

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. _____ Electronically Filed
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PROPOSED INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S

APPENDIX – VOLUME II OF III

PETITIONER’S APPENDIX ALPHABETICAL INDEX

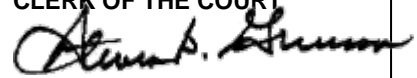
Document Description	Date	Vol.	Page Nos.
Answer to Plaintiff’s Complaint, Counterclaim and Third Party Complaint	8/31/2020	1	0064 – 0143
Application for Appointment of Receiver on Order Shortening Time	8/12/2020	1	0001-0048
Federal National Mortgage Association’s Answer to Counterclaim	2/18/2021	3	0514-0568
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	9/14/2020	1	0181-0212
Motion to Stay Pending Appeal on an Order Shortening Time	12/8/2020	3	0386 – 508
Opposition to Plaintiff’s Application for Appointment of Receiver on Order Shortening Time; Countermotion for Temporary Restraining Order and/or Preliminary Injunction; Memorandum of Points and Authorities	8/31/2020	1	0144 - 0180
Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for Appointment of Receiver	11/20/2020	2	0373-0385
Order Granting Stay in Part and Denying Stay in Part	2/1/2021	3	0509 -0513

Document Description	Date	Vol.	Page Nos.
Reply in Support of Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction	9/18/2020	2	0213-0319
Transcript of Proceedings	10/19/2020	2	0320-0372
Verified Complaint	8/12/2020	1	0049-0063

PETITIONER'S APPENDIX CHRONOLOGICAL INDEX

Document Description	Date	Vol.	Page Nos.
Application for Appointment of Receiver on Order Shortening Time	8/12/2020	1	0001 - 0048
Verified Complaint	8/12/2020	1	0049 - 0063
Answer to Plaintiff's Complaint, Counterclaim and Third Party Complaint	8/31/2020	1	0064 – 0143
Opposition to Plaintiff's Application for Appointment of Receiver on Order Shortening Time; Countermotion for Temporary Restraining Order and/or Preliminary Injunction; Memorandum of Points and Authorities	8/31/2020	1	0144 - 0180
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	9/14/2020	1	0181-0212
Reply in Support of Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction	9/18/2020	2	0213-0319
Transcript of Proceedings	10/19/2020	2	0320-0372
Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver	11/20/2020	2	0373-0385

Motion to Stay Pending Appeal on an Order Shortening Time	12/8/2020	3	0386 – 508
Order Granting Stay in Part and Denying Stay in Part	2/1/2021	3	0509 -0513
Federal National Mortgage Association's Answer to Counterclaim	2/18/2021	3	0514-0568



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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

**REPLY IN SUPPORT OF COUNTER-
MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

Hearing Date: September 22, 2020
Hearing Time: 9:00 AM

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-chartered corporation,

Counter-Defendant.

**REPLY IN SUPPORT OF COUNTER-MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION**

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”), hereby file this Reply in Support of Counter-Motion for Temporary Restraining Order and Preliminary Injunction (the “Reply”) to prevent Federal National Mortgage Association (“Fannie”) and Grandbridge Real Estate Capital, LLC (“Grandbridge,” or in conjunction with Fannie Mae “Lenders”) from continuing with any foreclosure, stop any interference with Westland’s use of the Properties, and deny appointment of a receiver, which Reply is supported by the Affidavit of Shimon Greenspan, attached hereto as Exhibit “3” (“S. Greenspan Aff.”).

I. INTRODUCTION

Simply stated, no default has occurred. Lenders have misconstrued, and continue to try to improperly apply their own loan agreements and extort Westland for the use of \$2.8 million, however, the deposit of those funds were in no way contemplated as being required at the time both parties agreed to specific scheduled dollar values to include as reserve amounts for these loans. Now, based on Lenders’ improper actions, Westland needs assistance to have Lenders actually adhere to the Loan Agreements, stop Lenders’ improper foreclosure, and to preserve the status quo.

Fannie Mae would have the Court believe that their Servicer’s failure to conduct a PCA at

1 the time of the loan assumption coupled with Lenders' subsequent unilateral modification of the loan
2 agreement by demanding a \$2.8 million deposit to over-correct for the Servicer's error, either
3 requires the borrower to fund the demand or be in default. It is frequently said that the devil is in the
4 details, and here Fannie Mae drafted those details. Yet, Fannie Mae fails, in bringing its Application
5 and opposing the Counter-Motion, to disclose the full terms, or an accurate analysis, of their own
6 standard loan documents.^{1 2} For instance, the loan agreements clearly establish: (i) a less formal
7 property *inspection* is not governed by the same terms as a detailed and extensive *property condition*
8 *assessment*, (ii) the requirement that a property condition assessment must demonstrate *deterioration*
9 prior to the demand for an increase in reserves, (iii) a borrower is required to take necessary action to
10 prevent crime on a Fannie Mae funded property, and (iv) Lenders failed to follow the terms of, and
11 thus breached, the Loan Agreements by conducting a property condition assessment, which they
12 utilized to declare a contrived default, and to attempt to foreclose on the Properties.

14 ¹ Essentially, Lenders' moving papers only asserted that they made a demand for \$2.8 million of reserves, and Westland
15 failed to pay it. Specifically, Lenders failed to analyze or identify any particular section of the Loan Agreements that
16 they alleged was breached other than Article 13.02(a)(4) [titled "Insufficient Funds"] and Article 14.01(a)(1) [identifying
17 events of default for failing "to pay or deposit any amount required by the Note, this Loan Agreement or any other Loan
Document"]. As such, despite Lenders' burden in filing the Application for a receiver, Lenders did not provide any other
analysis of the Loan Agreements until citing additional provisions for the first time in their opposition and reply brief
("Opp/Reply").

18 ² While Fannie Mae's brief asserts that Westland papers failed to analyze the loan agreements, Fannie's assertion is a red
19 herring and inaccurate. To be clear, it is Fannie's obligation to prove a default occurred in order to justify the
20 appointment of receiver, and Westland's opposition contested that Fannie had done so, including by referencing that the
21 parties *specifically agreed* to repair and replacement schedules at the time the loans were executed and upon assumption.
(Counter-Motion, at 6-9, 14.) To the extent, it was not previously clear, those repair and replacement schedules are in
22 fact integrated into the Loan Agreements, and Lenders attempted to unilaterally modify those schedules in breach of the
23 loan agreements. (Id.) Instead, Westland's Opposition and Counter-Motion (the "Counter-Motion") met Westland's
24 burden by disclosing a sufficient factual basis to show a reasonable likelihood of success that injunctive relief is
25 appropriate to prevent any foreclosure or appointment of a receiver, which does not require Westland to prove the
26 ultimate issues of the case. (Counter-Motion, at 18-19.) Specifically, in doing so, Westland referenced the actions taken
27 and funds spent to improve the condition of the Properties (Id. at 17-18), the lack of deterioration or waste as recognized
28 by unbiased third parties (Id. at 18; Counterclaim Exhibits L & M), the sufficiency of collateral (Id. at 17), Westland's
performance by tendering all loan service payments (Id. at 17-18), the fact that the Properties are now profitable (Id. at
22), Lenders' breach by disregarding Article 13.02(a)(3) – the section on adjustments to reserve deposits (Id. at 24),
Lender's failing to act in good faith when making representations that Westland would not be charged for the f3 PCA
and varying the standard used for PCA's after reducing reserves at the time of the loan assumption (Id. at 25), and by
recognizing that the Parties have differing interpretations of the loan agreements (Id. at 26-27). Moreover, the applicable
loan provisions are detailed in Westland's Counter-Complaint, to readdress the purported default the Opposition tries to
focus upon, Westland in this Reply, once and for all rebuts those claims with admissible evidence.

1 Simply stated, Lenders' rights are not unlimited, and Fannie's act of pronouncing a borrower
2 in "default" does not make it so, even if they parrot the term 92 times. In essence, the fallacy of
3 Fannie's position is clear. Fannie cites a purported \$2.8 million default, but Fannie has: 1) incurred
4 absolutely *no damage or loss*, 2) received every loan service payment in full, and 3) shown that the
5 best it could muster to support that the "condition of the Mortgaged Property has deteriorated
6 (ordinary wear and tear excepted)" was an incompetent self-serving declaration³ that occupancy
7 rates declined, as opposed to evidence of a physical condition at the Properties that deteriorated.
8 (See Pl. Ex. 1, Section 6.03(c), at 39 [requiring deterioration].) Moreover, as the explicit terms of
9 Section 6.03(c) make clear, a basis for finding deterioration is required for Lenders to be entitled to
10 conduct a property condition assessment in the first place - let alone to make a request for Additional
11 Lender Repairs or Additional Lender Replacements via Section 13.02(a)(4).⁴ Likewise, the loan
12 agreements show that occupancy is not a "condition" that Fannie can use to support a finding of
13 deterioration, and Fannie's assertion to the contrary is simply unsupportable.⁵

14 Fannie's assertion that it should have been paid the full monthly debt service payment plus
15 all rents, when there has not been any default in debt service payments is similarly misplaced. To be
16 clear, until the present Opp/Reply Brief, Fannie Mae had never requested such "cumulative"
17 payments. Instead, Fannie's Notice of Default and Acceleration of Note, not only *failed to request*
18 cumulative payments, but recognized that rents could be *applied to operating expenses* and that any
19 excess would be applied consistent with the loan documents. See Pl. Complaint, Ex. 13, at 3, 7.

20 Finally, Fannie ignores that it has come to this Court for the extraordinary remedy of
21 appointment of a receiver, and that Westland's request for an injunction simply asks this Court to
22

23 ³ As addressed hereinafter, James Noakes, the signatory of the Supplemental Declaration, is incompetent to testify
regarding the matters in his declaration. See Page 9-10.

24 ⁴ Section 13.02(a)(4) of the Loan Agreements explicitly incorporates 13.02(a)(9), which in turn incorporates Section
25 6.03(c)'s deterioration requirement. Apparently to avoid that requirement, Lenders simply fail to identify their demand
as seeking Additional Lender Replacements and Additional Lender Repairs, as opposed to repairs and replacements.

26 ⁵ As addressed hereinafter, the meaning of the term "Condition of the Mortgaged Property" is explicitly addressed in
27 Section 6.01(d), and Section 6.03(c) only permits a PCA after it is found that the condition of the Mortgaged Property
has deteriorated. However, declining occupancy is simply addressed anywhere in the loan documents.

1 maintain the status quo where these Lenders have received all contractually required loan payments,
2 have suffered no damages, and have not come close to proving that either Property suffered
3 deterioration or waste.

4 Therefore, to prevent irreparable harm to Westland based on Fannie Mae's wrongful request
5 for appointment of a receiver and illegally filed foreclosure proceedings, Westland respectfully
6 requests this Court grant its request for a preliminary injunction and/or TRO.

7 **II. LEGAL ARGUMENT**

8 **a. The Status Quo Should Be Preserved With A Temporary Restraining Order or an** 9 **Injunction, Because Lenders Have Failed to Show Any Demonstrable Deterioration** 10 **in the Condition of the Property**

11 Insofar as Fannie asserts that Westland has not engaged in a substantive analysis of the loan
12 agreements, and seemingly suggests that Westland needs to provide a thorough analysis of the Loan
13 Agreement's terms to be entitled to relief, Westland reiterates that a preliminary injunction is simply
14 intended to maintain the status quo *pending a final adjudication*. See *Dixon v. Thatcher*, 103 Nev.
15 414, 415, 742 P.2d 1029 (1987). In fact, a party seeking a preliminary injunction that simply
16 maintains the status quo pending final resolution of the dispute is actually held to a lower evidentiary
17 standard of reasonable likelihood of relief as opposed to the burden that is required for obtaining
18 final relief. *Id.* at 415. Therefore, any attempt by Lenders to place a more stringent burden on
19 Westland is misplaced, because Westland is simply requesting injunctive relief to preserve the status
20 quo pending the outcome of this matter.

21 Conversely, "[t]he appointment of a receiver *pendente lite* is a harsh and extreme remedy
22 which should be used sparingly and only when the securing of ultimate justice requires it. A
23 corollary of this rule is that if the desired outcome may be achieved by some method other than
24 appointing a receiver, then th[at] course should be followed." *Hines v. Plante*, 99 Nev. 259, 261,
25 661 P.2d 880, 881–82 (1983). More generally, "a receiver is a neutral party appointed by the court
26 to take possession of property and preserve its value for the benefit of the person or entity
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1 subsequently determined to be entitled to the property.” *Anes v. Crown P’ship, Inc.*, 113 Nev. 195,
2 199, 932 P.2d 1067, 1069 (1997). The appointment of a receiver determines no substantive rights
3 between the parties and is merely a means of preserving the status quo. *Johnson v. Steel Inc.*, 100
4 Nev. 181, 678 P.2d 676 (1984). Further, the Nevada Supreme Court has recognized employing a
5 receiver comes at a substantial cost to the business, a substantial administrative burden to the court,
6 significantly impinges on the rights of a businessowner, and may even endanger the viability of the
7 business. *Hines*, 99 Nev. at 261, 661 P.2d at 881–82. It was on that basis that the Nevada Supreme
8 Court regarded a “lesser remedy [to be] injunctive relief” and reversed that trial court’s order
9 appointing a receiver. *Id.*

10 Our case is similarly situated to *Dixon* and *Hines*, because there has not been any
11 deterioration of the Mortgaged Properties, Lenders have not suffered any damage as they have
12 received their full contractually required debt service payments (including principal, interest, and
13 replacement reserve funding), they have been permitted access to the Properties, and Lender’s
14 papers establish employing a receiver would amount to a substantial additional cost, all of which
15 weigh in favor of employing the lesser remedy of ordering injunctive relief to maintain the status
16 quo and denying appointment of a receiver is as unwarranted by these non-exigent circumstances.

17 In opposition, to Westland’s counter-motion, Lenders assert that a four-part test should be
18 followed, even though this is a private matter that does not present a colorable public interest, and
19 that Nevada Courts have held that only the first two prongs of the test are paramount. Tellingly,
20 even both of the cases that Lenders cite for the four-prong standard applicable to a preliminary
21 injunction, namely *Dixon v. Thatcher* and *Sobol v. Capital Management Consultants, Inc.*, only
22 address two prongs of the standard test for an injunction - the reasonable likelihood of prevailing and
23 the threat of irreparable injury. Even though the more on point law, and even Plaintiffs’ cases deal
24 with only two conditions to injunctive relief, Westland addresses all four factors below.

25 **i. Likelihood of Success Is Unopposed**

26 Lenders do not actually address the “likelihood of success” prong of the test, which since
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1 Westland is seeking injunction relief, necessarily must focus on whether Westland is likely to
2 succeed on the merits. Instead, Lenders fail to address even a single claim that Westland has
3 presented. Lenders miss the mark by focusing solely on their purported right to a receiver based on
4 a wholly concocted supposed default under the Loan Agreements. Because the argument is never
5 addressed in the Opposition in analyzing the likelihood of success on the merits of Westland's
6 claims, this Court should deem the matter unopposed, and adjudicate that prong in Westland's favor.

7 **ii. Lenders' Inapposite Citations Do Not Rebut Westland's Showing of**
8 **Irreparable Harm**

9 Again, Lenders fail to address or dispute any of the authority that Westland cited to establish
10 irreparable harm. Westland's position that a threat of irreparable harm is presented by Lenders'
11 claim to Westland's real property and business interests, which are unique, should be deemed
12 admitted by Lenders whose citations to some vague authority on the irreparable harm standard, and
13 inapposite caselaw change nothing.

14 Specifically, while lender cites the proposition that injunctive relief is not available to those
15 who will suffer a foreclosure and lose their property due to their own failure to make monthly debt
16 service payments, the facts of those cases are clearly distinguishable from this case. In both of the
17 cases Lenders cited, the borrowers were simply unable to make their ordinary mortgage payments.
18 *See Alcaraz v. Wachovia Mortg. FSB*, 592 F. Supp. 2d 1296, 1299 (E.D. Cal. 2009) ("Ms. Alcaraz"
19 fell behind on . . . [and had an] inability to make [her] house payments."); *Rosenberger v. Wells*
20 *Fargo Home Mortgage*, 215CV2107JCMVCF, 2015 WL 8160360, at *1 (D. Nev. Dec. 7, 2015) (the
21 borrower "fell behind in their mortgage payments due to financial hardship). In contrast, Westland
22 did not "fall behind" on its monthly debt service obligations. In fact, Westland has not only timely
23 made every required periodic debt service payment, it has overpaid so that it could preserve its
24 unique real estate assets. Thus, as opposed to borrowers who were simply unable to make the
25 payments that would have been explicitly designated in the loan documents for their homes, as
26 addressed *infra*, Lenders' purported basis for a default in payments was a result of Lenders'

1 unilateral modification of the repair reserve escrow terms, which resulted in Lenders' demand for a
2 \$2.8 million payment (more than 7% of the value of the loans) within 30 days.

3 **iii. Lenders' Inapposite Citations to the Doctrine of Unclean Hands Fail to**
4 **Address the Explicit Balancing of the Hardships Test**

5 Again, Lenders fail to adhere to the traditional test for an element of injunctive relief, by
6 ignoring the competing hardships to the parties. Lenders instead focus on the unclean hands
7 doctrine, by continuing to adhere to their position that Westland is in default, and thus cannot ask for
8 equitable relief. However, after making that bald assertion, Lenders fail to address the actual
9 standard for equitable relief.

10 Moreover, the cases Lenders cite for the unclean hands doctrine to apply all deal with a party
11 that acted with animus and/or engaged in fraud or deceit. *See Precision Instrument Mfg. Co. v. Auto.*
12 *Maint. Mach. Co.*, 65 S. Ct. 993, 998 (1945) (engaging in perjury); *Anderson v. Deutsche Bank Nat'l*
13 *Tr. Co.*, 2:10-CV-1443 JCM, 2010 WL 4386958, at *5 (D. Nev. Oct. 29, 2010) (failing to make
14 explicitly agreed upon monthly payments); *Adler v. Fed. Republic of Nigeria*, 219 F.3d 869, 877 (9th
15 Cir. 2000) (voluntarily participating in a criminal scheme). Lenders' assertion of fault "nowadays
16 just means that equitable relief will be refused if it would give the plaintiff a *wrongful* gain."
17 *Scheiber v. Dolby Laboratories, Inc.*, 293 F.3d 1014, 1021 (7th Cir. 2002) (emphasis added).
18 However, no party has asserted that Westland acted with a bad animus, engaged in fraud, or would
19 receive a wrongful gain. Moreover, Westland has continued making its monthly loan payments and
20 all amounts agreed upon at the time of the initial loan, and in fact it is Lenders who are attempting to
21 make a unilateral change to the agreed upon loan payments in bad faith.

22 Again, the basis for the purported default is not related to a failure by Westland to pay its
23 known and set monthly debt payments, some criminal act engaged in by Westland, or any fraud or
24 deceit. Instead the basis for this claim is that Lenders improperly attempted to extract an additional
25 \$2.8 million deposit from Westland upon 30 days' notice, by strong-arming Westland under threat of
26 foreclosure, and that Westland validly refused to pay that amount, which was not required by the
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1 loan agreement, but rather amounted to a unilateral modification of the contract. In response,
2 Lenders made good on their threat and without basis declared Westland in default even though,
3 Westland had simply continued making monthly debt payments not only through the date of the
4 purposed default, but through the present time. For all of these reasons, the balance of equities
5 strongly favors Westland.

6 **iv. Granting an Injunction Against a Unilateral Modification of Contracts**
7 **and Improper Foreclosures is in the Public's Interest**

8 As addressed above, Westland's factual basis for its request for a preliminary injunction is
9 that Westland is validly contesting a foreclosure, which is based on a unilateral modification of a
10 contractual agreement. Denying the preliminary injunction would have an ill effect on contractual
11 relationships by endorsing the clearly improper tactic of making a unilateral modification of an
12 executed contract, and then declaring a default based on that newly modified contractual term.

13 Conversely, Lenders assert that it is in the public's interest to deny a preliminary injunction,
14 because it would interfere with Lenders' mission in ensuring a stock of sustainable home ownership
15 and rental housing, if Lenders were "prohibited from enforcing borrower's obligations to repair and
16 maintain property" as well as meeting its purpose of providing safe, low to moderate-income
17 housing. Lenders also suggest that it would be better for them to locate "an alternative owner who
18 would perform the necessary repairs to the unleaseable apartments." *See* Opp/Reply Brief, at 23. In
19 support, of their position, Lenders provide only a citation to yet another matter where a borrower
20 engaged in a default when they "stopped paying their mortgage" after "residing in the property for
21 free." *See Rosenberg v. Wells Fargo Home Mortgage*, 215CV2107CMVCF, 2015 WL 8160360,
22 at *3 (D. Nev. Dec. 7, 2015).

