintiff has requested access to the Properties for an inspection. Defendants, however, have not cooperated with Plaintiff in this reasonable—and contractually

[1] The Application's defined terms are expressly incorporated herein by reference unless otherwise noted.
[2] Defendants may have claims against the prior owners of the Properties, but these arguments do not negate or cure Defendants' default.

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obligated—request. Plaintiff finds Defendants' refusal to cooperate puzzling in light of their claims of significant repairs to the Properties. If this Court is concerned that the repairs Defendants allege they made to the Properties following their receipt of the PCAs affect Fannie Mae's entitlement to a receiver, Fannie Mae requests that this Court: (a) continue the hearing on the Application and Counter-Motion for a period of time to allow Plaintiff to take necessary discovery regarding the value and condition of the Properties; and (b) order Defendants to provide Plaintiff and its agents access to the Properties for the purposes of inspecting the Properties and obtaining new PCAs.

Dated: September 14, 2020

SNELL & WILMER L.L.P.

By:/s/ *Nathan G. Kanute*
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ARGUMENT

I

DEFENDANTS ARE IN DEFAULT UNDER THE LOAN DOCUMENTS

A. Defendants' Assumption of the Village Square Loan Documents and the Liberty Village Loan Documents Contractually Binds them to Plaintiff.

When Defendants acquired the Village Square Property and the Liberty Village Property (collectively the "Properties"), they asked Plaintiff to consent to the transfer of the Properties to them.[3] Plaintiff consented to Defendants' acquisition of the Properties on the terms and conditions contained in the Assumption and Assignment Agreements dated August 29, 2018.[4] Those conditions included Defendants' assumption of all the obligations owed to Plaintiff under the Village Square Loan Documents and the Liberty Village Loan Documents (collectively the "Loan Documents").[5] Section 3 of the Assumption and Assignment Agreements provide:

[3] *See* Verified Compl. Exs. 5 and 10, Recital G.
[4] *See* Verified Compl. Exs. 5 and 10.
[5] *Haspray v. Pasarelli*, 79 Nev. 203, 208, 380 P.2d 919, 921 (1963) (stating that two separate writings may be sufficiently connected by internal evidence without any express words of reference of one to the other. That they refer to the same transaction and state the terms thereof may appear from the character of the subject matter and from the nature of the terms.) (citing 2 Corbin, Contracts § 514); *Sullivan v. Mounger*, 882 So.2d 1219, 135 (Miss. 2004) (finding

> **3. Assumption of Transferor's Obligations.**
>
> Transferor hereby assigns and Transferee hereby assumes all of the payment and performance obligations of Transferor set forth in the Note, the Security Instrument, the Loan Agreement, and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified from time to time, including payment of all sums due under the Loan Documents. Transferee further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Lon Documents had been made, executed and delivered by Transferee.[6]

The quoted language from the Assumption and Assignments Agreements is consistent with the successors and assigns provision in the Loan Agreements.[7] Thus, there is no dispute that Defendants assumed each and every monetary and non-monetary obligation of Shamrock VI and Shamrock VII – the prior owners of the Properties – to Plaintiff.

B. Defendants are in Default Under the Loan Documents.

The Loan Documents clearly establish the parties' respective rights and obligations. Among other things, the Loan Documents impose a continuing obligation that Defendants pay all expenses for the Properties' maintenance[8] and provide that Defendants' failure to maintain the properties is an automatic Event of Default.[9] The Loan Documents empower Fannie Mae to enforce Defendants' obligation to maintain the Properties by allowing Fannie Mae to inspect the Properties and, if necessary, to repair and maintain the Properties, require Defendants to make additional deposits into the Repairs Escrow Accounts and/or to increase the Monthly Replacement Reserve Accounts.[10] The Loan Documents further provide that the failure to "pay or deposit" the additional funds in the Repairs Escrow Accounts and the Monthly Replacement Reserve Accounts is an automatic Event

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that separate documents executed at the same time and for the same purpose and in course of the same transaction are construed together.); *see also* 17 Am. Jur. 2d Contracts, §§ 263-64.

[6] *See* Verified Compl. Exs. 5 and 10, § 3.

[7] *See* Verified Compl., Exs. 1 and 6, § 15.03(a) ("This Loan Agreement shall bind, and the rights granted by this Loan Agreement shall inure to, the successors shall inure to, the successors and assigned of Lender and the permitted successors and assigns of Borrower . . ."); Verified Compl, Exs. 1 and 6, § 15.12(b) ("Borrower acknowledges, represents, and warrants that: (b) it is familiar with the provision of all of the documents and instruments relating to such transactions . . ..")

[8] Verified Compl. Exs. 1 and 6, § 6.02(b)(1) ("Borrower shall pay the expenses of operating, managing, maintaining, and repairing the Mortgaged Property (including insurance premiums, utilities, **Repairs, and Replacements**) before the last date upon which each payment may be made without any penalty or interest charge being added.") (emphasis added).

[9] Verified Compl., Exs. 1 and 6, § 6.02(b)(2) and § 14.01(a)(10).

[10] Verified Compl. Exs. 1 and 6, § 13.02(a)(4).

of Default[11] under the Loan Documents. If the required amount is deposited into the Repairs Escrow Accounts and the Monthly Replacement Reserve Accounts, absent an Event of Default, disbursements may be made from those accounts once the repairs are made.[12] If all of the required repairs are made and there is not an Event of Default, any funds remaining in the Repairs Escrow Account may be disbursed to the Borrower.[13]

1. The Loan Agreements Entitle Plaintiff to Inspect the Properties.

The Loan Agreements unambiguously entitle Plaintiff to inspect the Properties. Section 6.02(d)[14] of the Loan Agreements states:

> **(d) Property Inspections.**
>
> Borrower shall:
>
> (1) permit Lender, its agents, representatives, and designees to enter upon and inspect the Mortgaged Property (including in connection with any Preplacement or Repair, or to conduct any Environmental Inspection pursuant to the Environmental Indemnity Agreement), and shall cooperate and provide access to all areas of the Mortgage Property (subject to the rights of tenants under the Leases);

Thus, it is undeniable that Plaintiff had the right to have the Property inspected by f3.

Following Defendants' assumption of the Loan Documents, there was a dramatic drop in the occupancy rates of the Properties.[15] Specifically, in November 2017, the time of the original loans, and before Defendants executed the Assumption and Assignment Agreements on August 29, 2018, the occupancy rate at the Properties was, by all accounts, approximately 80%.[16] By early 2019, the occupancy rate at the Properties had declined to approximately 45%.[17] This concerned Plaintiff because significantly declining occupancy rates signaled that the underlying Properties were deteriorating and reducing the Properties' income, thereby jeopardizing payment of the loans secured by those Properties.[18] Further, Plaintiff was concerned about the potential for life and safety

[11] Verified Compl. Exs. 1 and 6, § 14.01(b)(1) (automatic Event of Default includes "any failure by Borrower to any or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document").
[12] Verified Compl. Exs. 1 and 6, § 13.02(a)(9)(B).
[13] Verified Compl. Exs 1 and 6, § 13.02(a)(11).
[14] *See* Verified Compl. Exs. 1 and 6, § 6.02(d).
[15] Supplemental Noakes Declaration, ¶ 5-6.
[16] *Id.* at ¶ 5.
[17] *Id.* at ¶ 6.
[18] *Id.* at ¶ 7.

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issues to the other tenants, including potential perils to their livelihood due to unkept property conditions and the fact that the deteriorating conditions indicated that the Properties were not meeting Plaintiff's objective to provide affordable and safe housing to low- and moderate-income to provide a sustainable community and to cultivate opportunities to improve lives.[19] Defendants acknowledge that Plaintiff's concerns were justified by admitting that the occupancy rates at the Properties declined[20] and that Defendants had to inject their own money into the Properties to cover their monthly debt service obligations to Plaintiff.[21] This led Plaintiff to inspect the Properties in July 2019 and obtain the current PCAs dated September 9-11, 2019.[22]

2. The Loan Agreements Entitle Plaintiff to Obtain the PCAs.

After the Effective Date of the Loans, defined to be November 2, 2017,[23] Plaintiff is entitled to obtain one or more PCAs to address the deteriorating condition of the Properties. Section 6.03(c)[24] of the Loan Agreements state in their entirety:

> **(c) Property Condition Assessment.**
>
> If, in connection with any inspection of the Mortgaged Property, Lender determines that the condition of the Mortgaged Property has deteriorated (ordinary wear and tear excepted) since the Effective Date, Lender may obtain, at Borrower's expense, a property condition assessment of the Mortgaged Property. Lender's right to obtain a property condition assessment pursuant to this Section 6.03(c) shall be in addition to any other rights available to Lender under this Loan Agreement in connection with any such deterioration. Any such inspection or property condition assessment may result in Lender requiring Additional Lender Repairs or Additional Lender Replacements as further described in Section 13.02(a)(9)(B).

Due to the deterioration of the Properties seen by their declined occupancy rates and their failure to generate sufficient rents to pay even debt service, it is clear that Plaintiff was entitled to obtain PCAs for the Properties. Plaintiff had f3 perform property condition assessments on September 9-11, 2019.[25]

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[19] *Id.*
[20] *See* Opposition, p, 4, lines 12-14. This is inconsistent with the Affidavit of Yakoov Greenspan (the "Greenspan Affidavit") which states that the occupancy rate dropped to a low of 52%. Greenspan Affidavit, ¶ 23.
[21] *See* Opposition, pp. 10-11.
[22] Supplemental Noakes Declaration, ¶ 8.
[23] *See* Verified Compl., Exs. 1 and 6, Schedule 2, p. 3.
[24] *See* Verified Compl. Exs. 1 and 6, § 6.03(c).
[25] *See* Verified Compl. Ex. 11.

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3. The Loan Agreements Entitle Plaintiff to Demand Additional Deposits from Defendants.

f3's PCAs specified that immediate repairs totaling $1,092,835 for Village Square and $1,753,145 for Liberty Village were needed, many of which involved issues of life and safety.[26] The majority of those repairs concerned apartments at Village Square and Liberty Village that were vacant and "down" (unleasable).[27] The PCAs also detailed a Replacement of Capital Items Schedule which showed the escalating cost of capital improvements at the aging properties.[28]

Following delivery of the PCAs to Defendants, there was only $106,217 in the Repairs Escrow Accounts for Village Square and $246,047 in the Repairs Escrow Accounts for Liberty Village.[29] The Repairs Escrow Accounts for the Properties, therefore, only contained a fraction of the necessary $2,845,980 to remediate the issues identified by the PCAs, because nearly $1,000,000 was required to bring the Village Square reserve accounts into balance and over $1,500,000 was required to bring the Liberty Village reserve accounts into balance.[30] Thus, Plaintiff was entitled to demand that Defendants deposit a total of $2,845,980 pursuant to section 13.02(a)(4) of the Loan Agreements[31] which provides:

> **(4) Insufficient Funds.**
>
> 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.

Once deposits are made into the respective reserve account, Section 13.02(a)(9)(B)[32] of the

[26] Verified Compl., Ex. 11, p. 8 (both reports).
[27] *Id.* at p. 6 (both reports).
[28] *Id.* at p. 23 (both reports).
[29] Noakes Supplemental Declaration, ¶ 11.
[30] *Id.* at ¶ 12.
[31] *See* Verified Compl., Exs. 1 and 6, § 13.02(a)(4).
[32] Verified Compl., Exs 1 and 6, § 13.02(a)(9)(B).

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Loan Agreements governs the manner in which funds are disbursed following completion of the repairs, provided there is no Event of Default.

At least one Court has held that it is reasonable for a lender to demand the borrower deposit amounts to cover necessary repairs.[33] Thus, there can be no dispute that Plaintiff was entitled under the Loan Documents to demand that Defendants deposit in excess of $2.8 million into the appropriate reserve accounts for the Properties.

4. Defendants Breached the Agreements with Plaintiff by Failing to Fund the Reserve Accounts.

Following Plaintiff's receipt of the September 9-11, 2019 PCAs, Plaintiff's agent, SunTrust Bank, sent Defendants each a Notice of Demand on October 18, 2019.[34] The Notice of Demand which pertained to Liberty Village demanded payment of $1,753,145 to Servicer to be deposited into the Repairs Escrow Account within the thirty (30) required by section 13.02(a)(4) of the Loan Agreement. The Notice of Demand to Liberty Village also advised that the Monthly Replacement Reserve Deposit was being increased by $8,160 per month to $26,760 per month commencing on December 1, 2019.[35]

The Notice of Demand which pertained to Village Square demanded payment of $1,092,835 to Servicer to be deposited into the Repairs Escrow Account within the thirty (30) days required by section 13.02(a)(4) of the Loan Agreement. The Notice of Demand to Village Square also advised that the Monthly Replacement Reserve Deposit was being increased by $1,397.42 per month to $11,656.50 per month commencing on December 1, 2019.[36]

The deadline for making the payments described in the Notices of Demand was November 17, 2019. Defendants failed to make the required payments by that time and were in default pursuant to section 14.01(a)(1)[37] of the Loan Agreements, which provides that there is an automatic Event of Default upon the "failure by borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document." Thus, Defendants have been in

[33] *See Brierton v. Brown Deer Apartments Housing Associates, LLC*, 2010 WL 5071274 (Ct. of App. MN, Dec. 14, 2010).
[34] *See* Verified Compl. Ex. 12.
[35] *Id.*
[36] *Id.*
[37] *See* Verified Compl. Exs. 1 and 6, § 14.01(a)(1).

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payment default under the Loan since at least November 17, 2019.

a. Defendants' Default is Material.

Evidence of this nonpayment by the due date of November 17, 2019, is sufficient to establish a default.[38] Yet, Defendants imply that the default is not material because, among other things, they were current on their monthly loan payments and it is not a "payment default."[39] That is simply misdirection. Defendants have failed to pay $2,845,980 pursuant to the October 18, 2019 Notices of Demand – something that can only be described as a "payment default." Section 14.01(a)(1) Loan Agreements make it clear that the failure to pay the amounts demanded in the Notices of Demand is an "automatic" "payment default."[40]

There is also no doubt that Defendants' payment default is material. A failure to fund reserve accounts are material defaults which entitle the lender to accelerate the debt.[41] In addition, the amount of the payment default is in excess of $2.8 million—a significant amount in any respect.

Fannie Mae is entitled to the appointment of a receiver upon an Event of Default pursuant to the Deeds of Trust.[42] Fannie Mae's right to seek appointment of a receiver upon default is absolute, and the Court should honor the parties' agreements.

b. Defendants' Alleged Repairs Have Not Cured the Default.