23 The trouble with Lenders' argument is that it is factually baseless, and necessarily must
24 assume that a default occurred due to a unilateral modification of the agreement, when such a default
25 never existed. The closest testimony that relates to the stated allegations is the supplemental
26 declaration of James Noakes, however, that declaration is facially flawed, inadmissible, incompetent
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1 and self-serving. Specifically, Fannie’s Opp/Reply Brief improperly contains new factual assertions
2 supported solely by the Declaration of James Noakes (“Noakes”), who makes factual conclusions
3 without any first-hand knowledge or known documentary or evidentiary basis. In that declaration,
4 Noakes improperly attempts to testify to, and reach conclusions regarding, events that occurred in
5 2019, but Noakes only became involved in the matter when he replaced Carol King in 2020, and to
6 the best of Westland’s awareness he has never visited the Property. As such, Noakes only
7 involvement was several months after the PCA was conducted and subsequent to the notice of
8 default. Contrary to the statements made in Paragraphs 7 and 8, Noakes has no first-hand knowledge
9 of deterioration at the Properties, or any ability to make any observations from which conclusions
10 related to occupancy could be derived. (Supplemental Declaration, at ¶ 7-8.) Such statements are
11 simply self-serving statements that should not be credited for purposes of this motion. *See e.g.,*
12 *Clauson v. Lloyd*, 103 Nev. 432, 434-35 (1987) (a broad self-serving affidavit insufficient to support
13 a motion that the moving party had an evidentiary burden); *Alborzi v. Nationstar Mortgage, LLC*,
14 69906, 2017 WL 1806805, at *1 (Nev. App. Apr. 28, 2017) (denying a request for a foreclosure
15 related forensic examination based on a self-serving affidavit). Notably, in support of its position,
16 Westland has properly contested Mr. Noakes baseless declaration with the Affidavit of Yanki
17 Greenspan and Shimon Greenspan, who both have first-hand actual knowledge of the Properties, its
18 physical condition, and its occupancy rates.

19 **b. The Loan Agreements and Communications Between the Parties Establish that The**
20 **Purported Default is Baseless**

21 While Lenders’ Opp/Reply Brief addresses several sections of the loan agreements not
22 addressed in its original moving papers, Lenders portrayal of the loan agreements still has numerous
23 misleading omissions and fails accurately to present the terms of the parties’ loan agreement. In
24 order to fully understand the Loan Agreements, Westland is drawing additional attention to the
25 agreement’s definitions, the meaning of Condition of the Mortgaged Properties, the variation in the
26 Loan Agreements between the terms “inspection” and “property condition assessment”, and Loan
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1 Agreement's requirement for deterioration in order to justify any reserve increase based on a
2 category of repairs not explicitly contained in the Loan Agreement schedules.

3 **i. Lender's Assertion that Reserves were not Returned due to an Event of**
4 **Default is Demonstrably False**

5 Westland would agree that a valid, prior-noticed, substantial and material event of default
6 would be a valid reason to withhold reserve funds. However, the timeline of events shows that
7 Fannie's assertion of Section 14.02(b) is gratuitous and without a factual basis. Succinctly,
8 Westland submitted a valid reserve disbursement request, by no later than April 15, 2019, and
9 supported the request with documentation of work for which it was entitled to reimbursement. (S.
10 Greenspan Aff., ¶¶ 11-12; Exhibit 4.) Lenders did not issue a Notice of Default and Acceleration of
11 Note until eight (8) months later on December 17, 2019. Still, Lenders never issued any reserve
12 reimbursement payments, refused to respond to the majority of Westland's requests, refused to
13 provide the funds until after other undesignated purportedly pending matters were handled on other
14 occasions, and last requested additional documentation that even when Westland provided them, still
15 did not result in Lenders releasing Westland's funds. (S. Greenspan Aff., ¶¶ 11-12; Exhibit 4.)
16 Lenders have flatly refused to release Westland's funds without any proper basis, thus violating the
17 Loan Agreements. But even worse, despite holding \$1,000,000 of Westland's money has the
18 audacity to tell this Court that its foreclosure should not be enjoined, because it somehow claims
19 straight faced, that the reserves (of two Properties which Westland has cleaned up, made much more
20 safe and secure for its residents, and has spent in excess of \$3.5 million on improvements) are
21 inadequate.

22 **ii. Fannie's Disingenuously Seeks a Cumulative Rent and Debt Service Windfall**

23 For the first time, Fannie Mae baldly asserts that Westland was obligated *to pay the monthly*
24 *debt service obligation plus all rents* to Fannie Mae, because Westland "had *cumulative* obligations
25 to pay the accelerated note *and* to pay all rents." (Opp/Reply Brief, at 17.) Tellingly, Lenders'
26 argument lacks citation to any legal authority, and particularly no supporting Nevada law which
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1 would allow Lenders to receive an inappropriate windfall after making their spurious demand for
2 \$2.8 million of reserve funding. This is only magnified here because indisputably, *Fannie has*
3 *already been paid all contractually required monthly debt service payments (and then some)*.
4 Further, it seems that Lenders' overreaching has no limit, because the Opp/Reply Brief argues that
5 Westland "misses the point" by stating that "any rents collected were not even sufficient to cover the
6 monthly debt service obligation." (*Id.*) Thus, Lenders would have this Court believe that even
7 during a period when Westland covered any deficiency in rent with its own funds, Fannie apparently
8 expects to be able to double-dip and receive a windfall. This, at a minimum, is inequitable, and
9 supports Westland's request for an injunction, because the Lenders are before this Court with
10 unclean hands.

11 The truth is Fannie never requested payment of both full debt service obligations and rent
12 payments. Instead, Fannie's own Notice of Default and Acceleration of Note, stated "Borrower's
13 license to collect rents has terminated and Fannie Mae is entitled to all rents . . . Until further notice,
14 any rents borrower received after occurrence of the event of default shall be . . . *held by borrower in*
15 *trust for Fannie Mae*. Until further notice, all such rents shall be *applied only to bona fide current*
16 *operating expenses* to third parties in connection with the operation of the property *with excess paid*
17 *to Fannie Mae, to be applied in accordance with the loan documents.*" Pl's Complaint, Exhibit 13,
18 at 3, 7 (capitalized text normalized and emphasis added). As such, Lenders clearly did not request
19 cumulative rent and debt obligation payments, and Fannie's present arguments to the contrary do not
20 appear to have been made in good faith.

21 Instead, Lenders' request was for the payment of rents to be held in escrow for Fannie, and
22 that such funds could be used for current operating expenses, with the excess that is paid to Fannie
23 being applied in accordance to the loan documents. That is precisely what happened, because
24 Westland continued to pay the expenses for operating the Properties out of rent, and provided the
25 remaining amount to Fannie for purposes of application to Westland's debt service obligations
26 consistent with the loan documents. On that basis, it would be improper for Lenders to seek
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1 appointment of a receiver, under NRS § 107A.260(1)(a), for utilizing rents explicitly as Lenders
2 specified.

3 **iii. Occupancy Rates are Clearly not a Condition of Mortgaged Property, and a**
4 **Decline in Rates does not Qualify Lenders to Have a PCA or Raise Reserves**

5 The term “Condition of the Mortgaged Property” is addressed in Section 6.01(d) of the Loan
6 Agreements. It addresses physical conditions of the Properties. Specifically, the Loan Agreements
7 provisions using the term apply to “construction or condition of the Mortgaged Property or the
8 existence of any structural or other material defect therein” and in situations related to casualty
9 related property damages, where “neither the Land nor the Improvements has sustained any damage
10 other than damage which has been fully repaired.” (See Pl. Complaint, Ex. 1, at 34; Pl. Complaint,
11 Ex. 6, at 34.)

12 The only other substantive reference to Condition of the Mortgaged Property is in Section
13 6.03(c), which only permits a PCA when after a physical “inspection of the Mortgaged Property,
14 Lender determines that the *condition of the Mortgaged Property* has deteriorated. (Id., at 39.)
15 However, noticeably absent from the loan agreements is any reference to a decline in occupancy as a
16 condition of the Mortgaged Property, so Lenders reference to a decrease in the occupancy rate at the
17 Properties is simply irrelevant and inconsistent with the terms of the Loan Agreements.

18 **iv. If the Court Considers Occupancy to be a Property Condition it Should**
19 **also Consider Crime to be one, and no Deterioration at the Property**
20 **Could have Occurred, because the Reduction in Occupancy was in**
21 **Response to Westland’s Obligation to Decrease Crime Onsite**

22 Section 6.02(c) of the Loan Agreements govern Property Preservation, and in doing so
23 provides that Westland has an affirmative obligation not to engage in waste or destroy the physical
24 Condition of the Mortgaged Property. Specifically, Section 6.02(c)(3) focuses on crime and requires
25 that Westland must “not engage in or knowingly permit, and *shall take appropriate measures to*
26 *prevent and abate or cease and desist, any illegal activities* at the Mortgaged Property that could
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1 endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the
2 Land or otherwise materially impair the lien created by the Security Instrument or Lender's interest
3 in the Mortgaged Property.”

4 Here, as documented in Westland’s moving papers, the two Properties have been troubled by
5 crime for years, and now that the Properties are under Westland’s guidance, crime is no longer an
6 issue. The reduction of crime that was required by the loan agreements was only able to be achieved
7 with better security, stricter leasing guidelines, better coordination with law enforcement, and the
8 eviction of offending tenants. A regrettable byproduct of those appropriate measures to prevent and
9 abate crime was that the Properties initially had a reduced rate of occupancy, but that rate is now in
10 excess of the 80% that Mr. Noakes opined existed at the time that Lenders initially issued the Loan.
11 As such, it is clear that there has not been any deterioration in even the non-physical conditions at
12 the Properties.

13 **v. Westland has Consistently Agreed to Provide Lender Access to Inspect**
14 **the Property, but Now Seeks Reasonable Limitations on Lender’s**
15 **Request to Conduct any Further Harassing Property Condition**
16 **Assessments, Which has been Requested Without any Evidence of**
17 **Deterioration**

18 Lenders Opp/Reply Brief attempts to establish that Westland has not provided access to the
19 Properties for inspections. However, in reality, Lenders never sought access to the Properties from
20 the time when the f3 PCA was conducted in 2019 until the past week, and when doing so they
21 sought access for a property condition assessment not an inspection, which are not governed by the
22 same provisions within the Loan Agreement.

23 Section 6.02(d) of the Loan Agreements govern Property Inspections, and provides in
24 pertinent part that

25 Borrower shall: (1) permit Lender, its agents, representatives, and designees to enter
26 upon and inspect the Mortgaged Property (including in connection with any
27 Replacement or Repair, or to conduct any Environmental Inspection pursuant to the
28 Environmental Indemnity Agreement), and shall cooperate and provide access to all

1 areas of the Mortgaged Property (subject to the rights of tenants under the Leases):
2 (A) during normal business hours; (B) at such other reasonable time upon reasonable
3 notice of not less than one (1) Business Day; (C) at any time when exigent
4 circumstances exist; or (D) at any time after an Event of Default has occurred and is
5 continuing.

6 Notably, the ability to engage an inspection is limited to conditions that would be a quick event,
7 or that are substantially similar to the ability to inspect for hazardous substances as permitted by
8 N.R.S. § 40.507(2). Whereas, the Loan Documents place a much more stringent standard on
9 Property Condition Assessments, which are detailed in Section 6.03(c), and provides in
10 pertinent part that:

11 If, in connection with any inspection of the Mortgaged Property, Lender *determines that*
12 *the condition of the Mortgaged Property has deteriorated* (ordinary wear and tear
13 excepted) since the Effective Date, Lender may obtain, at Borrower's expense, a property
14 condition assessment of the Mortgaged Property. Lender's right to obtain a property
15 condition assessment pursuant to this Section 6.03(c) shall be in addition to any other
16 rights available to Lender under this Loan Agreement *in connection with any such*
17 *deterioration*. Any such inspection or property condition assessment may result in Lender
18 requiring Additional Lender Repairs or Additional Lender Replacements as further
19 described in Section 13.02(a)(9)(B).

20 See Section 6.03. (c) Property Condition Assessment (emphasis added). Tellingly, as opposed to an
21 inspection, a Property Condition Assessment may not simply be demanded. Rather, it is conditioned
22 on an inspection having been previously performed and a finding that there has been deterioration in
23 the physical condition of the Mortgaged Property in excess of ordinary wear and tear since the time
24 that the loan was taken out. *The reference to deterioration is paramount, because the requirement*
25 *also flows through to Lenders ability to seek reserves since the provision is also specifically*
26 *incorporated by reference into Sections 13.02(a)(4) and (a)(9) of the Loan Documents.*

27 Again, the best that Lenders could muster in support of a finding of deterioration at the
28 Properties was a baseless statement that deterioration must have occurred because the occupancy
levels at the Properties dropped, but that statement does not follow logically, and Lenders are unable
to produce any evidence of deterioration because it is simply not true. See Y. Greenspan Supp. Aff.,
at ¶¶ 4-14; see also discussion of Noakes Supp. Decl., *supra*.

1 Here, after the September 2019 PCA, Lenders first sought access to the Properties again
2 within their Opp/Reply Brief and recent September 2020 communications. The only plausible
3 reason for Lenders' request for access to perform a PCA is, consistent with Westland's position,
4 Lenders recognize that the September 2019 f3 PCA report is stale and no longer represents the
5 condition of the Properties. As such, Lenders have not sought access to the Properties for a
6 legitimate inspection due to their concern for the Properties or some interest in collateral, but instead
7 Lenders have actually sought access to attempt to obtain a supplemental PCA to bolster their
8 position in this litigation.

9 As such, it is disingenuous that Lenders attempt to shift the blame to Westland for failing to
10 cooperate with providing access to the Properties when it is Lenders who proceeded to file for a
11 receivership without a current PCA. Moreover, after waiting over a year to request access Lenders
12 cite a failure to cooperate, when they had only just sought access to the Properties and Westland
13 responded not with a denial but with conditions for providing such access.

14 Notably, to the extent that Westland is placing any limitations on access it is only because
15 when Westland initially fully cooperated with Lenders by providing access for an inspection by
16 Lenders' banking employees in July 2019, and a subsequent PCA, Westland's cooperation led to
17 Lenders' engaging in bad faith actions designed to underpin their current litigation position.

18 To be clear, Lenders have on statutory right to perform an inspection, not a PCA, and that
19 statutory right is conditioned, because it may not be harassing to a property owner. *See* N.R.S. §
20 40.507(2). Similarly, the loan documents condition requests for such access to perform a PCA, but
21 Lenders have sought unconditional access in violation of both the Loan Agreements and Nevada
22 law. Moreover, regardless of the rights that Lenders assert are owed by the onerous provisions of
23 the Loan Agreements, Lenders should not be able to insist on access for a PCA to the extent it
24 exceeds the statutory protections specifically included in N.R.S. § 40.507(2), which specifically
25 limits when a secured lender may enter and inspect a property to occasions that it is investigating the
26 "release or presence of a hazardous substance" on real property or "[a]fter the commencement of a
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1 trustee's sale or *judicial foreclosure* proceedings against the real collateral.” *Id.* To be blunt,
2 Lenders request for access and a PCA far exceeds the statutorily required limitations.

3 Notably, Westland has not placed conditions on access that would be within the parameters
4 of an inspection that is permitted under Nevada statutes or Section 6.02(d) of the loan agreement,
5 and has only requested reasonable conditions related to a PCA. For instance, based on the mishaps
6 that occurred when a biased PCA was conducted by f3, Westland has requested that the parties agree
7 to a neutral party to conduct such a PCA, and advised Lenders that it will not agree to pay the cost of
8 such an inspection because Lenders are seemingly only seeking to perform the inspection to bolster
9 their own litigation position.

10 Further, despite stating that Westland “only provided [] documentation of purported repairs
11 after it filed the Complaint and Application” that is simply untrue. To be clear, Westland repeatedly
12 provided updates to Lenders regarding the Properties, including by disclosing its strategic plan and
13 by the submission of reserve disbursement requests, which were supported by documentation of
14 repairs, in addition to providing Lenders 2500 pages of work orders. However, after Lenders
15 repetitively either failed to respond, or failed to take any action on Westland's reserve disbursement
16 requests, in early 2020 Westland deemed further updates (other than those required by the loan
17 agreements such as financial disclosures) would be futile until advised otherwise by lender, because
18 they simply failed to respond to reserve requests. See S. Greenspan Aff., at ¶ 12; Exhibit 4, Emails
19 to Lenders regarding reserve requests. However, more recently, when requested by Lenders,
20 Westland provided documentation, including but not limited to invoices with vendors, supporting
21 that the work specified in the f3 PCA has actually been performed.

22 As such, Westland has acted consistent with Nevada law by permitting its lender access to
23 inspect the real property. Westland did not even limit Lender to inspections solely for purposes of
24 looking for hazardous substances, or after a foreclosure sale is pending, but rather has only put
25 limited conditions of such access, which is appropriate because such right of entry and inspection of
26 real collateral is not unlimited. N.R.S. § 40.507(2); *see also* N.R.S. § 32.015. Notably, both
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provisions are subject to the “same limitations,” including that “[a] secured lender shall not abuse the right of entry and inspection or use it to harass the debtor or tenant of the property.” NRS § 40.507(2).

vi. The Loan Agreements Defined Repairs and Replacements, Based on Schedules Agreed Upon at the Time of Loans Closing and Assumption, and a showing of Deterioration is Required for Additional Reserves

Lenders have only engaged in a facial analysis of their own loan documents, which focuses solely on the terms “Repairs” and “Replacements” (Opp/Reply Brief, at 4, n.8), but in doing so leads to a distorted snapshot of the Loan Agreements, and is likely what has led to Defendants having improperly making a convoluted request for a \$2.8 million deposit. To be clear, many of the provisions of the loan documents are interrelated, and rely on the incorporated definitions not to lead to perverse results.

Specifically, the Loan Agreements differentiate between Required Repairs, Required Replacements, Additional Lender Repairs, and Additional Lender Replacements, and those distinctions are not meaningless, because if an Additional Lender Repair or Additional Lender Replacement is requested it *must be based on a finding of deterioration in the condition of the Mortgaged Properties*. The definitions of each of those terms are found in Schedule 1 to the Loan Agreement, and as to Repairs are as follows:

- **“Repairs”** means, individually and collectively, the Required Repairs, Borrower Requested Repairs, and Additional Lender Repairs.”
- **“Required Repairs”** means those items listed on the Required Repair Schedule.”
- **“Required Repair Schedule”** means that certain Schedule 6 (Required Repair Schedule) to the Loan Agreement.”
- **“Additional Lender Repairs”** means *repairs of the type listed on the Required Repair Schedule* but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair (ordinary wear and tear excepted) and in good marketable condition or to prevent deterioration of the Mortgaged Property.”

Pl. Complaint, Ex. 1, at 93, 106, 107 (emphasis added). Similarly, the definitions for Replacements are as follows:

- **“Replacements”** means, individually and collectively, the Required Replacements, Borrower Requested Replacements and Additional Lender Replacements.”
- **“Required Replacements”** means those items listed on the Required Replacement Schedule.”
- **“Required Replacement Schedule”** means that certain Schedule 5 (Required Replacement Schedule) to the Loan Agreement.”
- **“Additional Lender Replacements”** means replacements *of the type listed on the Required Replacement Schedule* but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair (ordinary wear and tear excepted) and in good marketable condition or to prevent deterioration of the Mortgaged Property.”

Pl. Complaint, Ex. 1, at 93, 106, 107 (emphasis added). As such, it can be seen that at the time of the signing of the Loan Agreements, a borrower is only required to fund the Required Repairs or Required Replacements that are listed in the pertinent Required Replacement Schedule and Required Repair Schedule, because at that time no additional lender repairs or replacements would have been requested.

Further, by establishing the Loan Agreements in such a manner, Lenders have agreed at the time the loan is executed to the amount of funding that will be contained in a Repair or Replacement reserve account, and here, it is undisputed that those accounts were initially funded with an amount that was agreed upon and fully funded at the inception of the loan. A summary of the amounts agreed to be scheduled in those accounts are as follows for the Village Square property:

Village Square Schedule 2 - Summary of Loan Terms

Initial Replacement Reserve Deposit: \$0.00

Monthly Replacement Reserve Deposit: \$10,529.08

Repair Escrow Deposit: \$85,091.00

Pl. Complaint, Ex. 1, at 117. Notably, no replacement reserve expenses were listed for Village Square, which meant that Lenders had agreed that aside from the specific repairs listed in the Required Repair

1 Schedule, they planned to move forward with only a monthly addition to the monthly payment that the
2 borrower was to make, which as shown by Schedule 5 to the Village Square loan agreement, was based
3 on a depreciable item cost schedule of \$301 per unit year. Pl. Complaint, Ex. 1, at 131. In terms of
4 immediate repairs, those conditions were specifically delineated and listed in Schedule 6 to the Village
5 Square loan agreement, which listed a total amount of \$85,091.00 for Village Square at the time the loan
6 was funded. Pl. Complaint, Ex. 1, at 133. Those were specific loan terms that could only be modified
7 consistent with the process of Additional Lender Repairs and Additional Lender Replacements.

8 Similarly, for the Liberty Village property, the Loan Agreement provided:

9 Liberty Village Schedule 2 - Summary of Loan Terms

10 Initial Replacement Reserve Deposit: \$315,000.00

11 Monthly Replacement Reserve Deposit: \$18,600.00

12 Repair Escrow Deposit: \$165,635.00

13
14 Pl. Complaint, Ex. 6, at 117. Again, Lenders agreed to a depreciable item replacement schedule within
15 Schedule 5 to the Liberty Village loan agreement, which was based on a depreciable item cost schedule
16 of \$310 per unit year. Pl. Complaint, Ex. 6, at 131. In terms of immediate repairs, those conditions were
17 specifically delineated and listed in Schedule 6 to the Liberty Village loan agreement, which listed a total
18 amount of \$165,635.00 for Liberty Village at the time the loan was funded. Pl. Complaint, Ex. 6, at 133.
19 Those were specific loan terms that could only be modified consistent with the process of Additional
20 Lender Repairs and Additional Lender Replacements.

21 In fact, the Liberty Village and Village Square schedules were actually modified at the time that
22 Westland assumed the Loan Agreements. Specifically, while no changes were made to any amounts of
23 the monthly replacement funding, the Required Repair Schedule for Village Square was revised to reflect
24 that no required repairs were needed, and the Required Repair Schedule for Liberty Village was reduced
25 to reflect repairs already performed and that only \$9,375.00 of repairs remained. See, Pl. Complaint, Ex.
26 6, at 189-201 (containing new Liberty Village Schedule 6); *see also* Counterclaim Exhibits J & K.
27 Ultimately, those revisions resulted in total repair and replacement reserves for both Properties in the

1 amount of \$143,319.28. *See* Counterclaim Exhibits J & K. In making those changes, Lenders conducted
2 a review that was permitted by the Loan Agreements in Section 13.02(a)(3)(B), which specifically
3 applies to at the time of a transfer of property, such as the loan assumptions that occurred here.

4 Notably, as addressed in Westland's initial moving papers, while several property conditions
5 were contained in those assumed schedules, *the original 2017 PCA's explicitly stated that no amounts*
6 *need be reserved for restoring vacant or down units to rent ready status.* Yet, it is precisely those types
7 of costs that comprise the vast majority of expenses listed in the f3 PCA report, because those expenses
8 amount to \$1.9 million of the total \$2.8 million that Lenders have improperly demanded to be submitted
9 for reserves. Simply stated, the two PCA reports impermissibly utilized vastly different standards.

10 However, thereafter, Lenders have attempted to unilaterally modify those specifically negotiated
11 and agreed upon reserve funding amounts without adhering to the process required by the Loan
12 Agreements for doing so. In doing so, Lenders have simply demanded that Westland deposit an
13 additional \$2.8 million based on the assertion such a result can occur based on a blanket assertion under
14 Section 13.02(a)(4) of the Loan Agreements related to "Insufficient Funds." However, from the terms of
15 that Section it is clear that the entire Section is not even applicable, because Lenders are *not seeking*
16 *additional funds to perform the Repairs and Replacements that were previously listed in the Required*
17 *Repair Schedule and Required Replacement Schedule for each property.* Section 13.02(a)(4) provides in
18 pertinent part that a blanket demand for deposits can only be demanded:

19 if Lender determines that the amounts on deposit in either the Replacement Reserve
20 Account or the Repairs Escrow Account *are not sufficient to cover the costs for Required*
21 *Repairs or Required Replacements* or, pursuant to the terms of Section 13.02(a)(9), not
22 sufficient to cover the costs for Borrower Requested Repairs, Additional Lender Repairs,
23 Borrower Requested Replacements, or Additional Lender Replacements.

24 However, here Lenders demand is misplaced because the f3 PCAs do not list the same repairs as those
25 listed in the schedules, and even include types of costs differing from those listed in the schedules, so it is
26 not that the funds set aside were *insufficient* to perform the repairs previously identified, but rather that
27 the Lenders are requesting new, different repairs be performed.
28

1 In such a case, based on the definitions listed above, a request for additional funding could only
2 be required under Section 13.02(a)(4) if the requested repairs were deemed Additional Lender Repairs or
3 Additional Lender Replacements. However, even Additional Lender Repairs and Additional Lender
4 Replacements are limited to the “types of repairs” listed in the Required Repair and Required
5 Replacement Schedule, which Lender’s request still exceeds by including the full scope of the repairs
6 listed in the f3 reports.

7 Moreover, Section 13.02(a)(4) requires that the request be made as an Additional Lender Repair
8 or Additional Lender Replacement, then the request must be made consistent with Section
9 13.02(a)(9)(B), which states in pertinent part that: “Lender may require, as set forth in Section 6.02(b),
10 Section 6.03(c), or otherwise from time to time, upon written notice to Borrower, that Borrower
11 make Additional Lender Replacements or Additional Lender Repairs.” However, as detailed above
12 those Sections of the Loan Agreements deal with inspections, and based on the terms applicable to a
13 Property Condition Assessment, such the one that was performed by f3 that Lenders rely upon here,
14 the Property Condition Assessment is limited to those conditions that amount to a *deterioration* of
15 the condition of Mortgaged Property. Again, Lenders have not shown any deterioration of the
16 condition of the Mortgaged Property, so their demand, PCA, and default, are invalid under Section
17 13.02(a)(4) of the Loan Agreements.

18 Finally, it is important to note that the Loan Agreements also contemplate the specific instances
19 when Schedules may otherwise be adjusted to include conditions at the Properties other than those listed
20 in the Required Repair Schedules and Required Replacement Schedules. Those terms are detained in
21 Section 13.02(a)(3) of the Loan Agreement, entitled Adjustment to Deposits. It provides that Lenders
22 may alter those schedules, and is entitled to a new PCA on two occasions, namely: 1) in the ninth year of
23 a ten year loan, or 2) upon a transfer of a property, such as the assumption that occurred in this case.
24 Importantly, at the time of the loan assumption, Lenders failed to make such an adjustment to the repair
25 and replacement schedules, despite that they were specifically authorized to do so at that point before
26 Westland was bound to the loan agreements. Lenders should not be permitted to make such an

1 adjustment now, contrary to the terms of the loan documents, to Westland's prejudice and expense, and
2 as a unilateral modification of the terms of the parties' agreement.

3 **III. CONCLUSION**

4 Based on the foregoing, Defendant respectfully requests that this Honorable Court **GRANT**
5 its Motion for Temporary Restraining Order and Preliminary Injunction preventing and enjoining
6 Plaintiff from conducting any foreclosure proceedings, foreclosure sale, or appointing a receiver
7 related to the Properties pending a determination of the rights and obligations of the parties pursuant
8 to the Loan Agreements.

9 Dated this 18th day of September 2020

10 Respectfully submitted,

11 **LAW OFFICES OF JOHN BENEDICT**

12
13 By: /s/ John Benedict

14 JOHN BENEDICT, ESQ.

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21 *Attorneys for Defendants/Counterclaimants/ Third*
22 *Party Plaintiffs Westland Liberty Village, LLC &*
23 *Westland Village Square LLC*
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 18th day of September 2020, I served a true and correct
3 copy of the foregoing **REPLY IN SUPPORT OF COUNTER-MOTION FOR TEMPORARY**
4 **RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** through electronic service
5 through the Court's Electronic Filing System to:

6 Nathan G. Kanute, Esq. and/or David L. Edelbute, Esq.
7 Snell & Wilmer L.L.P.
8 3883 Howard Hughes Parkway, Suite 1100
9 Las Vegas, Nevada 89169
10 Attorneys for Plaintiff

11 /s/ Brian R. Dziminski, Esq.
12 On Behalf of Law Offices of John Benedict
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EXHIBIT 3

EXHIBIT 3

AFF

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LLC & Westland Village Square LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

**AFFIDAVIT OF SHIMON GREENSPAN IN
SUPPORT OF COUNTERCLAIMANT'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND MOTION
FOR PRELIMINARY INJUNCTION**

Hearing Date: September 22, 2020
Hearing Time: 9:00 AM

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

Counterclaimants,

vs.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, a federally-chartered
corporation,

Counter-Defendant.

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.

Shimon Greenspan, being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years of age, and I have personal knowledge of the matters contained herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I would competently and truthfully testify to all statements made herein of my firsthand knowledge or business records, except to those matters stated on information and belief. As to those, I believe them to be true.

2. I am the Chief Financial Officer ("CFO") of Westland Real Estate Group, and a trustee for the family trusts that own Westland Liberty Village, LLC ("Liberty LLC") and Westland Village Square, LLC (individually "Square LLC," or in combination with Liberty LLC, "Westland").

3. I am familiar with the facts stated in this Affidavit based on my own knowledge, and my continuing involvement with the two Multifamily Loan and Security Agreements entered into on August 29, 2018, (the "Loan Agreements") by and between Westland as the assuming borrower, Federal National Mortgage Association ("Fannie Mae") as lender, and Grandbridge Capital Real Estate LLC (who was known as Cohen Financial and SunTrust Bank at the time the loan was signed, and hereinafter referred to as "Grandbridge" and together with Fannie Mae, "Lenders") as lender/loan servicer. As such, I am knowledgeable of the facts contained herein and am competent to testify thereto.

1 **Review of Reserve Schedules Prior to Closing**

2 4. Prior to Westland's purchase, I reviewed the financial records that we had been
3 provided for the two Properties purchased by Liberty LLC and Square LLC purchased on August
4 29, 2018, which are located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel
5 Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las
6 Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-702-002 and 140-08-702-003] (the
7 "Properties") from sellers Shamrock Properties VI LLV and Shamrock Properties VII LLC
8 (collectively the "Shamrock Entities").

9 5. As Westland's CFO, part of my review prior to the purchase of a property,
10 involves evaluating whether Westland is able to meet the debt obligations associated with the
11 loans by reviewing Replacement Reserve and Required Repair Reserve Schedules that designate
12 the amount of required reserves.

13 6. For the two loans presently before the Court, I reviewed the reserve schedules that
14 were attached to the loan agreements and the proposed assumption of mortgage loan letters and
15 found that \$105,032.03 remained in the repair and replacement reserves for Liberty Village, and
16 that \$38,287.25 remained in repair and replacement reserves for Village Square. Additionally,
17 when I reviewed the loan assumption closing statements I understood that Westland would be
18 making Replacement Reserve Escrow payments of \$18,800.80 per month for Liberty Village and
19 \$10,259.06 per month for Village Square as part of its monthly loan payment obligations.

20 7. I relied on the Schedules of Repairs and Schedules of Replacements, and Lender's
21 assignment letters from shortly prior to the loan assumption in determining that no change to the
22 repair or replacement reserve funding was required. A copy of those assumption letters and
23 closing statement were attached to the Westland's Counterclaims as Exhibits H, I, J & K.

24 **Disclosure of Occupancy**

25 8. Even prior to the closing of the loan, based on the criminal and questionable
26 element that I was informed was residing at the Properties, I provided the servicer a 36 month
27 proforma statement, prior to the closing of the loan, on July 31, 2018, that I anticipated a
28 decrease in the occupancy at the Properties would occur, including that my twelve month

1 projection for the Properties was that they would have a 67% occupancy rate approximately
2 twelve months after closing. A true and correct copy of my email to Asset Manager Michael
3 Woolf, dated July 30, 2018, is attached as Exhibit 4 (listing the reciprocal vacancy rate of 33%).

4 9. As such, it is not possible for Lenders to claim that they were unfairly surprised
5 by a decrease in the occupancy rate at the Properties, and Lenders had that information when
6 they agreed to maintain the repair reserve and replacement reserve balances at the same level at
7 the time the loan was assumed.

8 10. Additionally, prior to the submission of Westland's first quarterly report to the
9 servicer after purchasing the Properties, I became suspicious that the Properties' seller had
10 misrepresented the financial information and occupancy levels at the Properties. I promptly
11 notified the servicer for the loans by February 2019 at the time Westland submitted its quarterly
12 financial statements for the fourth quarter of 2018.

13 **Servicer's Improper Handling of Reserve Disbursement Requests**

14 11. While I am advised that Lender's opposition papers state that Westland never
15 disclosed any improvements that it had continued to make at the Properties until the filing of this
16 lawsuit that is simply not true.

17 12. As part of my duties as CFO, I am one of the individuals who oversee Westland's
18 accounting department, and I tasked two members of that department with communicating with
19 the loan's servicer in relation to making reserve disbursement requests. Those reserve requests
20 are required to be supported by detailed paperwork showing the work that had been completed,
21 the payments that had been made for that work, and any local government approval that was
22 required. That information is typically consolidated into a disbursement request form that the
23 lender requests to be completed. Related to the two loans at the Properties, 23 reserve
24 disbursement requests or emails inquiring about the status of Servicer's processing of Westland's
25 reserve requests were submitted starting on April 15, 2019, prior to any inspection or property
26 condition assessment being sought by Lenders, and continuing through September 4, 2020. For
27 the majority of those requests, Servicer's representative simply failed to respond, for several
28 others the response was that Fannie Mae had put "draw requests . . . on hold, pending resolution

1 of other matters at the Properties,” and for several others additional documentation was
2 requested. Ultimately, the end result was always the same, the Servicer failed to disburse any
3 funds, including in response to any of the 10 requests or inquiries that were made before any
4 default was stated to have occurred. A copy of the emails of my accounting team members to
5 Asset Manager Michael Woolf, dated April 15, 2019 to September 4, 2020, are attached as
6 Exhibit 5.

7 13. This gamesmanship seems to be a pattern with Grandbridge. For example,
8 Westland had to request that Lenders identify the particular provisions within the multiple pages
9 of subsections that comprise Section 6 of the loan agreements, so that we could look to address
10 any purported default. Westland did so with requests in two letters. However, Lenders failed to
11 respond. If there was an actual default, which Westland disputes occurred, then Lenders actions
12 meant that Westland had no realistic way to attempt to cure that default based on Lenders’
13 conduct in failing to specify the details of the default with anything more than a reference to one
14 of the largest Sections in the loan agreement. Basically, Lenders failed to provide notice of the
15 particular default that was engaged in by Westland.

16 14. This same gamesmanship continues to the present date, because while Lenders
17 Opposition and Reply asserts a timeline that includes “attempted settlement discussions” during
18 January and February 2020, Lenders’ statement is simply a misleading non-event. I was
19 involved with attempting to contact Lenders to resolve this matter, but I was told to direct the
20 matter to in-house counsel due to the purported need for a pre-negotiation agreement, and I was
21 told that Fannie Mae would be engaging in a “dual track process” where it would continue to
22 seek a foreclosure or prosecute litigation, while simultaneous engaging in settlement discussions.
23 Ultimately, once presented with the pre-negotiation letter, the settlement discussions went
24 nowhere, because Lenders refused to participate unless Westland paid all costs up front,
25 including for Fannie Mae’s counsel, and Westland would have been obligated to admit that it
26 was in default. Understandably, Westland was not willing to admit a loan default, and pay all
27 costs that Lenders deemed necessary, just for the chance to engage in settlement discussions.

28 15. This Affidavit is made in good faith and not for purposes of delay.

1 In accordance with NRS 53.045(2), I declare under penalty of perjury under the law of
2 the State of Nevada that the foregoing is true and correct.

3 Executed this 18th day of September 2020 at Long Beach, California.

4

5 DocuSigned by:


6 By: 
DE5412D186E7445
7 Shimon Greenspan, Member of the Board of Managers
8 to the Trust Managing Westland Liberty Village, LLC and
9 Westland Village Square LLC
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EXHIBIT 4

EXHIBIT 4

----- Forwarded message -----

From: **Shimon Greenspan** <shimon.g@westlandreg.com>

Date: Tue, Jul 31, 2018 at 10:50 AM

Subject: Re: Accepted: 330455177 - Village Square Apartments and 330455178 - Lib... @
Tue Jul 31, 2018 11am - 11:30am (PDT) (Michael Woolf)

To: Michael.Woolf <mwoolf@cohenfinancial.com>

Hi Michael,

Please see attached with tab added for Capex. The capex budget from the proforma were based on our estimates from when we were in escrow on this building last year. After our team did the physical inspection we updated our capex expectations for the building. The seller has done a lot of improvements on the property since we looked at it a year ago.

Best
Shimon

On Tue, Jul 31, 2018 at 9:45 AM Michael Woolf <mwoolf@cohenfinancial.com> wrote:
Shimon.

I have one question. The pro-forma operating statements include a 3 year Capex investment. Can you provide a list of major items to be addressed, related amounts, and timing for each property?

Thanks

Michael Woolf

Asset Manager
Investor Services
312.602.6126 Phone

Cohen Financial

A Division of SunTrust Bank
227 West Monroe Street, Suite 1000
Chicago, Illinois 60606
866.315.6212 Office
866.315.6202 Fax
loanadmin@cohenfinancial.com
www.cohenfinancial.com

-----Original Appointment-----

From: Google Calendar [mailto:calendar-notification@google.com] **On Behalf Of**
shimon.g@westlandreg.com

Sent: Tuesday, July 31, 2018 11:43 AM

To: Michael Woolf

Subject: Accepted: 330455177 - Village Square Apartments and 330455178 - Lib... @ Tue Jul 31, 2018 11am - 11:30am (PDT) (Michael Woolf)

When: Tuesday, July 31, 2018 1:00 PM-1:30 PM (UTC-06:00) Central Time (US & Canada).

Where: Dial in: 855-417-2207 Conf. ID: 8592340

<< File: invite.ics >>

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Name:		1129) Liberty Square. 409									
Property Address:		4870 &5025 Nellis Oasis Lane, Las Vegas, NV,									

EXHIBIT 5

EXHIBIT 5



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>
To: mwoolf@cohenfinancial.com
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Mon, Apr 15, 2019 at 5:00 PM

Hi Michael,

Attached please find the Disbursement Request for Westland Liberty Village, LLC for replacement reserve and supporting documents. The total amount of the Disbursement Request is \$137,266.69. If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109.

Thank you,

Emanuel Garcia

--

Emanuel Garcia

O: 310-639-7130 X: 329
emanuel.g@westlandreg.com



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520 W. Willow,
Long Beach, CA 90806
www.westlandreg.com

9 attachments**DOC_20190415163310.pdf**
248K**Sheet C.pdf**
1500K**__mhjfbmdgcfjbbpaeojofohoefgijehjai_index.pdf**
383K**Sheet E.pdf**
1618K**Sheet F.pdf**
1999K**Sheet D.pdf**
1630K**Liberty Village Cohen Financial Reserve Draw Request Form With Certification.xlsx**
54K**Sheet A.pdf**
1547K

0250

 **Sheet B.pdf**
1643K



Laura Gonzalez <laura.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Michael Woolf <mwoolf@cohenfinancial.com>
To: Emanuel Garcia <emanuel.g@westlandreg.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Wed, Apr 17, 2019 at 2:46 PM

Hello, Emanuel.

I have received the Replacement Reserve Draw Requests for Liberty Village and Village Square. I will be out of the office until next Tuesday, but will work on the requests upon my return.

Thank you

Michael Woolf
Asset Manager
Investor Services
312.602.6126 Phone

Cohen Financial

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Chicago, Illinois 60606
866.315.6212 Office
866.315.6202 Fax
loanadmin@cohenfinancial.com
www.cohenfinancial.com

From: Emanuel Garcia <emanuel.g@westlandreg.com>
Sent: Monday, April 15, 2019 6:55 PM
To: Michael Woolf <mwoolf@CohenFinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>
Subject: Westland Village Square, LLC Loan #330455177

Hi Michael,

Attached please find the Disbursement Request for Westland Village Square, LLC for replacement reserve and supporting documents. The total amount of the Disbursement Request is \$41,267.54 If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109.

Thank you,

Emanuel Garcia

--

Emanuel Garcia

O: 310-639-7130 X: 329
emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Wed, Apr 17, 2019 at 3:35 PM

Hi Michael,

Thanks for the update. Hope to hear from you next week.

Thank you,

Emanuel

[Quoted text hidden]

[Quoted text hidden]



[Quoted text hidden]

www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Wed, May 1, 2019 at 2:24 PM

Hi Michael,

I am following up on the status of the disbursement request. Can you please give me an update?

Thank you

Emanuel Garcia

On Wed, Apr 17, 2019 at 2:46 PM Michael Woolf <mwoolf@cohenfinancial.com> wrote:
[Quoted text hidden]

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[Quoted text hidden]



[Quoted text hidden]
www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Michael Woolf <mwoolf@cohenfinancial.com>
To: Emanuel Garcia <emanuel.g@westlandreg.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Thu, May 2, 2019 at 6:32 AM

Hi, Emanuel.

Thanks for following up. I am actually working on the Village Square and Liberty Village Replacement Reserve Draw Requests this morning, and will let you know when I have submitted my disbursement recommendation to the Lender.

Thank you.

[Quoted text hidden]

[Quoted text hidden]



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Michael Woolf <mwoolf@cohenfinancial.com>
To: Emanuel Garcia <emanuel.g@westlandreg.com>

Fri, May 17, 2019 at 1:21 PM

Hello, Emanuel.

The Replacement Reserve draw is being held pending receipt of other information from the Borrower, unrelated to the Replacement Reserve draw request.

Thank you.

Michael Woolf
Asset Manager
Investor Services
312.602.6126 Phone

Cohen Financial

A Division of SunTrust Bank
227 West Monroe Street, Suite 1000
Chicago, Illinois 60606
866.315.6212 Office
866.315.6202 Fax
loanadmin@cohenfinancial.com
www.cohenfinancial.com

From: Emanuel Garcia <emanuel.g@westlandreg.com>
Sent: Friday, May 17, 2019 11:10 AM
To: Michael Woolf <mwoolf@CohenFinancial.com>
Subject: Westland Liberty Village, LLC Loan #330455178

Hi Michael

I just want to follow up on Liberty Village. Can you let me know if you have any questions.

Thank you

Emanuel Garcia

0257

Emanuel Garcia

O: 310-639-7130 X: 329
emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Fri, May 24, 2019 at 3:37 PM

Hi Michael

I just want to follow up on Liberty Village. Can you let me know if you have any questions.

Thank you

Emanuel Garcia

Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Michael Woolf <mwoolf@cohenfinancial.com>
To: Emanuel Garcia <emanuel.g@westlandreg.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Tue, May 28, 2019 at 11:16 AM

Hi, Emanuel.

The Replacement Reserve disbursement request continues to be on hold pending receipt of other information from the Borrower, unrelated to the Replacement Reserve draw request.