Defendants admit they did not make the payments to the Servicer as required by the October 18, 2019 Notices of Demand.[43] Instead, and in lieu of making the required payments, Defendants contend that they sent Plaintiff a Westland Strategic Improvement Plan for Liberty Village and

[38] *See Vill. Pointe, LLC v. Resort Funding, LLC*, 127 Nev. 1183, 373 P.3d 971 (2011) (finding that a failure to make full payments when due consistent with a loan agreement constitutes a default); *see also Weems v. Transamerica Mortgage Co.*, 770 So. 2 936, 939 (Miss. 2000).

[39] *See* Opposition, p. 11; Greenspun Declaration, ¶ 18.

[40] Verified Compl. Exs. 1 and 6, § 14.01(a)(1).

[41] *See, e.g., American Sav. & Loan Ass'n v. Bloomquist*, 21 Utah 2d 289, 293 (1968) (holding that when mortgagor specifically agrees to pay sums as estimated by the mortgagee into the reserve account, its partial payment, even if the difference is de minimis, is inadequate and entitles the mortgage to declare the entire debt due); *see also Brierton v. Brown Deer Apartments Housing Associates, LLC*, 2010 WL 507124 at *9 (Ct. of App. MN, Dec. 14, 2010) (holding that it is immaterial that the shortage is a lesser amount than what is demanded when no payment at all is made); *see also Peny & Co v. Food First Housing Development Fund, Co., Inc.*, 39 Misc. 3d 1234, 972 N.Y.S.2d 145 *4 (N.Y. 2013) (continued willful failure to pay Imposition Deposits within twenty days after written notice constituted an Event of Default permitting the mortgagee to demand full payment of the principal and interest under the loan documents); *Collector's Coffee, Inc. v. Zobel*, No. 17-A-764943, 2018 WL 7572436, at *1 (Nev.Dist.Ct. Dec. 26, 2018) (finding that partial payment pursuant to an agreement constitutes a breach of contract sufficient for summary judgment).

[42] Verified Compl., Exs. 3 and 8, § 3(e).

[43] *See* Opposition, pp. 8-12 (showing the absence of paying the required deposits to Fannie Mae).

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Village Square (the "Plan") outlining their plan to rehabilitate the Properties. Somehow, Defendants believe this action replaces the requirement to cure their defaults under the Loan Documents. Notably, Defendants allege they made repairs worth $1.8 million before the PCAs were completed and $1.7 million after the PCAs were completed.[44]

This argument is misguided for several reasons. First, Defendants admit by omission that they made no effort to cure the default in the manner required by the October 18, 2019 Notices of Demand and the Loan Documents, which accelerated of the Loans.[45] Instead, it appears that they tried to replace their contractual obligation to make deposits of approximately $2.8 million with the Plan—a proposal that was not contemplated by the Loan Documents or ratified by Fannie Mae. Second, there is no evidence confirming that any of the repairs described in the PCAs were made by Defendants or the extent of the repairs described in the PCAs. Third, the contention that some of the repairs required by the PCA have been made was only recently disclosed to Plaintiff, and Plaintiff has not been provided with a meaningful opportunity to confirm that any of the described repairs were actually made to the Properties.[46] Finally, even if Defendants have made *some* of the repairs required by the PCAs, they have still failed to complete *all* of the repairs and have continued to be in default of their obligation to fund the reserve accounts.

Defendants appear to be coming to this Court asking for equitable relief from their willful failure to cure the defaults under the Loan Documents described in the Notices of Demand because they tried to address the issue in a manner of their own choosing that is not authorized by the Loan Document. Defendants, however, are not entitled to any relief from their contractual obligations under the Loan Documents. Simply stated, when a default is willful or continuous, equity will not relieve the borrower from acceleration following an Event of Default.[47] Similarly, the concept of substantial performance does not apply where there is a willful breach.[48]

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[44] Opposition, p. 2, lines 3-5.
[45] *See* Note 31, above.
[46] If the court finds that these allegations raise any issue with respect to need to appoint a receiver in this case, Plaintiff requests that the hearing on the Application and Counter-Motion be continued for an appropriate period of time to allow Plaintiff to obtain necessary discovery and new PCAs for the Properties and that the Court direct Defendants to cooperate with the PCAs.
[47] *Peny & Co.*, 972 N.Y.S.2d 145 at 4-5; *First Nat. Bank of Omaha v. Centennial Park, LLC*, 48 Kan. App.2d 714, 721-23 (Ct. App. Kan. 2013) (because the commercially sophisticated borrower intentionally elected not to pay the amount due, the trial court properly rejected the use of its equitable powers to prevent acceleration of the loan balance).
[48] *Harvey v. Caesar's Entertainment Operating Co., Inc.*, 55 F.Supp. 3d 901, 907-8 (N.D. Miss. 2014).

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Thus, this court should find that the repairs Defendants allege to have made to the Properties do not excuse their failure to cure the defaults under the Loan Documents as described in the Notice of Demand dated October 28, 2019.

c. <u>The Alleged "Equity" in the Properties Does not Excuse Defendants' Defaults</u>.

Defendants suggest that Plaintiff is not entitled to the appointment of a receiver because of the equity the Defendants have in the Properties. Defendants, however, have not submitted any appraisals or other evidence of the Properties' value to the Court.[49] Instead, they seem to be asking the Court to assume that they have $20 million in equity in the Properties because they made a down payment to the Sellers in that approximate amount. That, however, is evidence of only what was paid for the Properties, not what they are currently worth.

More importantly, it is clear in this case that there are serious issues with the Properties. Defendants themselves have admitted that the Properties had astonishingly low occupancy rates of 44% to 52% and did not generate sufficient revenue to pay debt service, thereby requiring Defendants to fund debt service with funds from sources other than the Properties' rents.[50] This suggests that the value of the Properties on an income capitalization approach is far less than what Defendants would have this Court believe. Regardless, no amount of equity that Defendants allege to have cures their defaults under the Loan Documents.

d. <u>Defendants' Allegations that the Properties Were in Disrepair When they Purchased Them is Irrelevant</u>.

Defendants go to great lengths in the Opposition to try to convince the Court that their defaults under the Loan Documents as described by the October 18, 2019 Notices of Demand are unfair because the Properties were in a state of disrepair when they bought them from Shamrock VI and Shamrock VII. Indeed, Defendants claim that many of the issues identified in the PCAs "pre-existed the Loans" because they were "already dilapidated at the time of the initial loan" and "that was how things were at the time of the Loan assumption."[51] This does nothing to further Defendants' cause because Westland knew or should have known the Properties were distressed at

[49] Generally, only a Nevada licensed real estate appraiser may act as an appraiser in Nevada and it is a misdemeanor to deliver an appraisal without obtaining the appropriate certificate, license or permit. NRS 645C.260(1).
[50] Opposition, pp. 10-11.
[51] Opposition, p. 9, ln. 10-12.

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the time they assumed the Loans. This fact should have motivated Defendants to closely examine the conditions of the Properties, and familiarize themselves with the Loan Documents, before purchasing the Properties and assuming the Loan Documents.