Thanks

Michael Woolf
Asset Manager
Investor Services
312.602.6126 Phone

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Chicago, Illinois 60606
866.315.6212 Office
866.315.6202 Fax
loanadmin@cohenfinancial.com
www.cohenfinancial.com

From: Emanuel Garcia <emanuel.g@westlandreg.com>
Sent: Friday, May 24, 2019 5:38 PM
To: Michael Woolf <mwoolf@CohenFinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>
Subject: Westland Liberty Village, LLC Loan #330455178

Hi Michael

I just want to follow up on Liberty Village. Can you let me know if you have any questions.

Thank you

Emanuel Garcia

Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Fri, May 31, 2019 at 4:23 PM

Hi Michael

I just want to follow up on Liberty Village. Can you let me know if you have any questions.

Thank you

Emanuel Garcia

--

Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Thu, Jun 13, 2019 at 4:58 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Hi Michael

I just want to follow up on Liberty Village. Can you let me know if you have any questions.

Thank you

--

Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Jun 25, 2019 at 11:32 AM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael

I just want to following up on Liberty Village disbursement request .Can you let me know if you have any questions.

Thank you

[Quoted text hidden]



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Mon, Jul 8, 2019 at 11:34 AM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>, Derek Strange <dstrange@cohenfinancial.com>

Hi Michael

I just want to following up on Liberty Village disbursement request .Can you let me know if you have any questions.

Thank you

On Tue, Jun 25, 2019 at 11:32 AM Emanuel Garcia <emanuel.g@westlandreg.com> wrote:

Hi Michael

I just want to following up on Liberty Village disbursement request .Can you let me know if you have any questions.

Thank you

Emanuel Garcia

[Quoted text hidden]



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Thu, Jul 18, 2019 at 4:16 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>, Derek Strange <dstrange@cohenfinancial.com>

Hi Michael

I just want to follow up on Liberty Village disbursement request. Can you let me know if you have any questions?

Thank you

Emanuel Garcia

[Quoted text hidden]



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Michael Woolf <mwoolf@cohenfinancial.com>

Fri, Jul 19, 2019 at 12:16 PM

To: Emanuel Garcia <emanuel.g@westlandreg.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>, Derek Strange <dstrange@cohenfinancial.com>

Hello, Emanuel.

Fannie Mae has put the Replacement Reserve draw requests for each of Liberty Village and Village Square on hold, pending resolution of other matters at the Properties. Please feel free to contact me should you like to discuss this matter.

Thanks

Michael Woolf

Asset Manager

Investor Services

312.602.6126 Phone

Cohen Financial*A Division of SunTrust Bank*

227 West Monroe Street, Suite 1000

Chicago, Illinois 60606

866.315.6212 Office

866.315.6202 Fax

loanadmin@cohenfinancial.com

www.cohenfinancial.com

From: Emanuel Garcia <emanuel.g@westlandreg.com>**Sent:** Wednesday, July 17, 2019 2:08 PM**To:** Michael Woolf <mwoolf@CohenFinancial.com>**Cc:** Laura Gonzalez <laura.g@westlandreg.com>; Derek Strange <dstrange@CohenFinancial.com>**Subject:** Westland Village Square, LLC Loan #330455177

Hi Michael,

Attached please find the Disbursement Request for Westland Village Square, LLC for replacement reserve and supporting documents. The total amount of the Disbursement Request is \$12,105.75 If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109.

0267

Thank you,

Emanuel Garcia

Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com



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<http://www.westlandreg.com>

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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Laura Gonzalez <laura.g@westlandreg.com>

Fri, Jul 19, 2019 at 1:37 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>, Emanuel Garcia <emanuel.g@westlandreg.com>

Cc: Derek Strange <dstrange@cohenfinancial.com>

Hi Michael,

What is your availability to discuss this matter?

Thank you,

Laura Gonzalez

O 310 639 7130 x109

E Laura.G@WestlandREG.com

520 W. Willow St.

Long Beach, CA 90806

www.westlandrealestategroup.com

[Quoted text hidden]



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177

Michael Woolf <mwoolf@cohenfinancial.com>

Fri, Jul 19, 2019 at 1:45 PM

To: Laura Gonzalez <laura.g@westlandreg.com>, Emanuel Garcia <emanuel.g@westlandreg.com>

Hi, Laura.

I am available now if you would like to discuss this matter.

Thank you.

[Quoted text hidden]

[Quoted text hidden]



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Michael Woolf <mwoolf@cohenfinancial.com>

Fri, Jul 19, 2019 at 12:15 PM

To: Emanuel Garcia <emanuel.g@westlandreg.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>, Derek Strange <dstrange@cohenfinancial.com>

Hello, Emanuel.

Fannie Mae has put the Replacement Reserve draw requests for each of Liberty Village and Village Square on hold, pending resolution of other matters at the Properties. Please feel free to contact me should you like to discuss this matter.

Thanks

Michael Woolf

Asset Manager

Investor Services

312.602.6126 Phone

Cohen Financial*A Division of SunTrust Bank*

227 West Monroe Street, Suite 1000

Chicago, Illinois 60606

866.315.6212 Office

866.315.6202 Fax

loanadmin@cohenfinancial.com

www.cohenfinancial.com

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<http://www.westlandreg.com>

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0271

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Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com



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Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Fri, Oct 18, 2019 at 4:29 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Derek Strange <dstrange@cohenfinancial.com>, Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael,

Attached please find the Disbursement Request for Westland Liberty Village, LLC for Insurance Claim and supporting documents. The total amount of the Disbursement Request is 538,434.58 If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109

Thank you,

Emanuel Garcia

--

**Emanuel Garcia**

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com

4 attachments**WL Liberty Village Financial Reserve Draw Request Form With Certification.xlsx**

20K

**DOC_20191018155717.pdf**

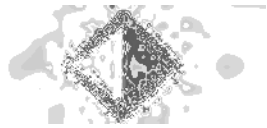
32K

**WI Liberty Village Checks .docx**

1003K

**Invoicelmages (10).pdf**

8594K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Michael Woolf <mwoolf@cohenfinancial.com>
To: Emanuel Garcia <emanuel.g@westlandreg.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Mon, Oct 21, 2019 at 12:19 PM

Good afternoon, Emanuel.

Thanks for submitting the insurance reserve draw request. There is no need to include Derek Strange on future correspondence. He was my backup was I was previously out of the office.

Cohen Financial's draw spreadsheet was changed recently (new form attached). Please transfer the information on your request to the new form and include the Borrower's wire/ACH instructions, and a wire/ACH verification contact at the Borrower, who cannot be the same individual who signs the draw request. Please note that only completed work can be considered for disbursement from the Insurance Loss Proceeds Reserve. Therefore, please remove the first two line items from the draw request, as these were advance payments made by the Borrower to the contractor. Only line items 3 through 5 relate to progress payments submitted by the contractor.

Please provide me with Unconditional Lien Waivers from the contractor for all of the invoices paid with the checks that you attached. Did the contractor submit a G702 and G703 with its request for payment? If so, please provide me with a copy.

Please contact me should you have any questions.

Thank you.

Michael Woolf
Asset Manager
Investor Services
312.602.6126 Phone

Cohen Financial

A Division of SunTrust Bank
227 West Monroe Street, Suite 1000
Chicago, Illinois 60606
866.315.6212 Office
866.315.6202 Fax
loanadmin@cohenfinancial.com
www.cohenfinancial.com

From: Emanuel Garcia <emanuel.g@westlandreg.com>
Sent: Friday, October 18, 2019 6:30 PM
To: Michael Woolf <mwoolf@CohenFinancial.com>
Cc: Derek Strange <dstrange@CohenFinancial.com>; Laura Gonzalez <laura.g@westlandreg.com>
Subject: Westland Liberty Village, LLC Loan #330455178

Hi Michael,

Attached please find the Disbursement Request for Westland Liberty Village, LLC for Insurance Claim and supporting documents. The total amount of the Disbursement Request is 538,434.58 If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109

Thank you,

Emanuel Garcia

--



Emanuel Garcia
Accounting Clerk
O: 310-639-7130 X: 329
emanuel.g@westlandreg.com

Westland Real Estate Group
520 W. Willow,
Long Beach, CA 90806
<https://protect-us.mimecast.com/s/VI7eCZ6prXC5PxyQTzFPrt>

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4 attachments



WL Liberty Village Financial Reserve Draw Request Form With Certification.xlsx
20K



DOC_20191018155717.pdf
32K



WI Liberty Village Checks .docx

0275

9/17/2020

Westland Real Estate Group Mail - Westland Liberty Village, LLC Loan #330455178

1003K

 **Invoicelmages (10).pdf**
8594K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178 Part A

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Tue, Oct 22, 2019 at 2:52 PM

Hi Michael,

Attached please find the Disbursement Request for Westland Liberty Village, LLC for replacement reserve and supporting documents. The total amount of the Disbursement Request is \$339,332.40. If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109. Due to the amount of information, I have to send I have to make 3 email to send all the information.

Thank you,

Emanuel Garcia

--

**Emanuel Garcia**

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com

9 attachments**CCF10012019_0004.pdf**

704K

**Liberty Village Cohen Financial Reserve Draw Request Form With Certification.xlsx**

88K

**DOC_20190415163310.pdf**

248K

**__mhjfbmdgcfjbbpaeojfohoefgiehjai_index.pdf**

383K

**DOC_20191022135929.pdf**

395K

**CCF09112019_0001.pdf**

761K

**CCF09112019_0002.pdf**

749K

**CCF10012019_0001.pdf**

9/17/2020

Westland Real Estate Group Mail - Westland Liberty Village, LLC Loan #330455178 Part A

723K

 **Checks .docx**
6929K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178 Part B

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Oct 22, 2019 at 2:54 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael,

Attached please find the Disbursement Request for Westland Liberty Village, LLC for replacement reserve and supporting documents. The total amount of the Disbursement Request is \$339,332.40. If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109. Due to the amount of information, I have to send I have to make 3 emails to send all the information.

Thank you,

Emanuel Garcia

--

**Emanuel Garcia**

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com

6 attachments**Sheet E.pdf**

1618K

**Sheet C.pdf**

1500K

**Sheet A.pdf**

1547K

**Sheet F(2).pdf**

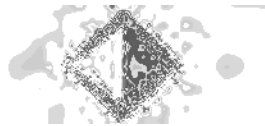
2937K

**Sheet D.pdf**

1630K

**Sheet B.pdf**

1643K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178 Part C

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Oct 22, 2019 at 2:55 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael,

Attached please find the Disbursement Request for Westland Liberty Village, LLC for replacement reserve and supporting documents. The total amount of the Disbursement Request is \$339,332.40. If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109. Due to the amount of information, I have to send I have to make 3 emails to send all the information.

Thank you,

Emanuel Garcia

--

**Emanuel Garcia**

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com

5 attachments**Sheet H.pdf**

2247K

**Sheet J.pdf**

2126K

**Sheet I.pdf**

2202K

**Sheet G.pdf**

6235K

**Sheet K.pdf**

2036K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>

Tue, Oct 22, 2019 at 10:07 AM

Hi Michael

Can you please send me the new spreadsheet

Thank You

Emanuel Garcia
[Quoted text hidden]

--



Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group
520 W. Willow,
Long Beach, CA 90806
www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Michael Woolf <mwoolf@cohenfinancial.com>
To: Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Oct 22, 2019 at 10:12 AM

Hi, Emanuel.

The new form is attached. Please let me know if you need any additional information.

Thanks

[Quoted text hidden]



[Quoted text hidden]

[Quoted text hidden]
<http://www.westlandreg.com>

[Quoted text hidden]



Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_ACH Instructions.xlsx
45K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Oct 22, 2019 at 2:43 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>, Ruth Garcia <ruth.g@westlandreg.com>

Hi Michael,

Attached please find the new form with wire instructions and lien waivers as requested. I have included deposits because the vendor has completed the work that covers the deposit and we have given him progress payments for the work that has been completed.

If you have any questions, please let me know.

Thank you,

Emanuel Garcia

[Quoted text hidden]



[Quoted text hidden]

[Quoted text hidden]

www.westlandreg.com

11 attachments **DOC_20191022105050.pdf**
54K **WL Liberty Village Financial Reserve Draw Request Form With Certification.xlsx**
20K **WI Liberty Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_ACH Instructions.xlsx**
46K **WI Liberty Village Checks .docx**
1003K **CCF08142019_0001.pdf**
746K **CCF08142019.pdf**
746K **CCF10162019_0002.pdf**
772K **InvoiceImages (10).pdf**
8594K **CCF10162019.pdf**
833K **DOC_20191018155717.pdf**
32K

0283

9/17/2020

Westland Real Estate Group Mail - Westland Liberty Village, LLC Loan #330455178

 **CCF10162019_0003.pdf**
784K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177 & Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Thu, Nov 21, 2019 at 9:26 AM

Good Morning Michael,

I am following up on the status of the disbursement requests. Can you please give me an update?

Thank you

Emanuel Garcia

--



Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177 & Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Dec 10, 2019 at 4:00 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael

I am following up on the status of the disbursement requests. Can you please give me an update?

Thank you

Emanuel Garcia

--



Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177 & Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Dec 10, 2019 at 4:00 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael

I am following up on the status of the disbursement requests. Can you please give me an update?

Thank you

Emanuel Garcia

--



Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177 & Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Tue, Dec 10, 2019 at 4:00 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael

I am following up on the status of the disbursement requests. Can you please give me an update?

Thank you

Emanuel Garcia

--



Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Village Square, LLC Loan #330455177 & Westland Liberty Village, LLC Loan #330455178

Emanuel Garcia <emanuel.g@westlandreg.com>

Wed, Jan 8, 2020 at 4:51 PM

To: Michael Woolf <mwoolf@cohenfinancial.com>

Cc: Laura Gonzalez <laura.g@westlandreg.com>

Hi Michael

I am following up on the status of the disbursement requests. Can you please give me an update?

Thank you

--



Emanuel Garcia

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com

Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan # 330455178 Part 1

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Fri, Sep 4, 2020 at 4:16 PM

Hi Michael

Attached please find the Disbursement Request for Westland Liberty Village, LLC for fire insurance reserve and supporting documents. We are requesting disbursement for all funds held by the lender relating to the reconstruction of building 3426 & 3517. Due to the size of the supporting documents, I will be sending you an additional email with the remaining supporting documents. Part 1 is for building 3426. If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109





Thank you,

Emanuel Garcia

**Emanuel Garcia**

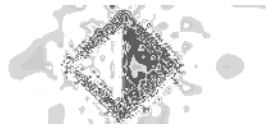
Accounting Clerk
O: 310-639-7130 X: 329
emanuel.g@westlandreg.com

Westland Real Estate Group
520 W. Willow,
Long Beach, CA 90806
www.westlandreg.com

18 attachments **CCF_000013.pdf**
396K **CCF08142019_0001.pdf**
746K **Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_...xlsx - 2020-09-04-13_30.pdf**
- 2020-09-04 (1).pdf
399K **CCF10162019_0003.pdf**
784K **ACFrOgDXQjqLyVZyc61b8Zgf2IApgmDM3qkLv09IbGAPBhHfY1MK8gEYxfAK**
qRqAt7heWrHght8J46KSK5tPbIplwfDh2Z_To2yTlhagYyMi7t5A4QnyCVoDsJpOjHg=.pdf
466K **Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_ACH Instructions.xlsx**
60K **Doc11.docx**
220K

0290

-  **Invoicelmages (3).pdf**
658K
-  **LV Waiver 3426 Not Notarized 03-30-2020.pdf**
156K
-  **WL 3426 Waiver CK #2003 01-16-20.pdf**
342K
-  **3426 Appliances Invoice.pdf**
39K
-  **1008 (1).pdf**
473K
-  **1225.pdf**
465K
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471K
-  **http___www.infocheck.cityweb.cityntl.com_print.aspx_seq=1025048.pdf**
2819K
-  **Invoicelmages.pdf**
7365K



Emanuel Garcia <emanuel.g@westlandreg.com>

Westland Liberty Village, LLC Loan # 330455178 Part 2

Emanuel Garcia <emanuel.g@westlandreg.com>
To: Michael Woolf <mwoolf@cohenfinancial.com>
Cc: Laura Gonzalez <laura.g@westlandreg.com>

Fri, Sep 4, 2020 at 4:19 PM

Hi Michael

Attached please find the Disbursement Request for Westland Liberty Village, LLC for fire insurance reserve and supporting documents. We are requesting disbursement for all funds held by the lender relating to the reconstruction of building 3426 & 3517. Due to the size of the supporting documents, I will be sending you an additional email with the remaining supporting documents. Part 2 is for building 3517. If you have any questions, please do not hesitate to call me at (310) 639-7130 x 109

Thank you,

Emanuel Garcia

--

**Emanuel Garcia**

Accounting Clerk

O: 310-639-7130 X: 329

emanuel.g@westlandreg.com








Westland Real Estate Group

520 W. Willow,

Long Beach, CA 90806

www.westlandreg.com

13 attachments

-  **Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_...xlsx - 2020-09-04-13_30.pdf**
- 2020-09-04 (1).pdf
399K
-  **Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_ACH Instructions.xlsx**
60K
-  **3517 Appliances - Invoice.pdf**
84K
-  **CCF01132020.pdf**
734K
-  **3517 Conditional Waiver on Final Payment.pdf**
443K
-  **Invoicelmages (4).pdf**
599K
-  **CCF08142019 (1).pdf**
746K

0292



CCF10162019.pdf
833K



CCF10162019_0002.pdf
772K



CCF12122019.pdf
862K



Doc5.docx
238K



Invoicelmages (1).pdf
8779K



http___www.infocheck.cityweb.cityntl.com_print.aspx_seq=1025048.pdf
4488K

EXHIBIT 6

EXHIBIT 6

AFF

JOHN BENEDICT, ESQ.
Nevada Bar No. 005581
LAW OFFICES OF JOHN BENEDICT
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
Telephone: (702) 333-3770
Facsimile: (702) 361-3685
E-Mail: John@BenedictLaw.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

**SUPPLEMENTAL AFFIDAVIT OF
YAKOOV GREENSPAN IN SUPPORT OF
COUNTERCLAIMANT'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: September 22, 2020
Hearing Time: 9:00 AM

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.

Yaakov Greenspan, being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years of age, and I have personal knowledge of the matters contained herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I would competently and truthfully testify to all statements made herein of my firsthand knowledge or business records, except to those matters stated on information and belief. As to those, I believe them to be true.

2. I am the President of Westland Real Estate Group, and a trustee for the family trusts that own Westland Liberty Village, LLC ("Liberty LLC") and Westland Village Square, LLC (individually "Square LLC," or in combination with Liberty LLC, "Westland").

3. I am familiar with the facts stated in this Affidavit based on my own knowledge, and my continuing involvement with the two Multifamily Loan and Security Agreements entered into on August 29, 2018, (the "Loan Agreements") by and between Westland as the assuming borrower, Federal National Mortgage Association ("Fannie Mae") as lender, and Grandbridge Capital Real Estate LLC (who was known as Cohen Financial and SunTrust Bank at the time the loan was signed, and hereinafter referred to as "Grandbridge" and together with Fannie Mae, "Lenders") as lender/loan servicer. As such, I am knowledgeable of the facts contained herein and am competent to testify thereto.

1 4. Prior to Westland's purchase, I took part in an inspection of the two Properties
2 purchased by Liberty LLC and Square LLC purchased on August 29, 2018, which are located at
3 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-
4 711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's
5 Parcel Nos. 140-08-702-002 and 140-08-702-003] (the "Properties") from sellers Shamrock
6 Properties VI LLC and Shamrock Properties VII LLC (collectively the "Shamrock Entities").

7 5. In addition, I took part in an inspection of the Properties when Westland
8 considered purchasing the Properties in early 2017, but the sale fell through based on occupancy
9 issues and problems with the physical condition of the properties.

10 6. On both occasions the Properties were dilapidated, but had improved to some
11 extent by 2018.

12 7. I was also present for an inspection that was conducted at Lenders' request during
13 July 2019. At the time of that inspection, I frankly answered all questions that Lenders had
14 regarding the Properties. I even explained the reason that the occupancy had fallen at the
15 Properties, which was that we had to take drastic measures related to the number of evictions at
16 the Properties needed to remove the criminal element and to ensure that we were able to create a
17 viable environment for the residents of the Properties who were fully qualified.

18 8. Because I conducted inspections at the Properties on two occasions prior to
19 purchasing the communities, and I conducted the inspection with Lenders' representatives during
20 July 2019, I can affirmatively state that the condition of the Properties had improved not
21 deteriorated. This is not only based on my observations, but also the observations of unbiased
22 third parties, such as representatives of the Office of the County Commissioner and the head of
23 the Nevada State Apartment Association.

24 9. I find Mr. Noakes' Supplemental Declaration troubling, because while both
25 Fannie Mae and Grandbridge had representatives present at the July 2019 inspection, who were
26 present for that inspection and who continue to service the two loans associated with the
27 Properties, none of those individuals submitted a declaration. Instead, Mr. Noakes, who to the
28 best of my awareness has never visited the Properties and only became involved with the loan

1 when he replaced Carol King during 2020, submits a declaration concluding that there were
2 “concerns” that the physical condition of the Properties was deteriorating, and the “potential” for
3 life and safety issues, because the Properties had low occupancy rates in 2019. But, Mr. Noakes
4 has no first-hand knowledge of the condition of the Properties, and he would have known his
5 statement was false if he was present for the inspection, but he was not.

6 10. Seemingly, Mr. Noakes submits his unsupported declaration, because Rodney
7 Roe, Joe Greenhaw and Michael Woolf, who were all present at the July 2019 inspection of the
8 Properties, and who are all believed to continue to work on these loans, either were unwilling or
9 knew they could not testify under oath that the condition of the Properties had deteriorated under
10 Westland’s ownership.

11 11. I am also troubled by Mr. Noakes’ Supplemental Declaration, because he ignores
12 the facts that prior to present ownership, the Properties had been served with a Notice of
13 Abatement of Crime, which the Las Vegas Metropolitan Police Department found to be an
14 *actual*, not a *potential*, danger to the life and safety of tenants – yet astonishingly he still finds
15 that there were deteriorating conditions at the Properties.

16 12. I am also troubled that Mr. Noakes’ Supplemental Declaration is based on flawed
17 one-sided conclusions. Mr. Noakes apparently has no problem concluding *based solely on low*
18 *occupancy rates* that the Properties must have deteriorated, that collateral is jeopardized, and that
19 the Properties will be unable to meet their debt service obligations, without ever having seen the
20 Properties. (*See* Noakes Supplemental Declaration, at ¶ 7 & 8.) However, now that the latest
21 reports show, as I disclosed in my declaration that preceded Mr. Noakes’ supplemental
22 declaration, that the Properties have an occupancy rate in excess of 80% (the number he cites as
23 existing at the Property at the time Fannie signed its loan) and a higher rental value, he is still
24 apparently unwilling to conclude, based solely on that same occupancy rate statistic, that: the
25 Properties are in fact in better condition, Fannie’s collateral is adequate, the Properties are able to
26 meet their debt service obligations, and there is not a need for a receiver.

27 13. Further, the flaw with Mr. Noakes approach is clear, because he generally asserts
28 that there must be deterioration and life and safety issues at both Properties. However, in making

1 that assertion he shows that he is not even familiar with the f3 reports that Lenders
2 commissioned let alone the Properties, because no life and safety issues were found by f3 at the
3 Village Square property. See Pl. Complaint, Exhibit 11, at 14.

4 14. Unlike Noakes, based on my actual knowledge of conditions at the Properties, I
5 can affirmatively state that if any purported life and safety conditions existed at the Properties at
6 one time, they no longer exist. Westland cleaned up the criminal element on the Properties, and
7 performed a substantial number of capital improvements, which included all sidewalk repairs,
8 wholesale repairs to stairs at the community, and repairs to the landings and smoke/CO detectors
9 that were replace in all units being turned as recommended in the f3 report. An example of those
10 repairs are the documents supporting the sidewalk and stair repairs that are attached hereto, as
11 Exhibit 7.

12 15. This Affidavit is made in good faith and not for purposes of delay.

13 In accordance with NRS 53.045(2), I declare under penalty of perjury under the law of
14 the State of Nevada that the foregoing is true and correct.

15 Executed this 18st day of September 2020 at Long Beach, California.

16
17 DocuSigned by:

Yanki Greenspan

18 By:

7EC333822AF44A2

19 Yakoov Greenspan, Trustee of
20 Manager to Westland Liberty Village, LLC and
21 Westland Village Square LLC
22
23
24
25
26
27
28

EXHIBIT 7

EXHIBIT 7



Check Request

Request NO.

Property

Liberty Village

Date

9/9/2019

Company

Westland Liberty Village LLC

Date Required

Payee

Juve Gonzalez & Son's, Inc

Amount

\$15,072.00

Vendor Status:

☐ New Vendor☐ Form 1099

Routing:

☒ Mail☐ Hold☐ Give to:

Supporting Documents Required:

☐ Contract☐ Lien Release☐ Certificate of Occupancy

PO No.

Note: Copy of CO, contract and/or lien release must be attached prior to release of check.

Purpose

40% Deposit - Liberty Sidewalk Repairs

Total Contract \$ 37,680 Balance \$ 22,608

Requested By:

Tania De La Cruz

Req Date

9/9/2019

Authorized By:

[Signature] & Ruth's approval
attached

Auth Date

9/9/19

A. Alevy Authorization

Yanki's approval attached

Auth Date

Check requests exceeding
\$1,000 must be also authorized
by Allen Alevy except for
payments under contracts
previously signed by him.

Accounting Use Only:

Construction Dept Job Cost Codes

GL Acct

111830

Dept

Job #

4034-sidewks

Contract

4034-016

Payment #

Controller Approval

Date

Approved for Payment:

ESTIMATE

Juve Gonzalez & Sons
 6240 Buckskin Ave
 Las Vegas NV 89108
 702-370-4022
 jjmarcos83@gmail.com
 Bonded, Lic. # 1002211333

1WL LIBERTY VILLAGE APARTMENTS
 4870 Nellis Oasis Lane
 Las Vegas, NV 89115

Concrete Sidewalks
 Labor & Materials

Estimate # LV-CNSDWK

Estimate Date 08/19/2019

Item	Description	Unit Price	Quantity	Amount
	JACKHAMMER TO REMOVE ALL DAMAGED SIDEWALK CONCRETE - DISPOSE OF ALL MATERIALS - POUR A 4" CONCRETE SIDEWALK WITH JOINTS 4,500 PSI			
	BLDG #3401: E.S. 5'x3'= 15 SQFT Apt 1197 5'x3'= 15 SQFT	7.50	30.00	225.00
	BLDG #3417: S.E. 16'x3'= 48 SQFT	7.50	48.00	360.00
	BLDG #3433: S. 5'x3'= 15 SQFT	7.50	15.00	112.50
	BLDG #3465: S.E. 3'X5'= 15 SQFT N.E. 16'X3'= 48 SQFT N. 3'X3'= 9 SQFT N.W. 8'X3'= 24 SQFT	7.50	96.00	720.00
	BLDG #3481: N. 8'X3'= 24 SQFT	7.50	24.00	180.00
	BLDG #3501: S. 5'X2'= 10 SQFT 8'X6'= 48 SQFT 4'X2'= 8 SQFT	7.50	66.00	495.00
	BLDG #3533: S. 6'X3'= 18 SQFT	7.50	33.00	247.50
	BLDG #3549: S. 8'X3'= 24 SQFT	7.50	24.00	180.00
	BLDG #3565: S. 9'X3'= 27 SQFT 5'X3'= 15 SQFT 4'X4'= 16 SQFT	7.50	130.00	975.00

N. 21'X3'= 63 SQFT 3'X3'= 9 SQFT			
BLDG #3581: N. 5'X3'= 15 SQFT 5'X3'= 15 SQFT E. 7'X3'= 21 SQFT 10'X3'= 30 SQFT 3'X3'= 9 SQFT	7.50	90.00	675.00
BLDG #4710: W. 6'X4'= 24 SQFT E. 3'X3'= 9 SQFT	7.50	33.00	247.50
BLDG #4730: W. 3'X3'= 9 SQFT	7.50	9.00	67.50
BLDG #4750: E. 3'X3'= 9 SQFT 3'X3'= 9 SQFT	7.50	18.00	135.00
BLDG #4770: W. 6'X2'= 12 SQFT 3'X3'= 9 SQFT E. 7'X3'= 21 SQFT	7.50	42.00	315.00
BLDG #4790: E. 4'X3'= 12 SQFT	7.50	12.00	90.00
BLDG #4810: W. 9'X4'= 36 SQFT	7.50	36.00	270.00
BLDG #4830: W. 4'X4'= 16 SQFT 16'X3'= 48 SQFT	7.50	64.00	480.00
BLDG #4870: W. 8'X3'= 24 SQFT 5'X4'= 20 SQFT	7.50	44.00	330.00
BLDG #4890: E. 3'X4'= 12 SQFT 9'X4'= 36 SQFT	7.50	48.00	360.00
BLDG #3525: E. 12'X3'= 36 SQFT 5'X3'= 15 SQFT N. 18'X3'= 54 SQFT	7.50	105.00	787.50
BLDG #3535: S. 14'X3'= 42 SQFT W. 15'X3'= 45 SQFT E. 8'X3'= 24 SQFT N. 18'X3'= 54 SQFT 7'X3'= 21 SQFT 3'X3'= 9 SQFT 23'X3'= 69 SQFT	7.50	264.00	1,980.00
BLDG #3545: E. 21'X3'= 63 SQFT 5'X3'= 15 SQFT W. 20'X3'= 60 SQFT	7.50	271.00	2,032.50

W.N. 20'X5'= 100 SQFT 11'X3'= 33 SQFT			
BLDG #3555: S. 8'X4'= 32 SQFT W. 38'X3'= 114 SQFT 15'X4'= 60 SQFT 6'X4'= 24 SQFT N. 15'X3'= 45 SQFT	7.50	275.00	2,062.50
BLDG #LAUNDRY E.N.: N. 20'X7'= 140 SQFT E. 4'X3'= 12 SQFT S. 39'X3'= 108 SQFT	7.50	260.00	1,950.00
BLDG #4855: N. 5'X3'= 15 SQFT W. 5'X3'= 15 SQFT	7.50	30.00	225.00
BLDG #4830: N.W. 12'X3'= 36 SQFT S.W. 7'X4'= 28 SQFT	7.50	64.00	480.00
BLDG #4840: E. 13'X4'= 52 SQFT	7.50	52.00	390.00
BLDG #4850: N.E. 8'X5'= 40 SQFT S. 13'X3'= 39 SQFT 10'X3'= 30 SQFT	7.50	109.00	817.50
BLDG #4785: N.W. 8'X3'= 24 SQFT	7.50	24.00	180.00
BLDG #4765: E. 7'X3'= 21 SQFT S. 26'X3'= 78 SQFT	7.50	99.00	742.50
BLDG #4730: S.W. 2'X4'= 8 SQFT W. 17'X3'= 51 SQFT	7.50	59.00	442.50
BLDG #LAUNDRY N.W.: E. 19'X3'= 57 SQFT S. 18'X5'= 90 SQFT 23'X5'= 115 SQFT W. 5'X4'= 20 SQFT	7.50	282.00	2,115.00
BLDG #3542: S. 8'X3'= 24 SQFT	7.50	24.00	180.00
BLDG #3458: E.N. 31'X3'= 93 SQFT E.S. 22'X3'= 66 SQFT 17'X3'= 51 SQFT S. 8'X3'= 24 SQFT	7.50	234.00	1,755.00
BLDG #4710: E.N. 13'X3'= 39 SQFT S.E. 10'X3'= 30 SQFT 18'X3'= 54 SQFT	7.50	123.00	922.50
BLDG #4790:	7.50	90.00	675.00

W.N. 30'X3'= 90 SQFT			
BLDG # MAIL POSTAGE:	7.50	24.00	180.00
E. 8'X3'= 24 SQFT			
BLDG # 4765:	7.50	4.00	30.00
S. 1'X4'= 4 SQFT			
BLDG #4745:	7.50	269.00	2,017.50
W. 17'X3'= 51 SQFT			
36'X3'= 108 SQFT			
5'X4'= 20 SQFT			
6'X4'= 24 SQFT			
6'X9'= 54 SQFT			
4'X3'= 12 SQFT			
BLDG # FITNESS CENTER:	7.50	167.00	1,252.50
E. 9'X4'= 36 SQFT			
19'X3'= 57 SQFT			
10'X5'= 50 SQFT			
6'X4'= 24 SQFT			
BLDG #3546:	7.50	45.00	337.50
N. 15'X3'= 45 SQFT			
BLDG #3534:	7.50	45.00	337.50
N.E. 15'X3'= 45 SQFT			
BLDG #3510:	7.50	35.00	262.50
N. 11'X3'= 33 SQFT			
2'X1'= 2 SQFT			
BLDG #3498:	7.50	156.00	1,170.00
N.E. 21'X3'= 63 SQFT			
E. 31'X3'= 93 SQFT			
BLDG #3462:	7.50	15.00	112.50
E. 5'X3'= 15 SQFT			
BLDG #3486:	7.50	120.00	900.00
N.E. 17'X3'= 51 SQFT			
N. 8'X3'= 24 SQFT			
N.W. 15'X3'= 45 SQFT			
BLDG #4868:	7.50	74.00	555.00
S. 5'X4'= 20 SQFT			
12'X3'= 36 SQFT			
N. 6'X3'= 18 SQFT			
BLDG #4861:	7.50	48.00	360.00
S. 12'X3'= 36 SQFT			
E. 4'X3'= 12 SQFT			
BLDG #4857:	7.50	72.00	540.00
S. 3'X4'= 12 SQFT			
20'X3'= 60 SQFT			
BLDG # 4831:	7.50	153.00	1,147.50
N. 14'X3'= 42 SQFT			
4'X3'= 12 SQFT			
S. 22'X3'= 66 SQFT			
11'X3'= 33 SQFT			

BLDG #4821: N.E. 11'X3'= 33 SQFT S. 6'X3'= 18 SQFT N.W. 12'X3'= 36 SQFT	7.50	87.00	652.50
BLDG #4811: W. 9'X3'= 27 SQFT 13'X3'= 39 SQFT	7.50	66.00	495.00
BLDG #4855: S. 3'X4'= 12 SQFT 5'X3'= 15 SQFT	7.50	27.00	202.50
BLDG #4845: S. 14'X4'= 56 SQFT 5'X4'= 20 SQFT	7.50	76.00	570.00
BLDG #4835: N. 13'X3'= 39 SQFT 5'X4'= 20 SQFT 5'X4'= 20 SQFT	7.50	79.00	592.50
BLDG #4810: S. 12'X3'= 36 SQFT	7.50	36.00	270.00
BLDG #4850: W. 4'X3'= 12 SQFT 4'X5'= 20 SQFT E. 5'X3'= 15 SQFT	7.50	47.00	352.50
BLDG #4870: W. 4'X3'= 12 SQFT 8'X3'= 24 SQFT 13'X3'= 39 SQFT	7.50	75.00	562.50
BLDG #3445: W. 14'X4'= 56 SQFT N. 7'X3'= 21 SQFT	7.50	77.00	577.50

TOTAL 5024 SQFT WITH THE LAST LINE TOTALS \$
37,680.00

NOTES: ANY CHANGES WILL BE EXTRA UPON APPROVAL OF BOTH PARTIES.

40% Start Up Payment

30% Progress Payment

30% Final Payment

	Subtotal	37,680.00
	Total	37,680.00
	Amount Paid	0.00
	Estimate	\$37,680.00

WESTLAND REAL ESTATE CENTRE VENDOR AGREEMENT-ADDENDUM

This Addendum is entered into on September 09, 2019, by and between the WESTLAND REAL ESTATE CENTRE ("WESTLAND") and Jane Gonzalez & Son's, Inc. ("Vendor"), as an Addendum to the agreement between WESTLAND and Vendor dated September 09, 2019 (the "LV-CUSTOMER/vendor Contract Document"). If there is any conflict between the Agreement and this Addendum, this Addendum shall control. Any contract arising between the parties is expressly made conditional on Vendor's acceptance of the terms of this Addendum, and WESTLAND's obligations to perform are subject to the terms of the Agreement or any other writing related to the same subject as the terms in this Addendum. The Addendum terms are as follows:

1. **Acceptance, Terms, Conditions of Contract, and Contract Documents:** As an offer, this Addendum expressly states acceptance in its terms and conditions, and modification of objection to any defects or additional terms in any response to this offer from the Seller to hereby grant for any terms addressed by this Addendum. If this Addendum is intended as an acceptance of the Vendor's offer, the acceptance is expressly conditioned on Vendor's assent to any additional or different terms contained in this Addendum. If this Addendum is intended as a modification of an existing contract, the parties agree that this Addendum constitutes the final and exclusive terms and conditions of the contract between the parties, superseding all terms by this Addendum. If an Agreement, the parties, rejection of its conditions in its offer, acceptance, modification or not to perform under its goods or services pursuant to its earlier contract, this Addendum, superseding by reference all terms of the Uniform Commercial Code providing any protection for the Buyer, including, without limitation, all express and implied warranty protection and all Buyer's remedies under the Uniform Commercial Code. If no Agreement for services is entered in the Agreement and this Addendum, the Contract Documents shall include all elements as set forth herein.

2. **Acceptance of Work:** If no Agreement for services, the number of days for Vendor's substantial completion of work is a material term and shall be specifically stated in the Agreement. If no date for completion is contained in the Agreement, all Work must be completed within (1) work of one day, or for Work affecting the habitability or structural soundness of the occupied apartment, all work must be completed within seventy-two (72) hours. Vendor agrees that the date of commencement shall be the date this Addendum was signed. There is no automatic extension of the time for completion of Work under

any circumstances, including due to weather, time delay, or any other condition. The extension of the number of days for completion of work is only when agreed to by WESTLAND in writing. Work necessary for completion under the terms agreed by the Contract Documents.

3. **Performance:** Vendor agrees to perform the services in a professional, substantially completed and timely manner, in accordance with industry standards and all applicable laws, rules and regulations, and to perform consistent with the stated purpose of the contract. Vendor shall obtain all licenses and permits and pay all fees required to comply with such laws and regulations. Vendor shall provide the equipment and materials used to perform the services and provide personnel who are appropriately trained and qualified to fulfill Vendor's obligations hereunder. Vendor will promptly notify WESTLAND in writing of any known non-compliance with the Contract Documents with applicable laws, rules and regulations. When a physical inspection applies, Vendor agrees that Vendor is responsible for providing physical inspection with supporting documentation, and the time and program and final payment, and the terms of work, are subject to the condition precedent that WESTLAND accepts from Vendor a fully supported physical inspection, after which payment will be made to 15 days. WESTLAND does not agree to pay any cost of payment related to disputed charges, or for which a fully supported physical inspection with supporting documentation was not provided. WESTLAND shall be entitled to apply for all other non-compliance or similar against any breach hereunder.

4. **Materials:** Vendor agrees to WESTLAND that (1) materials and equipment furnished under the Agreement are in use and of good quality which materials required or provided by the Contract Documents (2) the Work will be free from defects and

The following information was obtained from the records of the Federal Bureau of Investigation, Department of Justice, Washington, D.C., dated January 10, 1968:

2. Investigation. The Agent must pay the amount of the PAYROLL tax on any wage which is subject to such tax in either cash or check. In the event of remittance by PAYROLL check, the Agent must, within 15 days of the date of the check, deposit the amount of the check in the

[REDACTED]

10/1/73

The Agreement and Understanding was signed by the representatives of the people, and represents the best solution to the problem of the people of the United States. The Agreement and Understanding may be considered as the best way to a better government, and as the best way to a better future for the people of the United States.

1. 凡在本行开立存款账户的客户，均可向本行申请开立支票。
 2. 支票的有效期为自签发之日起六个月内。
 3. 支票的金额不得超过账户余额。
 4. 支票的签发人必须为账户持有人。
 5. 支票的收款人必须为本行客户。
 6. 支票的签发人必须对支票的金额负责。
 7. 支票的收款人必须对支票的金额负责。
 8. 支票的签发人必须对支票的金额负责。
 9. 支票的收款人必须对支票的金额负责。
 10. 支票的签发人必须对支票的金额负责。

27. Sanctions: The Government may be reluctant to accept conditions, some of which, involving financial or otherwise obligations, tend to strengthen an already set of relations, more negative than positive in signed instruments. The Government shall be deemed fully informed when it has had access to the text of the proposals, even though no single country or group of countries is named.

04-02-19

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26



Check Request

Request NO.

Property

Liberty Village

Date

8/30/2019

Company

Westland Liberty Village LLC

Date Required

Payee

Juve Gonzalez & Son's, Inc

Amount

\$10,580.00

Vendor Status:

☐ New Vendor☐ Form 1099

Routing:

☒ Mail☐ Hold☐ Give to:

Supporting Documents Required:

☐ Contract☐ Lien Release☐ Certificate of Occupancy

PO No.

Note: Copy of CO, contract and/or lien release must be attached prior to release of check.

Purpose

50% Deposit -Concrete Steps

Total Contract \$21,160.00

Balance \$ 10,580.00

Requested By:

Tania De La Cruz

Req Date

8/30/2019

Authorized By:

Auth Date

8/30/19

A. Alevy Authorization

Auth Date

Check requests exceeding

\$1,000 must be also authorized

by Allen Alevy except for
payments under contracts

previously signed by him.