The failure to conduct this due diligence is inexcusable since Defendants' contend that their parent company, Westland Real Estate Group ("Westland") has a long history of multifamily housing experience.[52] This suggests that Westland should have performed its own due diligence on the Properties before purchasing them and should have familiarized itself with the terms of the Loan Documents.[53]

Defendants also conveniently ignore that they assumed all obligations contained in the Loan Documents, including the obligation to fund any deficiencies in any of the reserve accounts established under the Loans, when they purchased the Properties.[54] The mere fact that Defendants acquired the Properties which were in a bad condition from a stranger to this case does not excuse Defendants of the contractual obligations they voluntarily assumed.

e. <u>Plaintiff Has not Unreasonably Delayed Seeking a Receiver</u>.

Defendants would have this Court believe that it should not appoint a receiver because of the time that has lapsed from the date of the PCAs – September 9-11, 2019 and the date of the initiation of this action – August 12, 2020. This is far too simple of a snapshot of what occurred and ignores the COVID-19 pandemic.

In this case the following occurred:

September 9-11, 2019	PCAs
October 18, 2019	Notices of Demand
November 17, 2019	Deadline to Comply with Notices of Demand
December 17, 2019	Notice of Default and Acceleration of Note
Jan.-Feb. 2020	Attempted settlement discussions with Defendants

[52] Opposition, p. 9, ln. 10-12.

[53] *See Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) (holding that "[w]hen a party to a written contract accepts it as a contract he is bound by the stipulations and conditions expressed in it whether he reads them or not. Ignorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations. He who signs or accepts a written contract, in the absence of fraud or other wrongful act on the part of another contracting party, is conclusively presumed to know its contents and to assent to them, and there can be no evidence for the jury as to his understanding of its terms.")

[54] *See* Section A, above.

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April 1, 2020	Commencement of COVID-19 foreclosure moratorium[55]
June 4, 2020	Attempted settlement discussions with Defendants
July 1, 2020	Termination of COVID-19 foreclosure moratorium for commercial properties[56]
July 14, 2020	Recordation of Notices of Default and Election to Sell[57]
August 12, 2020	Plaintiff files the Complaint in this case[58]

This demonstrates that any "delay" was reasonable and does not waive Fannie Mae's right to the appointment of a receiver. Most of the delay was caused by the notice periods in the Loan Documents, good faith efforts to negotiate with Defendants, and the COVID-19 pandemic, not Plaintiff's delay. Additionally, it demonstrates that Plaintiff was overly generous with Defendants in that they had nine (9) months to cure the default under the Loan Documents described in the Notices of Demand before the Notices of Default and Election to Sell were recorded but failed to do so.

II

FANNIE MAE HAS COMPLIED WITH THE LOAN DOCUMENTS

Defendants also make much of the claim that Fannie Mae is holding roughly $1 million in insurance proceeds for portions of the Liberty Village Property that had prior fire damage.[59] Defendants fail, however, to explain that the repairs were not completed until after the Notices of Default were sent and after Defendants were in automatic default under the Loan Documents. As fully set out above, multiple Events of Default occurred under the Liberty Village Loan Documents. As such, the Liberty Village Loan was accelerated and is due and payable in full, plus interest. The Events of Default have not been cured, and the Liberty Village Loan has not been repaid.

Pursuant to Section 14.02(b) of the Liberty Village Loan Agreement, "[i]f an Event of Default has occurred and is continuing, Borrower shall immediately lose all of its rights to receive disbursements from . . . any Collateral Accounts" and Fannie Mae will have the ability to apply the

[55] *See* Declaration of Emergency Directive 008 dated March 29, 2020.
[56] *See* Declaration of Emergency Directive 025, dated June 25, 2020.
[57] The Notices of Default and Election to Sell would have been recorded months earlier but for the foreclosure moratorium.
[58] The Complaint would have been filed months earlier but for the foreclosure moratorium.
[59] Opposition, p. 7, ln. 17-21.

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funds in those accounts as provided in the Loan Agreement.[60] The Restoration Reserve Account is a Collateral Account pursuant to Section 17.03(a)(1) of the Loan Agreement, as amended by the Second Amendment to Multifamily Loan and Security Agreement dated as of April 26, 2018 and the Third Amendment to Multifamily Loan and Security Agreement dated as of May 9, 2018.[61]

Section 17.03(a)(1) of the Liberty Village Loan Agreement, as amended, provides that "[i]n no event shall Fannie Mae be obligated to disburse funds from the Restoration Reserve Account if an Event of Default has occurred and is continuing."[62] Section 17.03(a)(5)(iii) of the Liberty Village Loan Agreement, as amended, provides that "Fannie Mae shall not be required to disburse any amounts: . . . (iii) if an Event of Default has occurred and is continuing."[63]

Given the Events of Default that have occurred and are continuing, Liberty Village is not entitled to a disbursement of any funds that are or were in the Restoration Reserve Account. Fannie Mae is within its rights under the Liberty Village Loan Documents to sweep and apply any funds that are or were in the Restoration Reserve Account. Accordingly, Fannie Mae has not breached the Loan Documents by failing to pay to Defendants the amounts that were in the Liberty Village Restoration Reserve Account. Finally, Defendants' monetary default under the Loan Documents is nearly three times as much as the insurance proceeds that Fannie Mae has retained, so to the extent the Court finds Defendants' argument persuasive, Defendants would still be in material default of the Loan Documents.

III

PLAINTIFF IS ENTITLED TO APPOINTMENT OF A RECEIVER

The foregoing clearly establishes that Defendants are in default under the Loan Documents and that Plaintiff is entitled to accelerate the Loans. Nevada law also makes clear that Plaintiff is entitled to the immediate appointment of a Receiver.

A. Appointment of a Receiver Following the Recordation of a Notice of Breach and Election to Sell is Mandatory in the Case.

The Court has authority to appoint a receiver under four different sets of Nevada Statutes

[60] Verified Compl. Ex. 6, § 14.02(b).
[61] Verified Compl. Ex. 6, § 17.03(a)(1); *see also id.* at Second Amendment to Multifamily Loan and Security Agreement and Third Amendment to Multifamily Loan and Security Agreement.
[62] Verified Compl. Ex. 6, § 17.03(a)(1).
[63] Verified Compl. Ex. 6, § 17.03(a)(5)(iii).

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in this matter: (1) the Uniform Commercial Real Estate Receivership Act (the "UCRERA") codified in NRS § 32.100 *et. seq.*; (2) the Uniform Assignment of Rents Act ("UARA") codified in NRS § 107A *et seq.*; (3) NRS § 107.100; and (4) Nevada's general receivership statutes NRS § 32.010 to 32.020.

1. The Court Must Appoint a Receiver Under the UCRERA.

The UCRERA provides that the Court may appoint a receiver under several circumstances.[64] UCRERA provides, in part:

> 2. In connection with the foreclosure or other enforcement of a mortgage, a mortgagee is entitled to appointment of a receiver for the mortgaged property if:
>
> (a) Appointment is necessary to protect the property from waste, loss, transfer, dissipation or impairment;
>
> (b) The mortgagor agreed in a signed record to appointment of a receiver on default;
>
> (c) The owner agreed, after default and in a signed record, to appointment of a receiver;
>
> (d) The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;
>
> (e) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or
>
> (f) The holder of a subordinate lien obtains appointment of a receiver for the property.[65]

Under NRS § 32.260(2), Fannie Mae is ***entitled***[66] to appointment of a receiver in connection with its attempt to enforce the Loans at issue if it can show that it has initiated foreclosure proceedings against the Properties and one of the six factors identified in subsection (a) through (f)

[64] *See generally* NRS § 32.260.
[65] NRS § 32.260(2).
[66] The Nevada Supreme Court has interpreted the term "entitle" consistent with *Black's Law Dictionary* as granting an immediate legal right. *See Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 136 Nev. Adv. Op. 5, 458 P.3d 1048, 1060-61 (2020). "As defined by *Black's Law Dictionary*, the term 'entitle' means '[t]o grant a legal right to or qualify for,' *Entitle*, *Black's Law Dictionary* (11th ed. 2019), and an 'entitlement' is defined as '[a]n absolute right to a (usually monetary) benefit…granted immediately upon meeting a legal requirement,' *Entitlement*, *Black's Law Dictionary* (11th ed. 2019)." *Id.* The term "entitle" imposes a right similar to the duty imposed by the term "shall," which divests the court of discretion. *See Goudge v. State*, 128 Nev. 548, 553, 287 P.3d 301, 304 (2012) (explaining that, when used in a statute, the word "shall" impose a duty on a party to act and prohibits judicial discretion). Thus, unlike NRS § 32.260(1), NRS § 32.260(2) mandates the appointment of a receiver upon a party meeting any of the requirements thereunder rather than giving the court discretion to appoint one. *See American Bankers Ins. Co.*, 106 Nev. at 882, 802 P.2d at 1278 (discussing that "may" is a permissive, rather than a mandatory term).

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are present. In this case, at least two of those factors are present.

a. <u>The Properties are Subject to Waste and Dissipation</u>.

NRS § 32.260(2) provides that Plaintiff is entitled to appointment of a receiver to protect the property from waste, loss, transfer, dissipation, or impairment.[67] NRS § 32.260(2)(a) is silent as to what constitutes "waste"; however, the Restatement (Third) of Property states that "waste" occurs when a mortgagor "materially fails to comply with covenants in the mortgage respecting the physical care, maintenance, construction, demolition, or insurance against casualty of the real estate or improvements on it".[68]

Here, Defendants have materially[69] failed to uphold their obligations to Fannie Mae. Defendants have continued to refuse to deposit the additional amounts to the Repairs Escrow Accounts and to increase their Monthly Replacement Reserve Deposits.[70] This is undeniably both waste and dissipation of the Properties. These failures entitle Fannie Mae to a Receiver.

b. <u>Defendants Consented to the Appointment of a Receiver</u>.

Additionally, NRS § 32.260(2)(b) provides that, in connection with its attempt to enforce the loans at issue, Fannie Mae is entitled to appointment of a receiver because it has initiated foreclosure proceedings and Defendants "agreed in a signed record to appointment of a receiver on default."[71] The Village Square Deed of Trust and Liberty Village Deed of Trust contain Defendants' explicit consent to the appointment of a receiver upon an Event of Default. Because Defendants are in default under the loan agreements, Fannie Mae is entitled to the appointment of a receiver.[72]

2. The Court Must Appoint a Receiver Under the UARA.

Fannie Mae is entitled to the appointment of a receiver under NRS § 107A.260(1)(a)(1) and

[67] NRS 32.260(2)(a).
[68] Restatement (Third) of Property § 4.6(a)(4).
[69] While some jurisdictions limit materiality in the context of real property to be limited to monetary defaults, only, Nevada courts have not taken that approach.
[70] *See* Application, Ex. 2, ¶ 5.
[71] NRS § 32.260(2)(b).
[72] Verified Complaint, Exs. 3 and 8 § 3(e) (stating "[i]f Lender elects to seek the appointment of a receiver for the 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.").

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(1)(a)(3).[73] Subsection (1)(a)(1) mandates the appointment of a receiver where an assignor of rents is in default of an agreement and agreed in a signed document to the appointment of a receiver in the Event of Default.[74] Subsection (1)(a)(3) requires an appointment of a receiver where an assignor is in default of an agreement and has also failed to turn over the proceeds that the assignee was entitled to collect.[75]

Here, there is no question that the Defendants failed to pay Fannie Mae all rents after they defaulted under the Loan Documents. The plain language of the Loan Documents entitled Fannie Mae to demand that Defendants pay all rents after the occurrence of a default.[76] On December 17, 2019, Fannie Mae demanded the proceeds of any and all rents, based on Defendants' defaults.[77] Defendants admit they have not paid to Fannie Mae all rents from the Properties because "any rents collected were not even sufficient to cover the monthly debt service obligation."[78] This misses the point. There is no provision in the Loan Documents, or in any statute, that limits Defendants' obligation to pay rents after a legal demand simply because the debt service exceeds the rents. There is also no limitation in NRS § 107A.260 that requires rents to be in excess of the debt service in order for the mandatory receiver provisions to be effective. Once Defendants defaulted, and Fannie Mae demanded rents due to Defendants' default, Defendants had *cumulative* obligations to pay the accelerated note *and* to pay all rents. Defendants have not paid to Fannie Mae all rents they have received since December 17, 2019.

Moreover, the Security Instruments state that Fannie Mae is entitled to the appointment of a receiver upon an Event of Default that has occurred and is continuing.[79] Defendants' express consent to the appointment of a receiver is undeniable.[80]

Fannie Mae is entitled to the appointment of a receiver because Defendants have defaulted on their obligation to pay all rents, they continue to withhold all rents from Fannie Mae, and

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[73] NRS § 107A.260.
[74] *Id.*
[75] *Id.*
[76] Verified Compl. Exs. 1 and 6, § 7.03(a)(1).
[77] Verified Compl. Exs. 13 and 14.
[78] Opposition, p. 10, ln. 25-26.
[79] Verified Compl. Exs. 3 and 8, § 3(e).
[80] *Id.* (". . . Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver . . .")

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Defendants agreed in the executed Security Instruments to the appointment of a receiver in these instances.

3. The Court Must Appoint a Receiver Under NRS 107.100.

Under NRS § 107.100(a), a lender may, at any time after filing a notice of breach and election to sell, seek the appointment of a receiver. NRS § 107.100(b) provides that the Court "shall"[81] appoint a receiver if the real property subject to a deed of trust is in danger of substantial waste or may become insufficient to discharge the debt it secures.

Here, the Village Square Property and Liberty Village Property are in danger of substantial waste due to Defendants' continued rejection of Fannie Mae's rightful demand to increase the Repairs Escrow Accounts and to increase the Monthly Replacement Reserve Accounts. In addition, Fannie Mae's ability to collect on the Loans is in danger of being lost due to the condition of the Properties as described in the PCAs. The Court must appoint a receiver over the Properties in order to secure Fannie Mae's interests.

4. The Court Must Appoint a Receiver Under NRS 32.010 to 32.020.

Fannie Mae agrees that the Court has equitable power to appoint a receiver under NRS § 32.010.[82] That section provides:

> A receiver may be appointed by the court in which an action is pending, or by the judge thereof:
> …
> 2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt…
> …
> 6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

a. <u>Plaintiff is Entitled to a Receiver under NRS § 32.010(2)</u>.

As set out above, Plaintiff is entitled to appointment of a Receiver under NRS § 32.010(2)

[81] "In construing statutes, 'shall' is presumptively mandatory." *State v. American Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990).

[82] *See Barclays Bank of California v. Superior Ct.*, 69 Cal.App.3d 593, 599-601, 137 Cal. Rptr. 743, 746-47 (Cal. Ct. App. 1977) (stating that the Court's equitable power to appoint a receiver ***in certain circumstances*** sounds in equity).