Accounting Use Only:

Construction Dept Job Cost Codes

GL Acct

111830

Dept

Job #

4034-steps

Contract

4034-010

Payment #

Controller Approval

Date

Approved for Payment:

Juve Gonzalez & Sons
 6240 Buckskin Ave
 Las Vegas NV 89108
 702-370-4022
 jjmarcos83@gmail.com
 Bonded, Lic. # 1002211333

ESTIMATE

1WL LIBERTY VILLAGE APARTMENTS
 4870 Nellis Oasis Lane
 Las Vegas, NV 89115

Estimate # LV-STEPS

Estimate Date 08/15/2019

Replace Steps
 Labor & Materials

Item	Description	Unit Price	Quantity	Amount
	AS OF AUGUST 18, 2019 THIS IS THE COUNT ON THE STEPS			
	REMOVE OLD DAMAGED STEPS AND DISPOSE OF DEBRIS - MAKE SURE THAT THE BRACKETS ARE STRONG ENOUGH TO SUPPORT THE NEW STEP - MAKE MORE SECURE - INSTALL NEW CONCRETE STEP 11" X 44"	115.00	184.00	21,160.00
	# 2004 2ND STEP 3-steps			
	# 2006 3RD STEP 3 steps			
	# 2016 2ND STEP 3 steps			
	# 2035 3RD STEP			
	# 2091 1ST STEP			
	# 2099 1 STEP			
	# 2105 1 STEP			
	# 2106 9TH STEP 6 steps			
	# 2107 7TH STEP 2 steps			
	# 2109 1 STEP			
	# 2111 2ND, 3RD, 4TH STEP 5 steps			
	# 2112 8TH STEP 7 steps			
	# 2114 1ST, 2ND, 4TH STEP 5 steps			
	# 2115 2ND, 4TH, 5TH, 6TH STEP 7 steps			
	# 2116 1ST, 3RD STEP 3 steps			
	# 2118 3RD, 5TH STEP 3 steps			
	# 2119 2ND, 3RD, 4TH, 6TH, 7TH 5 steps			
	# 2120 1ST STEP 2 steps			
	# 2121 1ST, 2ND STEP 5 steps			
	# 2134 4 STEPS			
	# 2124 1ST, 2ND, 5TH, 7TH STEP 7 steps			
	# 2125 1ST, 2ND, 3RD, 4TH, 5TH 8 steps			
	# 2129 1ST STEP 4 steps			
	# 2133 4TH STEP 6 steps			
	# 2140 2ND STEP			
	# 2141 1ST, 4TH STEP 2 steps			
	# 2144 2ND STEP 3 steps			
	# 2148 2ND, 3RD STEP 5 steps			
	# 2149 2ND STEP 1 step			
	# 2157 2ND STEP 1 step			
	# 2158 1ST, 2ND STEP 3 steps			

2159 1ST STEP 1 step
 # 2161 2 STEPS
 # 2166 1ST, 3RD STEP 2 steps
 # 2169 1 STEP
 # 2188 8TH STEP 1 step
 # 2189 1ST, 2ND STEP 2 steps
 # 2190 1ST, 2ND 4TH STEP 4 steps
 # 2194 3RD, 6TH STEP 2 steps
 # 2199 1ST STEP 1 step
 # 2202 1ST STEP 3 steps
 # 2204 7TH STEP 2 steps
 # 2207 2ND STEP 3 steps
 # 2208 2 STEPS
 # 2212 1 STEP
 # 2217 2 STEPS
 # 2221 1 STEP
 # 2222 3 STEPS
 # 2223 1ST, 2ND, 3RD STEP 3 STEPS
 # 2224 1ST STEP 5 STEPS
 # 2225 2 STEPS
 # 2227 1ST STEP 1 step
 # 2228 1ST STEP 1 step
 # 2229 1 STEP
 # 2232 2ND STEP 1 step
 # 2239 1ST STEP 2 steps
 # 2242 1ST, 2ND STEP 5 steps
 # 2247 1ST STEP 1 step
 # 2253 1ST STEP 1 step
 # 2311 1ST STEP 1 step
 # 2334 1ST, 7TH, 12TH STEP 4 steps
 # 2339 1ST, 2ND STEP 5 steps
 # 2346 1 STEP
 # 2350 1ST STEP 1 step
 # 2354 1ST STEP 1 step
 # 2357 1ST STEP 1 step
 # 2359 1ST STEP 1 step
 # 2365 2ND, 3RD STEP 2 steps
 # 2366 2ND, 3RD STEP 2 steps

TOTAL STEPS

NOTES: ANY CHANGES WILL BE EXTRA UPON APPROVAL OF BOTH PARTIES
 50% START-UP PAYMENT
 50% FINAL PAYMENT

	Subtotal	21,160.00
	Total	21,160.00
	Amount Paid	0.00
	Estimate	\$21,160.00

WESTLAND REAL ESTATE GROUP VENDOR AGREEMENT ADDENDUM

This Addendum is entered into on August 10, 2019, by and between the WESTLAND REAL ESTATE GROUP ("WESTLAND") and Jane Chenette & Son's, Inc. ("Vendor"), as an Addendum to the agreement between WESTLAND and Vendor dated August 28, 2019 ("August 28, 2019 Supplemental Vendor Contract Scope"). If there is any conflict between the Agreement with this Addendum, this Addendum shall control. Any conflict arising between the parties is expressly made confidential to Vendor's satisfaction of the terms of this Addendum, and WESTLAND agrees to use their best efforts to keep the Agreement or any other writing related to the same subject in the terms of this Addendum. The Addendum terms are as follows:

1. **Amendments, Terms, Conditions of License, and Contract Documents:** As an offer, this Addendum represents Vendor's acceptance to the terms and conditions, and satisfaction of objection to any conflict, or additional terms to any response to this offer from the Seller to Vendor given the any item submitted by this Addendum. If this Addendum is construed as an acceptance of the Vendor's offer, the purchaser is hereby constituted as Vendor's agent to any addition or deletion terms contained in this Addendum. If this Addendum is construed as a confirmation of an existing contract, the parties agree that this Addendum constitutes the final and exclusive terms and conditions of the contract between the parties, as all subject submitted by this Addendum. If an Agreement has already, regardless of its construction as an offer, acceptance, confirmation or one to plan to plan for goods or services pursuant to its earlier version, this Addendum incorporates by reference all terms of the Uniform Commercial Code governing the transaction for the Buyer, including, without limitation, all express and implied warranty provisions that all Buyer's remedies under the Uniform Commercial Code. If an Agreement for services, in addition to the Agreement and this Addendum, for Contract Documents shall include all drawings or specifications related to the work.

2. **Representations and Warranties:** If an Agreement for services, the number of days the Vendor's submitted quantities of work is a material term and must be specifically stated in the Agreement. If no date for completion is stated in the Agreement, all Work must be completed within one (1) month of start date, or the Work affecting the substantially completed portions of an awarded quantity, all work must be completed within ninety (90) days. Vendor agrees to meet the date of commencement shall be the date this Addendum was signed. There is no automatic extension of the time for completion of Work under any circumstances, including due to weather, labor disputes, or any other conditions. In execution of the

number of days for completion of Work is valid when agreed to by WESTLAND in writing. Work under the Contract Documents shall remain subject to the Contract Documents.

3. **Performance:** Vendor agrees to perform the services in a professional, industriously contracted, and timely manner, in compliance with industry standards and all applicable laws, rules and regulations, and in a manner consistent with the stated purpose of the contract. Vendor shall obtain all licenses and permits and pay all fees required in compliance with applicable laws and regulations. Vendor shall provide the equipment and materials used in the project the equipment and materials purchased and appropriately labeled and specified in the Vendor's submittal schedule. Vendor will promptly notify WESTLAND in writing if any laborer, subcontractor or the Contract Documents with applicable laws, rules and regulations. When a payment schedule applies, Vendor agrees that Vendor is responsible for submitting payment application with supporting documentation, and the time and progress and final payment, and the amount of time, are subject to the written approval of the WESTLAND within five (5) days of the submitted payment application, after which payment will be made in 15 days. WESTLAND does not agree to pay any sum of money which is delayed charges, or for which a fully completed payment application with supporting documents was not provided. WESTLAND shall be entitled to apply for attorney's reimbursement or costs against any subcontractor.

4. **Changes:** Vendor warrants to WESTLAND that (1) materials and equipment furnished under the Agreement will be new and of good quality unless otherwise specified or permitted by the Contract Documents; (2) the Work will be for their defense and safety in the quality control or organized; (3) the Work will conform to the requirements of the Contract Documents, and local building standards. The relevant remedy applicable to that shall be the (1)

Warden shall be the sole and exclusive agent of Employer for the purpose of the Agreement, and the Employer hereby agrees that it shall not, at any time, the date of completion of the Agreement or thereafter, employ any other person to perform the duties of Employer's agent. Warden shall retain all management, control, supervision and authority over the work of the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer.

5. **Independent Contractor.** Warden is an independent contractor, and shall not be considered an employee of Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer.

6. **Indemnification.** Warden shall indemnify and hold Employer harmless from and against all claims, damages, losses, costs, expenses, and attorney's fees, and all other costs, that Employer may incur or be liable for, as a result of the Agreement, or the actions of Warden or any other person who may be employed by the Employer.

7. **Assignment.** Warden shall not assign, transfer, or otherwise dispose of its rights or obligations under the Agreement, or any part thereof, to any other person. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer. Warden shall not be held responsible for the actions of the Employer or any other person who may be employed by the Employer.

8. **Entire Agreement.** This Agreement shall constitute the entire agreement between Employer and Warden, and shall supersede all other agreements, understandings, or arrangements, written or oral, between Employer and Warden, relating to the subject matter of this Agreement.

9. **Amendment.** The Agreement may be amended or modified by a written instrument signed by both Employer and Warden.

10. **Termination.** The Agreement may be terminated by either Employer or Warden at any time, without cause, upon written notice to the other party. In the event of termination by either party, the other party shall not be liable for any damages or costs incurred by the terminating party.

14-518-PS

expenses incurred by WHEELABIT in making payment for such expenses is conditioned on Vendor properly providing those materials to WHEELABIT. The Agreement will be deemed to be terminated for cause if the Vendor: (i) repeatedly fails to supply enough properly sorted material or proper material; (ii) fails to pay administration fee monthly or later consistent with those parties' agreement with Vendor; (iii) repeatedly disregards applicable laws, rules, ordinances, codes, rules or regulations or (iv) material breach is a breach of a provision of the Agreement, Addition, or other Contract Document. If terminated for cause, Vendor shall not be entitled to further payments until the Work is finished, and if the unpaid balance exceeds the cost of doing the work, Vendor shall be paid the difference, while if the cost is less than the work, Vendor shall pay the difference to WHEELABIT. Upon termination by WHEELABIT with or without cause, Vendor shall return all personal property and all equipment.

10. **Agreement and Addendum:** The Agreement and Addendum shall be binding on the parties upon their execution and original, without regard to whether it is separately acknowledged in any instrument of recording or possession.

11. **Assignment:** The Agreement may not be assigned by Vendor or its rights, granted to or obligated

thereunder, until Vendor has been approved or authorized by Vendor, without the express prior written consent of WHEELABIT.

12. **Entire Agreement:** This Agreement and Addendum constitute the entire agreement between the parties, and supersede all prior writings or oral agreements with respect to the subject matter hereof. This Agreement and Addendum may be amended or modified only by a written agreement signed by the authorized representative of each party herein.

13. **Waiver:** These parties' action or failure to exercise any right provided for in this Agreement and Addendum shall not be deemed a waiver or any further or future right under this Agreement and Addendum.

14. **Agreement Binding:** If any provision of the Agreement or the Addendum is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be impaired or affected thereby.

15. **Counterparts:** This Agreement may be executed in several counterparts, each of which, including facsimile or electronic signatures, shall be deemed an original and all of which, taken together, shall constitute a signed instrument. This Agreement shall be deemed fully executed when all Parties have executed in hard copy or the counterparts, even though the counterparts bear all such signatures.

By executing this Agreement, the parties have acknowledged, accepted, and agreed that Addendum to be executed on the day and date hereinafter shown.

WHEELABIT REAL ESTATE GROUP

By: 

Title: 

Date: 8/20/15

Vendor

By: 

Title: 

Date: 08-20-15

Blacksmith, Ashley

From: Taylor, Lara
Sent: Monday, September 21, 2020 8:55 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 Reply to Opposition - ROPP (CIV), Envelope Number: 6649325

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: Friday, September 18, 2020 5:31 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 Reply to Opposition - ROPP (CIV), Envelope Number: 6649325

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Notification of Service

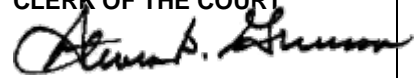
Case Number: A-20-819412-C
Case Style: Federal National Mortgage,
Plaintiff(s) vs. Westland Liberty Village, LLC,
Defendant(s)
Envelope Number: 6649325

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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	9/18/2020 5:29 PM PST
Filing Type	Reply to Opposition - ROPP (CIV)
Filing Description	Reply in Support of Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction
Filed By	Brian Dziminski
Service Contacts	Federal National Mortgage:

	<p>Lara Taylor (ljtaylor@swlaw.com)</p> <p>Nathan Kanute (nkanute@swlaw.com)</p> <p>Docket Docket (docket_las@swlaw.com)</p> <p>D'Andrea Dunn (ddunn@swlaw.com)</p> <p>David Edelblute (dedelblute@swlaw.com)</p> <p>Westland Village Square, LLC:</p> <p>Brian Dziminski (brian@dziminskilaw.com)</p> <p>John Benedict (john@benedictlaw.com)</p> <p>Jacqueline Gaudie (jacqueline@benedictlaw.com)</p> <p>Angelyn Cayton (Angelyn@benedictlaw.com)</p> <p>Office Admin (office.admin@benedictlaw.com)</p>
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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

FEDERAL NATIONAL MORTGAGE,)	
)	CASE NO. A-20-819412-C
Plaintiff,)	
)	
vs.)	DEPT. NO. IV
)	
WESTLAND LIBERTY VILLAGE, LLC,)	
WESTLAND VILLAGE SQUARE, LLC,)	Transcript of Proceedings
ET AL.,)	
)	
Defendants.)	

BEFORE THE HONORABLE KERRY EARLEY, DISTRICT COURT JUDGE
**APPLICATION FOR APPOINTMENT OF RECEIVER ON OST; DEFENDANTS'
OPPOSITION TO PLAINTIFF'S APPLICATION FOR APPOINTMENT OF
RECEIVER ON OST; COUNTERMOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS
AND AUTHORITIES;**

TUESDAY, OCTOBER 13, 2020

APPEARANCES:

For the Plaintiff: BOB L. OLSON, ESQ.
(Via BlueJeans Videoconference)

For the Defendants: JOHN G. BENEDICT, ESQ.
(Via BlueJeans Videoconference)

RECORDED BY: REBECA GOMEZ, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 TUESDAY, OCTOBER 13, 2020 AT 10:30 A.M.

2

3 THE CLERK: *Federal National Mortgage versus*
4 *Westland Liberty Village, LLC*, case A-20-819412-C.

5 THE COURT: Okay. And can I have -- who is here
6 for Federal National Mortgage?

7 MR. OLSON: Good morning, Your Honor. Bob Olson
8 of Snell and Wilmer on behalf of the plaintiff.

9 THE COURT: Okay. And who is here for Westland
10 Village, the other -- the defendants? Mr. Benedict?

11 MR. BENEDICT: Good morning, Your Honor. Yes.
12 Good morning. John Benedict.

13 THE COURT: Good morning, Mr. Benedict. Okay.

14 All right. We have two Motions. Well, we have a
15 Motion and a Countermotion. We have the plaintiff, Federal
16 National Mortgage Motion for an Appointment -- well, it's
17 an Application for Appointment of a Receiver. Correct?
18 Yes.

19 MR. OLSON: Yes, Your Honor.

20 THE COURT: It's correct. After everything I've
21 been through, it's correct. Okay. I will tell you, I read
22 through all the exhibits. I mean, I've read through
23 everything, but anything you feel you want to add or point
24 out to me on your argument for an appointment of a
25 receiver, at this point, and the receiver that you want,

1 Mr. Olson.

2 MR. OLSON: Thank you, Your Honor.

3 With respect to the receiver that the plaintiff
4 would like, the plaintiff has selected Jacqueline Kimaz of
5 Madison Real Estate Group. We were informed that Ms. Kimaz
6 has worked with Fannie Mae in the past. She has experience
7 as a receiver in Nevada with approximately 50 properties
8 over the last 10 years. She is imminently qualified and
9 Fannie Mae has complete confidence in Ms. Kimaz of Madison
10 Real Estate.

11 THE COURT: Okay.

12 MR. OLSON: I don't know if Your Honor has any
13 additional questions concerning Ms. Kimaz or Madison --

14 THE COURT: No. I -- you know, I'm very familiar.
15 I've had, unfortunately, experiences with working with
16 receivers. I'm finally winding one down right now. So,
17 I'm very familiar with the caselaw in appointing a receiver
18 and the criteria.

19 So, anything you want to -- you know, anything you
20 want to add on why you feel like, under the caselaw, that a
21 receiver should be appointed at -- you know, that somehow
22 these two properties are in danger of being -- you know,
23 getting -- suffer irreparable harm, being lost, so that
24 Fannie Mae's interests are not being protected? I mean, --

25 MR. OLSON: Well, Your Honor, I think the focus --

1 THE COURT: -- I've looked through everything,
2 including all of the exhibits for you. I don't -- one was
3 1,670 or something and all the stuff. I mean, it's like
4 doing a lawsuit from the beginning, but I understand. And
5 why is it -- I think I need to understand a little bit
6 better why Fannie Mae, or your client, thinks that they're
7 not, you know, doing an adequate job right now? Because
8 you know receivers are very expensive. They -- as you know
9 under the caselaw, they are not necessarily favored. They
10 can be -- they'll cost both parties.

11 I'm just winding one down on a case that -- and
12 now, of course, they're all fighting about how much the
13 receiver gets, what the receiver did that was right. We
14 have experts coming into court saying the receiver didn't
15 do this, didn't do that. So, it is not a small investment.
16 It's -- then takes it out of the hands of the people who
17 are the defendants who paid for this property. I think my
18 notes said -- didn't they put 20 million down? Am I right,
19 Mr. Benedict? Did you clients put 20 million down?

20 MR. BENEDICT: We have 20 million invested --

21 THE COURT: Yes.

22 MR. BENEDICT: -- in the property in total.

23 THE COURT: Right now. Correct?

24 MR. BENEDICT: We've invested --

25 THE COURT: Yeah.

1 MR. BENEDICT: -- three and a half million and
2 another one and a half million, since we took it over in
3 August of 2018.

4 THE COURT: Right. Correct.

5 And, then, I read all the exhibits. I happen to
6 have a trial -- I don't know, pre-Covid, you guys -- I
7 don't know if time goes fast here, with Sportsman's Manor
8 who, some of your exhibits, Mr. Benedict, I'm familiar
9 with. When Metro comes in and writes those letters, I --
10 it was like déjà vu a little bit because that was a huge
11 thing on Sportsman's Manor. I don't know if you guys know
12 where it is but it's on Boulder Highway and it's a very
13 unfortunate death case. Someone was -- you know, due to
14 criminal activity. So, I understand all that.

15 My biggest concern, Mr. Olson, is why it is that
16 you think this Court should exercise its discretion and
17 say: You know what, these people who put a lot of money in
18 it, are still doing it, have gotten accommodations for -- I
19 mean, they -- and I get it's a high -- I don't want to say
20 a high crime, but it is an area where Metro -- they -- you
21 know, what Metro does is they spot certain areas, I don't
22 know if you know but I know from all of the testimony now,
23 that -- looking at the statistics, that due to the
24 population and due to the people that come there, they can
25 be more -- more crime can occur. That's why I was familiar

1 when I saw the exhibit.

2 So, why is it that -- because -- why is it that
3 you think the defendants can't be protecting the interests
4 of Fannie Mae?

5 MR. OLSON: Your Honor, very simple. We have got
6 a contract. As Your Honor noticed reviewing it, it's a
7 pretty long and --

8 THE COURT: I noticed.

9 MR. OLSON: -- detailed contract.

10 THE COURT: Yes.

11 MR. OLSON: But the contract essentially provides
12 that if there is a property condition assessment performed
13 on the property that identifies repairs, the defendants are
14 required to deposit into the appropriate reserve account
15 adequate funds to ensure completion of those repairs. And,
16 at the time of the PCA, that was \$8,245,000, approximately.

17 The defendants have simply refused to do so. They
18 allege that they have made additional repairs to the
19 property since then of 1.7 million. I would note that that
20 is a deficiency of 1.1 million, based upon the numbers in
21 the PCA, and Fannie Mae does not have the opportunity to go
22 out and inspect the property and confirm whether or not
23 those repairs have been made.

24 THE COURT: That's basically a question --

25 MR. OLSON: The --

1 THE COURT: -- of fact, isn't it? Isn't whether -
2 - what -- first of all, when I read through it all, Fannie
3 Mae gets to unilaterally decide what the repairs should be
4 and say, even though they've kept up all the reserves,
5 everything they contracted for, and say: Okay, in our
6 opinion, you need to add -- what did you say, 8,245,000
7 more to protect --

8 MR. OLSON: Two million eight hundred --

9 THE COURT: Two million -- okay.

10 MR. OLSON: -- forty-five.

11 THE COURT: Okay. I thought you said eight. I
12 thought -- two million something. I'm --

13 MR. OLSON: Yeah. Approximately 2,845,000.

14 THE COURT: Okay. So, that -- and their --

15 MR. OLSON: Well, Your Honor, the contract says
16 they have to fund those accounts. And the purpose behind
17 those accounts is to ensure that there are funds available
18 to keep the -- or to maintain and improve the property, --

19 THE COURT: Right.

20 MR. OLSON: -- to ensure that there's funds
21 available to pay the lienholders, the potential lienholders
22 against the property so we don't end up with a property
23 lien, and it's there to ensure that the property is
24 maintained in a safe and good condition in accordance with
25 Fannie Mae's objective, which is to foster competitive,

1 liquid, efficient, and resilient national housing finance
2 market, and support sustainable homeownership and
3 affordable rental housing.

4 THE COURT: And that's --

5 MR. OLSON: And Fannie Mae simply wants to make
6 sure that the properties are maintained in that fashion.
7 The defendants have, basically, snubbed their obligations
8 under the contract to fund that by saying: You know, we're
9 not going to fund it. Instead, here's our strategic plan
10 and this is how we intend to address the concerns you've
11 raised. But, Your Honor, that's not contemplated by the
12 contract. It clearly isn't. The --

13 THE COURT: Now you're asking to interpret the
14 terms of the contract. Correct?

15 MR. OLSON: Oh, the contract is pretty
16 straightforward. But, yes, Your Honor. And we think the
17 contract provides that if there's a PCA, and there's shown
18 to be a change in the condition of the property, that they
19 have to post the adequate funds into our reserve account to
20 cover those changes.