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because it has commenced foreclosure proceedings against the Properties and they are in danger of being materially injured due to the condition of the Properties and Defendants' willful refusal to fund such repairs in the manner provided for in the Loan Agreement.

b. Plaintiff is Entitled to a Receiver under NRS § 32.010(6).

As stated in Fannie Mae's Application, NRS § 32.010(6) provides that a receiver may be appointed in all cases where receivers have heretofore been appointed by the courts of equity.[83]

Fannie Mae has shown that a receiver is needed to protect its interest in the Properties. The PCAs establish that the Properties are in desperate need of substantial repairs and that Defendants objected to Fannie Mae's demands.[84] In addition, even Defendants admit that they have not been able to collect any rents at the Properties sufficient to cover its monthly debt service obligations.[85] If Defendants are unwilling to put up necessary reserves to pay for needed repairs, as required by the Loan Documents, and Defendants cannot cover their monthly debt service obligations from the rents they are collecting, then clearly Fannie Mae's interest in the Properties is in danger, the Court should exercise its discretion to appoint a receiver to protect Fannie Mae's interests.

Defendants' arguments to the contrary are unpersuasive. First, Defendants' contention that their parent company, Westland Real Estate Group ("Westland"), has a long history of multifamily housing experience is completely irrelevant.[86] All that suggests is that Westland should have performed its own due diligence on the Village Square Property and Liberty Village Property, and that Westland knew or should have known the terms of the Loan Documents.[87] Second, Defendants' claim that many of the issues identified in the PCAs "pre-existed the Loans" because they were "already dilapidated at the time of the initial loan" and "that was how things were at the time of the Loan assumption" does nothing to further their cause.[88] The fact that Westland knew the Properties were distressed at the time they assumed the loans supports Fannie Mae's reasoning for requiring Defendants to pay an additional deposit into the Repairs Escrow Accounts and to increase the

[83] NRS § 32.010(6); *Lynn v. Ingalls*, 100 Nev. 115, 119, 676 P.2d 797, 800-801 (1984) (appointing a receiver to protect rents from real property and to maintain those assets in conjunction with a contractual default).
[84] Opposition, p. 9, ln: 7-22.
[85] *Id.* at p. 1, ln 25-26.
[86] Opposition, p. 9, ln. 10-12.
[87] *Campanelli*, 86 Nev. at 841 *supra* n.52.
[88] Opposition, p. 9, ln. 10-12.

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Monthly Replacement Reserve Accounts. Over a year after Defendants assumed the loans and began its management of the Properties, the PCAs demonstrated that the Properties ***still*** needed over $2.8 million in repairs—many of which were immediate needs to protect life and safety. The fact that Westland allegedly "spent $1.8 million" to repair the Village Square Property and Liberty Village Property offers support for f3's independent opinion that the Properties needed over $2.8 million in additional repairs. This also does not account for the fact that the Properties would necessarily require additional capital improvements and continuing maintenance that exist with any multifamily property. Third, Defendants' contention that they met their respective "Loan obligations by check plus approximately 10% to account for any variance in payment . . ." is both inaccurate and immaterial. When Defendants failed to make Fannie Mae's requested repairs and to fund the Repairs Escrow Accounts or increase their Monthly Replacement Reserve, they defaulted on the loans.[89] Defendants' automatic default automatically triggered acceleration of the loans.[90] Thus, Defendants' payments made after they defaulted on the loan balance were, in fact, partial payments of the full loan balance and not satisfactory to cure their defaults on the loan.

IV

THIS COURT SHOULD DENY DEFENDANTS' REQUEST FOR INJUNCTIVE RELIEF

A. The Court should not enjoin Fannie Mae's right to Foreclose the Properties.

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion."[91] A preliminary injunction is available "when it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually."[92] Nevada courts exercise their discretion by applying a four-factor test to determine whether a preliminary injunction should issue: (1) the reasonable likelihood that the plaintiff will prevail on the merits; (2) the threat of irreparable injury to the plaintiff if the injunction is not granted; (3) the threatened

[89] Verified Compl. Exs. 1 and 6, § 14.01(a)(1) (showing that "any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document" is an automatic Event of Default).
[90] Verified Compl. Exs. 1 and 6, § 14.02(a).
[91] *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).
[92] NRS 33.010; *see also* NRCP 65(b) (authorizing the issuance of a temporary restraining order if irreparable harm will result before the preliminary injunction can be heard).

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injury to the plaintiff outweighs the threatened harm the injunction may cause the defendant; and (4) the granting of the injunction is not contrary to public interest.[93]

1. Defendants failed to show that they are likely to succeed on the merits.

Defendants failed to show the likelihood of success on the merits of Fannie Mae's request to appoint a receiver. First, it has been established that Defendants are in default under the Loan Agreements. Due to that default, Plaintiff is entitled to accelerate Defendants' obligations under the Loan Agreements, initiate foreclosure proceedings against the Properties and exercise the remedies provided under the Loan Agreements and applicable law including the right to seek the appointment of a receiver. Second, Plaintiff has demonstrated that it is entitled to the appointment of a receiver under the UCRERA, the UARA, NRS 107.100 and NRS 32.010 to 32.020. Enjoining Fannie Mae's contractual and statutory right to foreclose on the Properties and does not change these facts, it just delays Fannie Mae's ability to enforce its rights and protect its interests.

2. Defendants will not suffer irreparable injury if the injunction is not granted.

A preliminary injunction should only be entered based on a "likelihood," not a "possibility," of irreparable harm to occur in the absence of the issuance of an injunction by the Court.[94] "'Regardless of how the test for a preliminary injunction is phrased, the moving party must demonstrate irreparable harm'" by probative evidence. *Mandrigues v. World Savings, Inc.*, No. C 07-4497 JF (RS), 2009 WL 160213, at *3 (N.D. Cal. Jan. 20, 2009) (*quoting American Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985), in which the Ninth Circuit reversed a grant of preliminary injunction because movant failed to offer evidence of irreparable harm).

Defendants have defaulted under the Loan Documents and chose not to cure those defaults after adequate notice. Nevada law authorizes lenders such as Plaintiff to foreclose upon their collateral[95] when there is a default by the borrower and generally requires that foreclosure proceedings be completed before exercising other remedies against the borrower.[96] It is

[93] *See Dixon v. Thatcher*, 103 Nev. 414, 415-16, 742 P.2d 1029, 1029-30 (1987); *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986).
[94] *Mazurek*, 520 U.S. at 972.
[95] *See generally* NRS chapter 107.
[96] Nevada's one-action-rule is codified at NRS 40.430.

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inconceivable that a borrower would suffer irreparable harm where the borrower's default caused the loss of that borrower's property at foreclosure. For example, in *Alcaraz v. Wachovia Mortg. FSB*, 592 F. Supp. 2d 1296 (E.D. Cal. 2009), the district court refused to grant an injunction prohibiting a foreclosure simply because the plaintiff would lose her home.[97] Similarly, in *Rosenberger v. Wells Fargo Home Mortgage*, 215CV2107JCMVCF, 2015 WL 8160360, at *3 (D. Nev. Dec. 7, 2015) the court declined to find evidence of irreparable harm by stating "Plaintiffs' loss of property is admittedly solely due to plaintiffs' own failure to make required payments. Plaintiffs cannot now complain that they will suffer irreparable harm."