21 Moreover, Your Honor, it's required under section
22 6.2 of the Loan Agreement that has a lot of provisions
23 requiring the defendants to maintain and repair the
24 property. And, you know, they're just -- they're not doing
25 it in the manner that Fannie Mae's contract says they are

1 to do it. Rather, they simply have kind of taken the
2 cowboy approach and said: This is how we're going to
3 address the issue and, if you don't like it, that's your
4 problem.

5 Now, with respect to the appointment of a
6 receiver, Your Honor, I don't think the Court's discretion
7 is as limited as Your Honor seems to be suggesting. The
8 caselaw really isn't that relevant because Nevada has a
9 number of statutes that govern the appointment of the
10 receivers, including the Uniform Commercial Real Estate
11 Receivership Action, which I think was adopted by the
12 Nevada Legislature in 2017. And, if you look through the
13 UCLE, you're going to -- or UCRERA, my apologies, you'll
14 see that there are instances where the Court may
15 appointment a receiver and there are instances where the
16 Court -- or what the statute says is if the party is
17 entitled to the appointment of a receiver. And the word
18 may is used and the word entitled is used in the same
19 section. For example, NRS 32.260 subsection 1 says: These
20 are the cases where a court may appoint a receiver.

21 THE COURT: But it's all fact specific.

22 MR. OLSON: Subsection 2 --

23 THE COURT: Is it not? Is it not --

24 MR. OLSON: Well, --

25 THE COURT: -- depending on facts? At least every

1 receivership I had, it's fact specific because the point of
2 the receivership is to make sure that, you know, in your
3 case, Fannie Mae is not -- you know, has protected their
4 interest. It's -- there's not, let's say in this case,
5 Fannie Mae has a right or it's a mandatory right to a
6 receiver. Correct?

7 MR. OLSON: Well, Your Honor, the statute requires
8 two factual findings by the Court in order for plaintiff to
9 be entitled to the appointment of a receiver.

10 THE COURT: Okay.

11 MR. OLSON: The first is that it's in connection
12 with the foreclosure or other enforcement of a mortgage.

13 THE COURT: I'm sorry. Say it again. You faded
14 out.

15 MR. OLSON: It is connection with enforcement or
16 foreclosure of a mortgage.

17 THE COURT: Okay. But we don't have --

18 MR. OLSON: And, in this case, Fannie Mae has
19 initiated foreclosure proceedings.

20 THE COURT: Okay.

21 MR. OLSON: We recorded the Notice of Default and
22 the Election to Sell in August. It's about time that we
23 can file and serve the Notice of Sale.

24 So, that's the first finding: Is there a
25 foreclosure proceeding pending? And the answer is: Yeah.

1 And we would ask Your Honor to so hold.

2 Then, there are a number of options under that
3 subsection that the Court can select from one of to appoint
4 a receiver. The first that I wanted to discuss is
5 subsection (b) of section 2 of NRS 32.260. That requires a
6 finding that the mortgagor agreed in a signed record to the
7 appointment of a receiver.

8 THE COURT: The -- do it again. The mortgagee --

9 MR. OLSON: Again, the mortgage --

10 THE COURT: Holder --

11 MR. OLSON: The mortgagor, or the borrower, --

12 THE COURT: Oh, okay.

13 MR. OLSON: -- agreed in a signed record to
14 appointment of a receiver on default.

15 THE COURT: Upon default. So --

16 MR. OLSON: If you look at --

17 THE COURT: -- this is on default. Okay. This is
18 if there's a finding --

19 MR. OLSON: Yeah. Well, --

20 THE COURT: -- of default. I agree with that.

21 MR. OLSON: Correct. You have to have an event of
22 default in order to initiate the foreclosure proceeding.

23 THE COURT: Correct.

24 MR. OLSON: And, in this case, section 3(e) of
25 Exhibits 3 and A, which are the Deeds of Trust, fully

1 provides that the borrower, in this case were the two
2 defendants, agreed to the appointment of a receiver as a
3 remedy upon a default.

4 THE COURT: Okay. So, once --

5 MR. OLSON: So, I think, Your Honor, --

6 THE COURT: It all keys on the default. Okay.

7 MR. OLSON: I think that's a safe statement, Your
8 Honor.

9 THE COURT: Well, at least that's what I thought
10 reviewing it.

11 MR. OLSON: There has to be --

12 THE COURT: Okay. That's fine. Okay.

13 MR. OLSON: And we went through the papers why we
14 think there's an event of default because the obligation is
15 to fund the account and the defendants have refused to do
16 that.

17 THE COURT: And you don't think --

18 MR. OLSON: The second is --

19 THE COURT: -- there's a question of fact on the
20 obligation -- on what that obligation is to fund the
21 account? You think -- I mean, when I read your stuff, it
22 almost sounded like you, Fannie Mae, said unilaterally:
23 We've got this -- what is it? F3? I'm sorry, you guys.
24 I've read it all.

25 MR. OLSON: Yeah.

1 THE COURT: What's the 2019 -- I have so many
2 notes here. I apologize, Mr. Olson. What is the report
3 from the -- I got it. I got it. Oh.

4 MR. OLSON: I believe you're referring to the --

5 THE COURT: The September 2019 PCA Report prepared
6 by Small F3, Inc. That's where you came up with the 2.7
7 million. Correct?

8 MR. OLSON: Correct, Your Honor. It's 2.8, but --

9 THE COURT: I have 2 -- maybe I did it wrong. I
10 put 2.7. I could -- either way. It can be 2.8 if -- there
11 were a lot of exhibits, Mr. Olson. So, I did the best I
12 could to sift through over 1,200 or some. Okay.

13 So, --

14 MR. OLSON: I understand, Your Honor. This is a -
15 - it's a very paper-intensive case thus far.

16 THE COURT: I -- that's a nice way to say it. I
17 agree. Which -- but I understand on the -- okay. So, all
18 right. So, based on that, you're saying then these
19 property owners are in default because we have this report
20 that says more funds should be put in the reserve. And do
21 they have any remedy to say, wait a minute, we've done
22 this, we've done that, to have -- to make that a question
23 of fact whether there is a breach of that?

24 MR. OLSON: Well, Your Honor, I think there's no
25 doubt there's a breach of it.

1 THE COURT: It's -- you know, I've done a lot of
2 contract stuff, as you know, and I'm like: Wait a minute.
3 I've not seen one where a client can unilaterally say:
4 We've decided you breached, you're going in default, and we
5 want a receiver.

6 MR. OLSON: Well, Your Honor, first is we were
7 unable to have a meaningful discussion as to how --

8 THE COURT: Meaningful? Okay.

9 MR. OLSON: Meaningful. As to how to address
10 this. It just didn't get anywhere, unfortunately.

11 THE COURT: Well, that's why you get lawsuits,
12 huh?

13 MR. OLSON: The second I would add --

14 THE COURT: Okay.

15 MR. OLSON: Exactly. But I would also add, Your
16 Honor, that if you look at some of the exhibits for the
17 counterclaim, for example, Exhibit N, which includes their
18 strategic -- Westland's strategic --

19 THE COURT: Yeah, I have it right here as a matter
20 of fact.

21 MR. OLSON: I apologize. I forgot the name of the
22 --

23 THE COURT: It's called their Improvement Plan for
24 Liberty Village, dated November 27th, 2019. I actually read
25 through it.

1 MR. OLSON: Yeah. That's it. Your Honor, if you
2 look at page 7, they broke down --

3 THE COURT: I got it. Okay.

4 MR. OLSON: They broke down the repairs to the
5 interior of the unit by what was requested in the F3 Report
6 versus what they thought was due.

7 THE COURT: Correct.

8 MR. OLSON: And this goes to show that there is a
9 default. They say the F3 PCA identified \$1,908,760 of
10 repairs. That's in the third table on that page --

11 THE COURT: No, I'm looking at it, as we speak,
12 Mr. Olson. I have all these -- I'm looking at it. And?

13 MR. OLSON: And then it -- if you go immediately
14 to the right, there's the Westland budget for the same
15 unit. Their budget amount is \$1,218,125.12. Now, the
16 interior unit's not all of the items that were identified
17 in the PCA. They were items in connection with the
18 communities and the exterior. But, if you just focus on
19 the interior of the unit, we say it was a million-nine.
20 They say it was a million-two. How much did they deposit?
21 Zero. They didn't even make a good faith effort to try to
22 deposit what they viewed the repairs as being.

23 THE COURT: Okay. Did they do any efforts on
24 their own?

25 MR. OLSON: They are claiming that. We have been

1 trying to organize an inspection of the property by F3 and
2 we're getting a lot of grief from the defendant because,
3 primarily, they want [indiscernible] inspect the property
4 for Fannie Mae and that's something that they're --

5 THE COURT: Okay. Well, that's a whole different
6 issue. That -- that's a -- okay. All right.

7 MR. OLSON: Clearly, Your Honor, but we're -- we
8 haven't been able to arrange an inspection of the property
9 to verify anything.

10 THE COURT: Okay. Well, maybe that's an area that
11 should be going forward in discovery, as opposed to -- but
12 okay. That makes sense.

13 MR. OLSON: Well, it is an obligation under the
14 contract, 6.03(b), I believe, that they're to make the
15 property available for inspections by Fannie Mae.

16 THE COURT: I --

17 MR. OLSON: Not doing it.

18 THE COURT: So that could be asserted in the
19 lawsuit as another breach and, if there's damages that
20 result from it, that's what contract -- okay. Anything
21 else you want to add? I wanted to make sure I understood
22 the mandatory.

23 MR. OLSON: Well, --

24 THE COURT: I get it. Okay.

25 MR. OLSON: Okay. You know, similar argument

1 under the Uniform Assignment of Rents Act, 107A.260 (a)(1)
2 and (a)(3), uses the same language as the Uniform
3 Commercial Real Estate Receivership Act in that we're
4 entitled if there's a showing. And, under that statute, it
5 says we're entitled if the assignor is in default and, you
6 know, we've been talking about the default. They failed to
7 fund any of the reserve account. And the assignors agreed
8 in a signed document to the appointment of a receiver. And
9 they've done just that. Section 6.3 -- I'm sorry. Section
10 3(c), I believe, of the Deed of Trust.

11 And, similarly, we sent out in November of --
12 excuse me, December of 2019, a Demand under NRS Chapter
13 117A for all of the rents and they have not been honoring
14 that. That's additional cause under subsection 3 of that
15 statute for the appointment of a receiver.

16 Your Honor, we have also briefed NRS 107.100
17 subsection (b) that says, quote:

18 Shall appoint a receiver if the property is in
19 danger of substantial waste or may become insufficient
20 to discharge the debt.

21 In this case, we're gravely concerned that the
22 value of the property is going to deteriorate if certain
23 repairs aren't made, aren't made in a workmanlike manner
24 and, you know, they need to be made in accordance with the
25 contract, just not in some [indiscernible] manner.

1 Finally, Your Honor, under the NRS Chapter 32.010,
2 that statute says the Court may appoint a receiver if the
3 property is danger of loss -- of being lost, removed,
4 materially injured, or the condition of the mortgage has
5 not been performed. We've got conditions of the mortgage
6 that haven't been performed, and we think the failure to
7 make the repairs and put the money into the deposit to
8 ensure that the repairs are made is a danger of the
9 property being lost.

10 Your Honor, the allegation that they've cured
11 their default by making some repairs, you know, they
12 haven't proven that they've made every repair on the PCAs
13 that were assembled. And, moreover, as we went over a
14 couple of times, Fannie Mae hasn't had the opportunity to
15 inspect that property. And we're getting pushback from
16 them about inspecting it.

17 THE COURT: Well, maybe that's something that
18 needs to be resolved in discovery. Right, Mr. Olson?
19 Because you certainly can go to the Discovery Commissioner
20 and say, we have a right, you know, and do a motion on
21 that. I agree with that --

22 MR. OLSON: Your Honor, that's one alternative.
23 The other is if it's an additional breach of the agreement.

24 THE COURT: Well, then, that's -- you prove that
25 up --

1 MR. OLSON: I mean, this is --

2 THE COURT: -- and then you prove your damages for
3 Fannie Mae. That's what breach of contract. I understand
4 that, too. Okay.

5 MR. OLSON: You know, I can go into some of the
6 points they've raised in the Opposition if Your Honor would
7 like.

8 THE COURT: Well, let Mr. Benedict speak then,
9 because I read through -- like I said, I pulled out and I,
10 as best I could, did a whole lawsuit, I felt like, in one
11 Motion to Appoint Receiver and, actually, his Countermotion
12 for a TRO. But let me hear -- I understand your side
13 better why you were saying it was mandatory. It was based
14 on the default or what you feel is an appropriate -- okay.

15 So, Mr. Benedict, if you want to add to -- once
16 again, I read everything as best I could, as you -- I know
17 you live with it, but what you would like to add and why
18 you feel I should not appoint a receiver.

19 MR. BENEDICT: Well, thank you, Your Honor. First
20 of all, starting with your initial question to Mr. Olson,
21 there is no default. This is --

22 THE COURT: Yeah.

23 MR. BENEDICT: -- a loan that is in full
24 compliance. I mean, if you start from the premise that's a
25 default, then, of course, --

1 THE COURT: Yeah.

2 MR. BENEDICT: -- all the cards are going to fall
3 in the house of call -- of cards. Yes, the statute says,
4 you know, under a situation if there's a default, there's a
5 right to receiver. Yes, the statute says if there's a
6 default there's a right to an assignment of rents. Yes,
7 the statute says there's a right to file an NOD. But what
8 the statute doesn't say, and what I think we've established
9 overwhelmingly, is that there is no default. This is a
10 loan that is fully compliant. All the payments have been
11 made. All of the monthly payments have been made and then
12 some.

13 We have -- as we established through affidavit and
14 backup, we have invested -- the client has invested over --
15 before there was ever a PCA, before there was ever this
16 report, had invested \$1.8 million in improvements, before
17 there was ever any reports to respond to. And, somehow,
18 between August of 2018 and September of 2019, if you're to
19 believe the face of the report, then the value of the
20 property, the amount of the improvements, after we put \$1.8
21 million into it, went down by \$2.8 million. And that's
22 just impossible to have occur. And it didn't occur.

23 And, since the PCA, my client has established and
24 put in another \$1.7 million, for a total of \$3.5 million.
25 And, in addition to that, as the Court alluded to at the

1 beginning, has spent substantial sums cleaning up the
2 property, --

3 THE COURT: Right.

4 MR. BENEDICT: -- getting the criminal element out
5 of there, working with Metro, working with community
6 leaders. Heck, they even bought a commercial center next
7 door to weed out that criminal element. One point --
8 almost \$1.6 million in security services alone. Plus, it
9 employs 32 fulltime employees to operate this premises.
10 Mr. Olson would suggest that there's some kind of shotty
11 operations going on here and that we're ignoring the
12 obligation to keep the property up or --

13 THE COURT: What happened?

14 THE COURT RECORDER: That's on their end.

15 [Technical issues with audio/visual from 10:57:07 a.m.
16 until 10:53:18 a.m.]

17 MR. BENEDICT: -- circular reasoning where they
18 start with a default that they created after a unilateral
19 modification to the agreements and now they're running with
20 it.

21 Now, why do I say that there's unilateral
22 modifications to the agreements? There are two ways --
23 there are two times that a PCA can be asked for and entered
24 upon. One is that change of ownership. And when my client
25 assumed this loan in August of 2018, there was a PCA that

1 was done by a different firm that was done under the
2 guidance and oversight of this particular servicer, the
3 same servicer that's on it now, and the parties agreed in
4 the Loan Schedule 1 to keep the reserve of \$143,000 total
5 for both properties.

6 THE COURT: That's how they came up with that
7 amount.

8 MR. BENEDICT: That's a bargain for --

9 THE COURT: Okay. Okay.

10 MR. BENEDICT: And that's the agreed upon amount.
11 There is nothing in that contract that allows the Fannie
12 Mae to come a year later and unilaterally increase that by
13 20-fold. It doesn't exist in the contract. That's called
14 a unilateral modification. And, so, Mr. Olson says, well,
15 there was pushback because we didn't just jump through
16 whatever hoop they placed in front of us and put on top of
17 the three and a half million dollars another two and a half
18 million dollars, or whatever random number they assigned to
19 it. The fact of the matter is the agreement doesn't
20 require that, their agreement that they drafted. And that
21 is called out specifically in section 13.02(a)(3) of their
22 contract that they drafted, which should be construed
23 against them.

24 THE COURT: Do it again. Thirteen -- I have it --

25 MR. BENEDICT: It's the --

1 THE COURT: Thirteen --

2 MR. BENEDICT: Yeah, 13.02(a)(3). It says --

3 THE COURT: Okay. Hold on. I've --

4 MR. BENEDICT: -- that --

5 THE COURT: A -- okay. Adjustments to Deposits, I
6 got it.

7 MR. BENEDICT: Adjustments to the deposits upon
8 the transfer of a property owner, which had -- occurred in
9 August and they didn't ask for anything. It did not occur
10 in September, when they're asking -- when they put the PCA
11 out, and they start making demands, and then they put us in
12 default. And, secondly, it says: Option nine of a 10-year
13 loan. Well, we're not in year nine. Okay? So, those two
14 provisions are expressed and they're bargained for.

15 Additionally, in 13.02(a)(4), --

16 THE COURT: Yes. The insufficient funds one.

17 MR. BENEDICT: Insufficient funds, there is an
18 agreed upon amount for \$143,000 that must be used to -- for
19 insufficient to cover the cost. But, here, the repairs had
20 been completed, they're in progress, and they've been
21 communicated.

22 And Mr. Olson says that they don't know what we
23 did. Your Honor, I feel for you. Part of the 2,000 pages
24 you had to flip through were all the repair receipts and
25 backup that we gave them to show them that the work has

1 been done, indeed has been done. And this, Your Honor, --

2 THE COURT: And we actually went through it, Mr.
3 Benedict. I will tell you. My law clerk and I spent many,
4 many, many hours going through matching up and trying to
5 figure out what they wanted done from their report to what
6 was done. So, I understand that.

7 MR. BENEDICT: Well, I appreciate that and my
8 client, who has \$60 million invested, and the hundreds of
9 families that have decent housing as a result of my client
10 who has been in the business for 50 years, has 10,000 units
11 under management and ownership in Las Vegas alone, it's not
12 its first rodeo, Your Honor. And, so, they are complying
13 with their obligations under the law. They are complying
14 with their obligations with Fannie Mae, from whom they have
15 many other loans. And, so, this Notice of Default is a big
16 problem to them.

17 THE COURT: Yeah.

18 MR. BENEDICT: And, frankly, they don't like it
19 very much. They haven't had a Notice of Default in 50
20 years of being in business and they don't like it very much
21 on what we firmly believe and have argued is a pretty
22 concocted, unilateral modification of the contract that
23 they drafted in order to declare a default and then to have
24 all of the circular reasoning follow from there.

25 So, we think that their argument about that they

1 should -- that they have a right to raise these reserves by
2 \$2.8 million after the fact are -- is completely contrary
3 to the contract that they drafted, 13.02(a)(4), if you
4 follow it, flows through. It talks about section 6.03, the
5 condition of the mortgaged property.

6 THE COURT: Yes.

7 MR. BENEDICT: And it's without question at this
8 point, Your Honor, that there has been no showing by Fannie
9 Mae of deterioration of this property whatsoever. Their
10 sole basis for arguing waste as one -- under their statute
11 -- statutory argument, or deterioration, which is a defined
12 term in their contract, that does not involve lower
13 occupancy on the property, but that's exactly what they
14 rely upon. They rely upon the fact that occupancy went
15 down. Well, what happened, Your Honor, is you've been
16 through this drill and you've lived in Las Vegas a long
17 time. When you're throwing criminal element out of your
18 property, the occupancy is going to go down. It went down.
19 My client reported it and it was forthright about that.
20 All the time that the occupancy went down, my client paid
21 the mortgage in full. Never asked for a break, never paid
22 it short, never did anything. Paid it in full. Paid all
23 the operating expenses in full.

24 And, so, now that they move for -- they started
25 this process in December of 2019, only to file something in

1 August on an order shortening time, in that time, we've
2 established to the Court that the occupancy rate is back up
3 to 80 percent where the presale rate was. So, in that
4 interim, exactly what we knew, because we are experienced
5 operators and owners, would happen happened. You got rid
6 of the criminal element. You started putting money back
7 into the property to make it safe. You made the units
8 better for people to live in and occupancy will go up, and
9 that is exactly what has happened.

10 And now that it's gone up, and now that we've
11 invested all of this money, and now that we fixed the
12 problem that they had well before we were involved for
13 years and years and years at that property, now they want
14 to say we're in some kind of technical default and file a
15 foreclosure notice against us to take the property back.
16 That is just wrong and the arguments that Mr. Olson has
17 made, respectfully, under the statute, I can address them,
18 but they all start from the premise that there is a default
19 and, at the very --

20 THE COURT: Well, and I got that, Mr. Benedict.
21 Did you notice that's why I had Mr. Olson explain to me --
22 I got that it all stemmed from the default.