It is also crucial to note that Defendants could have avoided the initiation of foreclosure proceedings against the Properties and this receivership action by making the payments required in the October 18, 2019 Notices of Demand. Defendants, however, chose to disregard their contractual obligations to Plaintiff. This left Plaintiff with no option but to accelerate the Loans, initiate foreclosure proceedings and request the court to appoint a receiver for the Properties to address Defendants' defaults under the Loan Agreements.

3. The balance of hardships favors Fannie Mae.

The guiding doctrine for the granting of equitable relief is the maxim that "he who comes into equity must come with clean hands."[98] "Under this doctrine, plaintiffs seeking equitable relief must have acted fairly and without fraud or deceit as to the controversy in issue."[99] In other words, unclean hands "means that in equity as in law the plaintiff's fault … is relevant to the question of what if any remedy the plaintiff is entitled to."[100] Thus, the unclean hands doctrine "closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant."[101] Defaulting on one's loan obligations is not "doing equity."[102] Accordingly, Nevada courts have refused requests

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[97] 592 F. Supp. 2d at 1301-02 (denying injunctive relief on claim that deeds of trust were invalid and noting "[c]learly, loss of a home is a serious injury. However, the record suggests that Ms. Alcaraz sought a loan beyond her financial means and expectation of job loss. Such resulting harm does not alone entitle her to injunctive relief.").

[98] *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945).

[99] *Adler v. Fed. Republic of Nigeria*, 219 F.3d 869, 877 (9th Cir. 2000) (internal quotation marks and citations omitted).

[100] *Scheiber v. Dolby Labs., Inc.*, 293 F.3d 1014, 1021 (7th Cir. 2002).

[101] *Precision Instrument Mfg. Co.*, 324 U.S. at 814.

[102] *Anderson v. Deutsche Bank Nat'l Trust Co.*, No. 2:10-CV-1443-JCM-PAL, 2010 U.S. Dist. LEXIS 120865, 2010 WL 4386958, at *5 (D. Nev. Oct. 29, 2010).

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for injunctive relief where plaintiffs defaulted on their loan obligations and thus had not "done equity."[103]

Here, Defendants have not "done equity" entitling them to equitable relief. Defendants defaulted on the Loan Agreements and failed to cure those defaults after receiving notice from Fannie Mae. The balance of equities does not favor Defendants.

4. Public Interest Considerations favor Fannie Mae.

In cases where the public has an interest in the outcome of private litigation, the court may consider those interests in granting or refusing to grant injunctive relief. *Ellis v. McDaniel*, 95 Nev. 455, 459 (1979). Plaintiff does not explain how impeding Fannie Mae's right to a receiver and stalling the foreclosure process on the Properties on which they have defaulted is in the public interest. Quite frankly, it's not for at least three reasons. First, Fannie Mae's core objective is to "foster competitive, liquid, efficient, and resilient national housing finance markets that support sustainable homeownership and affordable rental housing"[104] and its purpose is to provide affordable and safe housing to low- and moderate-income to provide a sustainable community and to cultivate opportunities to improve lives.[105] This objective and purpose would be frustrated if Fannie Mae is prohibited from enforcing borrowers' obligations to repair and maintain property. A preliminary injunction would also impede that mission by preventing Fannie Mae from finding an alternative owner who would perform the necessary repairs to the unleasable apartments at the Properties, which would add needed inventory to Nevada's affordable housing market.[106] Second, lenders must be permitted to realize the value of the collateral for loans made to borrowers by foreclosing upon their interests in property they financed when the borrower defaults under the

[103] *See Anderson v. Deutsche Bank Nat'l Trust Co.*, No. 2:10-CV-1443-JCM-PAL, 2010 U.S. Dist. LEXIS 120865, 2010 WL 4386958, at *5 (D. Nev. Oct. 29, 2010) ("Plaintiff's claim must be dismissed because plaintiff has not done equity; it is undisputed that plaintiff defaulted on his loan."); *see also Thurston v. HSBC Bank USA, N.A.* (D. Nev., May 19, 2016, No. 3:16-CV-0246-LRH-VPC) 2016 WL 2930706, at *2 ("Moreover, the Thurstons have been living in the home without making payments for almost nine (9) years. As such, the court finds that the equities in this action favor defendants who were properly enforcing their rights under the mortgage note and deed of trust in seeking a non-judicial foreclosure of the property.")

[104] Fannie Mae's October 2019 Strategic Plan is available at: https://www.fhfa.gov/Conservatorship/Pages/History-of-Fannie-Mae--Freddie-Conservatorships.aspx (last accessed Sept. 11, 2020).

[105] Supplemental Noakes Declaration, ¶ 7.

[106] The National Low Income Housing Coalition's data on Nevada's affordable housing market is available at: https://nlihc.org/housing-needs-by-state/nevada (showing that Nevada's affordable housing market is the worst in the country) (last accessed Sept. 11, 2020).

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terms of the agreement. As noted in *Rosenberger v. Wells Fargo Home Mortgage*, 215CV2107JCMVCF, 2015 WL 8160360, at *3 (D. Nev. Dec. 7, 2015), "Enjoining a valid trustee's sale does not serve the public interest. Lenders and secondary mortgage participants alike cannot be barred from obtaining the value of the collateral for loans made to borrowers by foreclosing upon their interest in the property they financed." One by-product from enjoining valid foreclosure proceedings is the chilling of the credit market and other Nevadans experiencing increased difficulty in obtaining financing as a result.[107] Additionally, as evidenced by the PCAs, the Properties need significant repairs to make certain portions safe and livable for potential renters. The potential for life and safety issues to the other tenants, including potential perils to their livelihood due to unkept property conditions concerns Plaintiff and should concern this Court. It's in the public's best interest to provide safe housing without risk to life and safety.

5. Any Injunction Bond Should Protect Fannie Mae's Interests

If the Court grants Defendants' request to issue a preliminary injunction, NRCP 65(c) requires that the applicant gives security in a sum as the court deems proper before a restraining order or preliminary injunction can issue. The sum of the security is left to the discretion of the court and is for the payment of such costs and damages as may be incurred or suffered by any party found to be wrongfully restrained or enjoined.[108] However, the primary purpose of the bond is to safeguard the non-applicant from costs and damages incurred as a result of an improperly issued temporary restraining order.[109]

In this case, Fannie Mae initiated foreclosure proceedings due to Defendants' refusal to pay in excess of $2.8 million pursuant to the Notices of Demand. If this Court is inclined to issue the requested injunction, Fannie Mae requests that the Court require Defendants to post a bond of not less than $3,000,000. That should be sufficient to cover the amounts stated in the Notices of Demand—$1,753,145 for Liberty Village and $1,092,835 for Village Square, plus interest—and would cover Plaintiff's anticipated legal fees of not less than $200,000. The Court should also require Defendants to make the full regularly scheduled monthly payments to Fannie Mae, in

[107] *Rosenberger*, 2015 WL 8160360, at *3.
[108] *See* NRCP 65(c).
[109] *V'Guara Inc. v. Dec*, 925 F. Supp. 2d 1120, 1127 (D. Nev. 2013) (citations omitted).

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addition to continue paying their monthly debt service obligations on the underlying Loans, sufficient to cover the additional $8,160 per month for the Liberty Village Monthly Replacement Reserve Account and an additional $1,397.42 per month into the Village Square Monthly Replacement Reserve Account during the pendency of any injunction the court may issue.

CONCLUSION

Fannie Mae is entitled to the appointment of a receiver. Defendants cannot satisfy the elements necessary for the issuance of a preliminary injunction. For these reasons, and those stated previously, the Court should grant Fannie Mae's Application and issue an order appointing Jacqueline Kimaz of The Madison Real Estate Group LLC as a receiver over Liberty Village and Village Square and deny Defendants' request for injunctive relief.

If the Court, however, is inclined to evaluate the Defendants' evidence of purported repairs to the Properties, Fannie Mae respectfully requests that (i) the hearing on the Application and Counter-Motion be continued to allow Fannie Mae to conduct discovery on the value of the Properties, condition of the Properties, and the purported repairs and (ii) the Court order the Defendants to provide access to the Properties for Fannie Mae's agents to conduct the necessary inspections.

Dated: September 14, 2020

SNELL & WILMER L.L.P.

By:/s/ *Nathan G. Kanute*
Nathan G. Kanute, Esq. (NV Bar No. 12413)
Bob L. Olson, Esq. (NV Bar No. 3783)
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **FEDERAL NATIONAL MORTGAGE ASSOCIATION'S REPLY IN SUPPORT OF APPLICATION FOR APPOINTMENT OF RECEIVER ON ORDER SHORTENING TIME AND OPPOSITION TO COUNTER-MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** by the method indicated:

_____ U. S. Mail

_____ U.S. Certified Mail

_____ Facsimile Transmission

_____ Federal Express

__X__ Electronic Service

_____ E-mail

and addressed to the following:

John Benedict, Esq.
Law Offices of John Benedict
2190 E. Pebble Road, Suite 260
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Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village, LLC & Westland Village Square LLC

DATED: September 14, 2020

/s/ Lara J. Taylor
An Employee of Snell & Wilmer L.L.P.

EXHIBIT 1 - Supplemental Declaration of James Noakes

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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. A-20-819412-C Dept No. 4 **SUPPLEMENTAL DECLARATION OF JAMES NOAKES IN SUPPORT OF PLAINTIFF'S APPLICATION FOR APPOINTMENT OF RECEIVER AND IN OPPOSITION TO DEFENDANTS' COUNTER-MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

I, James Noakes, declare as follows:

1. I am a Senior Asset Manager for Federal National Mortgage Association ("Plaintiff"). I make this affidavit in support of Plaintiff's Application for Appointment of Receiver.

2. As to the facts in this declaration, I know them to be true of my own knowledge or have obtained knowledge of them from employees who I supervise or work with and from my review of the business records of Plaintiff concerning the loan documents with Westland Village Square, LLC ("Village Square LLC") and Westland Liberty Village, LLC ("Liberty Village LLC", collectively with Village Square LLC, "Defendants"). If called upon to testify as to the matters set

forth in this declaration, I could and would competently testify thereto. As to those matters stated in this declaration on information and belief, I believe them to be true.

3. I have reviewed the "Reply" and "Opposition to Counter-Motion" and the exhibits referenced therein, and affirm that, to the best of my knowledge, the contents of the "Reply" and "Opposition to Counter-Motion" are true and accurate.

4. Defendants assumed the Village Square Loan Documents and the Liberty Village Loan Documents (the "Loan Documents") on August 29, 2018.

5. In November 2017, at the time of the original Loans and prior to the Defendants assumption of the Loan Documents, the Village Square Property and the Liberty Village Property (the "Properties") had an occupancy rate of approximately 80%.

6. By early 2019, the Properties' occupancy rate dropped to approximately 45%.

7. The Properties' rapid drop in occupancy rate signaled numerous issues to Plaintiff. First, Plaintiff became concerned that the declining occupancy rates at both Properties was because the Properties were deteriorating into unleasable condition. The potential for life and safety issues to the tenants, including potential perils to their livelihood due to unkept property conditions concerned Plaintiff. Second, the deteriorating conditions indicated that the Properties were not meeting Plaintiff's objective to provide affordable and safe housing to low-to-moderate-income families fostering sustainable communities and cultivating opportunities for tenants to improve their lives—a central tenant of Plaintiff's plan. Finally, the deteriorating conditions and low occupancy rates lowered the Properties' potential for income significantly, which jeopardized both Plaintiff's interest in the Properties as collateral and Defendants' ability to meet their debt service obligations.

8. In July 2019, Plaintiff determined that it needed to inspect the Properties. Based on that inspection, Plaintiff determined that third-party property condition assessments ("PCAs") of the Properties needed to be conducted based on the dramatic decline in occupancy rates and potential for deterioration of the Properties. The PCAs were conducted in September 2019.

9. The PCAs showed that the Village Square Property needed immediate repairs totaling $1,092,835.00 and that the Liberty Village Property needed immediate repairs totaling

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$1,753,145.00. Many of these repairs required urgent attention because they involved issues of life and safety.

10. On October 18, 2019, Plaintiff sent each Defendant a Notice of Demand that included their respective PCA and demanded the following payments:

a. $1,753,145.00 to the Liberty Village Repairs Escrow Account within thirty (30) days;

b. An increase of $8,160.00 per month, for a new total of $26,760.00 per month, for the Liberty Village Monthly Replacement Reserve Deposit;

c. $1,092,835.00 to the Village Square Repairs Escrow Account within thirty (30) days;

d. An increase of $8,349.92 per month, for a new total of $11,656.50 per month, for the Liberty Village Monthly Replacement Reserve Deposit.

11. In October 2019, the Village Square reserve accounts held $106,217.00 and the Liberty Village reserve accounts held $246,047.00.

12. These accounts did not hold enough funds to pay the $2,845,980.00 in estimated total repair costs for the Properties. Accordingly, Fannie Mae sent Defendants a demand to fund the reserve accounts for the Properties and make the repairs.

13. Defendants never paid the amount demanded to fund the reserve accounts and Fannie Mae accelerated the Loans.

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

Executed this 14th day of September 2020 at Collin County, Texas.

James Noakes

James Noakes

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Blacksmith, Ashley

From: Taylor, Lara
Sent: Monday, September 14, 2020 4:36 PM
To: Blacksmith, Ashley
Subject: FW: Filing Accepted for Case: A-20-819412-C; Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s); Envelope Number: 6620046

Lara J. Taylor
Legal Administrative Assistant to Tom Burton, Nathan Kanute, Wayne Klomp, Kiah Beverly-Graham, and Stevie Casteel
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Case Style: Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s)

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Case Number	A-20-819412-C
Case Style	Federal National Mortgage, Plaintiff(s)vs.Westland Liberty Village, LLC, Defendant(s)
Date/Time Submitted	9/14/2020 4:33 PM PST
Date/Time Accepted	9/14/2020 4:35 PM PST
Accepted Comments	Auto Review Accepted
Filing Type	Reply in Support - RIS (CIV)
Filing Description	Federal National Mortgage Association's Reply in Support of Application for Appointment of Receiver on Order Shortening Time

	and Opposition to Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction
Activity Requested	EFileAndServe
Filed By	Lara Taylor
Filing Attorney	Nathan Kanute

Document Details	
Lead Document	Fannie Mae_Liberty Village - Opp to TRO and RIS of App for Appt Rcvr 4850-3320-7242 v.4.pdf
Lead Document Page Count	30
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