23 MR. BENEDICT: okay. And, so, --

24 THE COURT: I just want you to understand that I
25 didn't -- I had an issue with it when I was reading

1 everything, but Mr. Olson did clarify it. So, I do follow
2 you, Mr. Benedict.

3 MR. BENEDICT: Okay.

4 THE COURT: Does that make sense? I follow that.

5 MR. BENEDICT: So I don't need to --

6 THE COURT: It all stems from the default notice.

7 And --

8 MR. BENEDICT: And --

9 THE COURT: Then the question is: Is it -- who
10 makes the determination whether they were -- whether your
11 client was in default?

12 MR. BENEDICT: Well, we believe that under the
13 face of the documents that we've bargained for that says
14 there's a --

15 THE COURT: You're not. This -- yes.

16 MR. BENEDICT: -- reserve of 143,000, that we're
17 not in default and that they can't put us in default for
18 not paying \$2.8 million. And, on top of that, Your Honor,
19 as we established in our papers, on top of all of that,
20 it's not just the 143,000. We're paying, between the two
21 properties, almost \$30,000 a month for these repair and
22 construction reserves. There's a total of 432,000 in one -
23 - for one property, 236,000 for the other property, and
24 that doesn't even address the \$1 million of an insurance
25 claim that we funded the work for that they, in turn, kept

1 the money for.

2 So, there is no waste or fear of losing this
3 property or not having it have its value. There's \$20
4 million of equity.

5 THE COURT: Yeah.

6 MR. BENEDICT: There's \$6 million -- \$5 million
7 that we invested in two years there, plus they're holding
8 onto an additional 1.6 or 7 million dollars in these
9 reserve accounts. So, I totally don't understand the
10 argument that says there's waste or there is some kind of
11 uncertainty that would allow for the drastic remedy of an
12 appointment of a receiver. Respectfully, we don't need it
13 --

14 THE COURT: And then there was --

15 MR. BENEDICT: We have the folks in place to do
16 the work. They're doing an excellent job. We don't need
17 the additional expense and, at the end of the day, Your
18 Honor, we think that the Court sees this for what it is.
19 At best for Fannie Mae, it's a factual dispute --

20 THE COURT: Yeah.

21 MR. BENEDICT: -- that we do not need a receiver.
22 We need this Notice of Default lifted and the injunction
23 entered so that we can protect our property and not lose
24 it. It's unique and we are more than happy to slug this
25 out with Fannie Mae, if that's what they want to do in

1 discovery, but you can't hold a -- call a default and then
2 hold a gun to our heads and then say: Well, but we're
3 going to take your property back while you figure it out.
4 The Court, respectfully, can stop that and should do so,
5 both under the facts, the law, and certainly sitting in
6 equity.

7 THE COURT: And that segues into your
8 Countermotion for the TRO where, basically, it would be a
9 preliminary injunction, at this point. Correct? To stop
10 their default proceedings. Correct?

11 MR. BENEDICT: It would be. Yes, Your Honor. It
12 does.

13 THE COURT: They're all intertwined, at least
14 going through all this, I could see. Okay.

15 MR. BENEDICT: And, so, may I address that to the
16 Court?

17 THE COURT: Yes. You can go ahead and, then, I'll
18 give Mr. Olson a chance because it -- I do understand it's
19 all intertwined. That I --

20 MR. BENEDICT: Right.

21 THE COURT: That I have. Okay.

22 MR. BENEDICT: So, on the injunction side, you've
23 summarized it perfectly, which is it's a preliminary
24 injunction to --

25 THE COURT: It is.

1 MR. BENEDICT: -- stop the Notice of Default. We
2 -- we've set everything out. I don't want to repeat what I
3 just said. We have -- you've -- I've already established --
4 -- and the affidavits in support and the exhibits in support
5 establish our substantial investment. The reserves, the
6 PCA that is trying to increase it by 2.8 million when
7 there's \$143,000 tab.

8 The -- as the Court knows, the standard is
9 likelihood of success on the merits --

10 THE COURT: The reasonable probability -- yeah, of
11 likelihood of success on the merits and, of course, the
12 irreparable harm. But we have property, so I understand
13 that.

14 MR. BENEDICT: And balancing the hardships.

15 THE COURT: Correct.

16 MR. BENEDICT: And, respectfully, in opposition,
17 those are not really addressed by my opponent. They simply
18 say there's a default and, therefore, we're entitled to do
19 what we've done. And if you undermine that premise, then I
20 believe their argument completely falls.

21 Likelihood of success on the merits, we believe
22 that, respectfully, they sidestep that; that we're not
23 trying to convince the Court that we are going to win on
24 our Counterclaim, although we feel very strongly that we
25 will. What we're saying is the one cause of action on the

1 other side is a claim for right of receiver. They, in
2 furtherance of that, filed the NOD. The NOD -- we've
3 established that we believe that there's more than enough
4 to establish that the status quo, which is our client, who
5 has \$20 million plus and all of these, you know, 32
6 employees fulltime, and security forces, and so forth, who
7 has been accommodated in writing by the municipalities and
8 by Metro, that they should be allowed to maintain the
9 status quo, which is to operate the property, and that
10 we've established the success of disproving the default,
11 although it's my opponent's obligation to prove there's a
12 default. On -- at this stage, we believe we've more than
13 shown likelihood of success. Irreparable harm is, frankly,
14 straightforward.

15 THE COURT: Right.

16 MR. BENEDICT: It's the -- the property is unique.
17 It's --

18 THE COURT: It's property.

19 MR. BENEDICT: -- real estate and we have a myriad
20 of investment, we have processes, and people in place, and
21 things that we've done that would mean that we would be
22 irreparably harmed. And, at this early stage, with no
23 discovery, and with nothing really other than Fannie Mae's
24 say-so, taking the property from us would cause irreparable
25 harm.

1 And balancing the hardship follows pretty
2 substantially with that. We've established that without
3 giving any credence to the property increasing in value,
4 just due to, you know, increase in values in the valley --
5 if you just take what we paid for it and what we have in
6 it, we'd have over \$25 million at stake here, Your Honor.
7 I know monetary is not an irreparable harm, but, in real
8 estate, of course, the value cannot be understated and
9 uniqueness. And, therefore, the \$25 million does go to the
10 balancing of hardships; whereas, on the other hand, we've
11 made all of our payments and Fannie Mae can only point to
12 its claim that it claims that its report is correct, our
13 report isn't correct, and that we haven't done enough to
14 bring these properties up to their standard. Even if that
15 were true, respectfully, that's not what their documents
16 say. They don't have a right to do that. And, secondly,
17 we respectfully represent to the Court and believe we
18 established enough to get the preliminary injunction that
19 we have done substantial work. You've gone through it.
20 You've seen it.

21 And the final point is that Fannie Mae has not
22 been able to point this Court to one case where other than
23 a breach of the Note served as the basis or a Notice of
24 Default or a receivership. They've pointed you to breach
25 of promissory note cases, cases where they -- that the

1 borrower agreed that they were in violation or there was a
2 bargained for specific amount that wasn't paid like in --

3 THE COURT: Right. And they didn't pay that
4 specific amount. We read those cases, yes.

5 MR. BENEDICT: That has never -- that is not what
6 we have here, Your Honor. What we have here is a
7 manufactured default after you --

8 [Technical issues with audio/visual from 11:08:51 a.m.
9 until 11:09:07 a.m.]

10 THE COURT RECORDER: Mr. Benedict?

11 MR. BENEDICT: Your Honor, is --

12 THE COURT: Unfortunately, Mr. Benedict, your
13 internet is kind of going in or out. I've heard most of --

14 MR. BENEDICT: We ask the Court to access -- oh,
15 sorry about that. I'm showing a good signal. Is that
16 better?

17 THE COURT: Yes. Thank you. I can hear you. I
18 don't care if your mouth doesn't work the same, as long --

19 MR. BENEDICT: Okay. I apologize.

20 THE COURT: -- as I can hear you. You --

21 MR. BENEDICT: That would be a little bit funny
22 with the words coming out.

23 I'm done. Just the Court has to assess the bonds.
24 We ask for a \$1,000 on the basis that Fannie Mae has not
25 been harmed in the least and this de minimis bond would

1 more -- that, plus the million-seven they have in reserve,
2 and us continuing to make payments, more than protects
3 them. Thank you.

4 THE COURT: Okay. All right. Mr. Olson.

5 MR. OLSON: Your Honor, there's a number of points
6 that I wanted to address. I'll start with the very last
7 one that was made and that is that Fannie Mae has presented
8 this Court with no caselaw demonstrating that this is an
9 event of default that would justify a foreclosure or a
10 receiver. I would submit to Your Honor that is, in fact,
11 not the case. We've provided Your Honor with citations to
12 at least three cases that deal with -- or, excuse me. Two
13 cases that deal with the failure to fund reserve accounts
14 or reserve escrow accounts or repair escrow account. The
15 first is the *Bierton versus Brown Deer Apartments Housing*
16 *Associates* case out of the Court of Appeal from Minnesota
17 in 2010, which held that it is immaterial of the shortage,
18 and it was referring to an escrow account, is lesser than
19 what was demanded when no payment at all is made. So, in
20 that case, the Court held that the failure to fund the
21 reserve account by the borrower constituted an event of
22 default.

23 Similarly, in the case of *Peny and Company versus*
24 *Food First Housing Development Fund*, which is in the
25 papers, it's out of New York from 2013, the Court held that

1 the continued failure to pay imposition deposit within 20
2 days after written notice constituted an event of default
3 permitting the mortgagee to demand full payment of the
4 principal and interest under the loan document.

5 I believe, Your Honor, also that there was a third
6 case out of Utah, and that was *American Savings and Loan*
7 *Association versus Blomquist*, which held that when a
8 mortgagor specifically agrees to pay sums as estimated by
9 the mortgagee into a reserve account, a partial payment,
10 even if the difference is de minimis, is inadequate and
11 entitles the mortgagee to declare the entire debt due.

12 So, the failure to fund these escrow accounts is,
13 in fact, Your Honor, an event of default.

14 THE COURT: Yes. It's my understanding, when I
15 read those cases, isn't that the original funding, which we
16 have talked about, the 143, not additional funding when I
17 read those cases or am I not --

18 MR. OLSON: If I recall correctly, the Minnesota
19 case was additional funding, Your Honor.

20 THE COURT: I don't -- my notes don't say that,
21 but that's okay. I did notice a distinction when I read
22 those cases. Okay.

23 MR. OLSON: Thank you, Your Honor. You know,
24 there's a lot of argument here that the -- this is a
25 default that was manufactured by Fannie Mae and there's

1 been a unilateral modification of the loan documents. Your
2 Honor, the first thing to clear up is there has not been a
3 modification of the loan documents by Fannie Mae other than
4 what has been presented to Your Honor in [Indiscernible]
5 and that is copies of the loan documents, as well as the
6 first six amendments to the Liberty Village Loan Agreement.
7 There have been no efforts to unilaterally modify the loan
8 documents. They say that the loan is fully compliant.
9 Well, Your Honor, I would submit it's not. They have not
10 funded the escrow account, as required.

11 They've, instead, tried to effectuate a cure of a
12 default by doing something else that's not contemplated by
13 the contract. And the caselaw that we've cited says that,
14 you know, when a contract says this is what you do when
15 there's a default and you do it, you don't go out and do
16 something else and allege that you've complied with the
17 terms of the contract.

18 I wanted to --

19 THE COURT: So what you're doing, Mr. Olson,
20 you're basically doing a Motion to Dismiss, as far as a
21 legal argument that I should find as a matter of law that
22 there was a breach and, based on that, by me looking at the
23 contract deciding that there was a breach, your client is
24 entitled to a default. Since they're entitled to a
25 default, at this point, you want a receiver. Isn't that,

1 basically, if you follow your argument? Because you're
2 arguing whether there was or was not a breach of these loan
3 agreements. Correct?

4 MR. OLSON: Your Honor, I think, clearly, there's
5 a breach of the Loan Agreement and --

6 THE COURT: But that --

7 MR. OLSON: -- in the Reply --

8 THE COURT: But wouldn't I have to determine that
9 as a matter of law? Because that's a question of fact --

10 MR. OLSON: Well, I mean, --

11 THE COURT: I mean, that's -- that would be, to
12 me, a Motion to Dismiss -- I mean, I think -- as I read
13 everything as I did it, it's like: Wait a minute. You --
14 because your whole default is based on the breach. Okay?

15 Now, I could see if they didn't fund it or
16 anything, if they didn't do -- they hadn't been paying
17 their escrow account at all, you know, I mean, there's
18 certain things. I'm not even sure if there's a genuine
19 issue of material fact, so maybe it would be more of a
20 summary judgment. I don't know if there's defenses. As
21 you know, we're just in the beginning of this case. I felt
22 like I had -- I know it sounds silly, but I felt like I had
23 a whole case, Mr. Olson. Does that make sense to you? In
24 the beginning, as best I could, but when I -- because I do
25 understand on the receiver if there's a default, but I

1 really could not understand how this Court could say,
2 basically, by -- and I'm, you know, that there's no dispute
3 as to whether there was or was not a breach by this client.
4 I mean, especially on -- there's no specific amount. It's
5 -- when you -- I mean, I did the best I could to try to go
6 through and put the different sections of the agreement
7 together.

8 But, as Mr. Benedict said, which was what I was
9 thinking in terms of, at the very minimum, there's a
10 factual dispute on whether there is a default by these
11 defendants on that funding of the escrow.

12 MR. OLSON: Well, Your Honor, I don't think
13 there's a factual issue of the default.

14 THE COURT: How could you not think so?

15 MR. OLSON: And the reason I say that --

16 THE COURT: Yeah.

17 MR. OLSON: -- is, you know, I mean, look at the
18 contract's language on property condition assessments, the
19 section 6.03(c).

20 THE COURT: 6. -- I've got -- hold on.

21 MR. OLSON: I believe there's a page number on the
22 bottom of 39.

23 THE COURT: I don't -- go ahead. Just tell me why
24 you think -- because I looked through, obviously, the
25 sections you were -- which were basically Article 13 and --

1 what's the next section on the default that I looked
2 through? Default -- I've got it all here, Article 14. I
3 don't know what -- I apologize. I don't have in front of
4 me an Article 6 that would say it's not a question of fact
5 on those two sections. So, hold on, Mr. Olson. Let me see
6 if my law clerk -- obviously, we couldn't bring all of the
7 exhibits in here. We did a lot on computer on a
8 spreadsheet, to be honest. Hold on one second.

9 It's under his -- it would be his Appendix.

10 THE LAW CLERK: Yeah.

11 THE COURT: Give us just one second, Mr. Olson.
12 There's so much. I want to make sure I follow what you're
13 saying.

14 MR. OLSON: Your Honor, the relevant agreements
15 are attached as Exhibits 1 and 6 to the Complaint, if that
16 helps.

17 THE COURT: Right. Well, we also have your
18 Appendix. Oh, we have the Complaint. Hold on. We also
19 have your Appendix, you know, that was done afterwards.
20 Where's the Complaint? I apologize -- we have so much
21 stuff in front of us, I -- those are all the Motions. Give
22 me a second. Okay. We don't have the Appendix -- we don't
23 have all the exhibits to the Complaint. So, we don't have
24 -- I just went through the Complaint, Mr. Olson. Not all
25 the exhibits, but we'll find it.

1 In your exhibit list -- hold on. We want the
2 Agreement. Here. The Loan -- no, go back. Yeah. Is it
3 page 143 you said to look at of the Agreement?

4 MR. OLSON: Your Honor, I'm looking at Exhibit 6,
5 page 39.

6 THE COURT: Exhibit 6, page 39. Oh, okay. Let me
7 -- is there a bates number?

8 MR. OLSON: I've got page 39 on the bottom of it.
9 But, no, it's not bates stamped, Your Honor.

10 THE COURT: Okay. I -- hold on. Let me see.
11 That's not it. That's -- it's the -- can I ask? Is it the
12 Liberty Village Multifamily Loan and Security Agreement
13 that starts on page 201 that you -- in your exhibit -- you
14 know your Supplemental Exhibits? Is it -- that the right
15 place to go?

16 MR. OLSON: No.

17 THE COURT: No. Okay.

18 MR. OLSON: It's either Exhibits 1 or 6, Your
19 Honor, attached to the Complaint.

20 THE COURT: We don't have those exhibits from the
21 Complaint. We just --

22 THE LAW CLERK: I have the Appendix.

23 THE COURT: I have the Appendix of Exhibits to the
24 Complaint. That's what I was referring to. So, which one
25 do you think it is? We have all those.

1 Exhibit 1 is Village Square Multifamily Loan and
2 Security Agreement, 143 pages.

3 MR. OLSON: That one will suffice, Your Honor.

4 THE COURT: I assume that -- my impression is the
5 two properties were similar, were almost the same
6 documents. Right? Okay. So, page --

7 MR. OLSON: That is correct, Your Honor.

8 THE COURT: At least when I compared them, Mr.
9 Olson, they looked the same. So, we need to look at page
10 39 of Exhibit -- okay. Let's see if we can find it.

11 MR. OLSON: Or 39 of Exhibit 1.

12 THE COURT: Okay. We're almost there. Thirty-
13 nine, it starts: Covenants, Insurance -- section 9.02.

14 MR. OLSON: No. This would be section 6.03(c).

15 THE COURT: Okay. So go the other way. 6.03 --
16 we'll get back to it. Six -- here's 6.01 or 6.02, 6. --

17 MR. OLSON: Yeah. I mean, the Agreement has page
18 30 on the bottom --

19 THE COURT: 6.03 is the Mortgage Loan
20 Administration Matters Regarding the Property. Is that in
21 section (a)?

22 THE LAW CLERK: No, in section (c), Property.

23 MR. OLSON: No. It's -- it would be Exhibit 1 --

24 THE COURT: Okay. Section (c), Property
25 Conditions Assessment?

1 MR. OLSON: Correct.

2 THE COURT: Okay. All right. We got it. Thank
3 you. I'm --

4 MR. OLSON: Great.

5 THE COURT: -- looking at it right now. Okay.

6 MR. OLSON: And that section says: If in
7 connection with any inspection of the mortgaged
8 property, and there was an inspection in July when
9 occupancy rates were down to about 44 percent, lender
10 determines that the condition of the mortgaged property
11 has deteriorated, ordinary wear and tear expected since
12 the effective date, lender may obtain at borrower's
13 expense a property condition assessment of the
14 mortgaged property. The lender's right to obtain the
15 property condition assessment pursuant to the section
16 6.3(c) shall be in addition to any other rights or
17 remedies available to lender under this Loan Agreement
18 in connection with any such deterioration. Any such
19 inspection or property condition assessment may result
20 in lender requiring additional lender repairs or
21 additional lender replacements as further defined in
22 section 13.02(a) (9) (b).

23 THE COURT: And they did allow -- that's how you
24 got your report, your F3 Report. Correct?

25 MR. OLSON: Correct. And --

1 THE COURT: So they did allow that. Correct?

2 MR. OLSON: Yeah, and the defendants, they
3 objected to paying for it, but they didn't object to us
4 going in and conducting the inspection and that's --

5 THE COURT: Well, it doesn't say who pays for it.
6 So, --

7 MR. OLSON: -- in their Counterclaim.

8 THE COURT: Does it say they paid for it?

9 MR. OLSON: But, Your Honor, then if you go back -
10 -

11 THE COURT: The lender may obtain at borrower's
12 expense. Okay. All right.

13 So, then, you go to the section I talked about as
14 to what the assessment is, correct, of what were repairs?
15 13. -- what I have in front of me, 13.02. Correct? Yes.
16 Section 4, which talks about insufficient funds, because
17 that's what it refers to. Right? 02 --

18 MR. OLSON: 13 -- correct.

19 THE COURT: I've got it front of -- 13.2(a),
20 Accounts, Deposits, and Disbursements.

21 MR. OLSON: Yeah. And, then, subsection 4 deals
22 with --

23 THE COURT: Right. Insufficient funds.

24 MR. OLSON: -- insufficient deposits.

25 THE COURT: Correct.

1 MR. OLSON: And that says, you know, if you don't
2 have enough funds to cover the PCA, you have to deposit the
3 balance within 30 days.

4 THE COURT: Okay.

5 MR. OLSON: And Fannie Mae sent out hat notice.

6 But I also wanted to point out, Your Honor, that
7 the additional deposits are also appropriate under section
8 6.02(b)(3) sub(b) and (c) of the Agreement. They're on
9 pages 26 and 27, or they've got the marking of 35 and 36 on
10 the bottom.

11 THE COURT: Okay. All right.

12 MR. OLSON: But the bottom line is Fannie Mae
13 obtained the PCA, we sent out a Notice of Demand that they
14 be funded or that the reserve accounts be funded by the
15 amounts described in the PCAs. That was on October 17.
16 There's 30 days under the contract to respond, which takes
17 you to November 17 -- I'm sorry. It was October 18 --

18 THE COURT: 19. Okay. I've got the Improvement
19 Plan. It's dated here. I thought F3 was -- is November
20 27th, 2019. You're talking about Exhibit N?

21 MR. OLSON: No, Your Honor. I'm talking about the
22 PCAs. The PCAs were on September 9 through 11 and then on
23 October 18th --

24 THE COURT: Hold on. Hold on. Let me find it.
25 It's in here somewhere. Okay. Oh, and the deficiencies

1 and they came up with the 2.8 million. Okay. Yes. I know
2 what you're talking about.

3 MR. OLSON: Yeah.

4 THE COURT: Okay.

5 MR. OLSON: Then we --

6 THE COURT: So, --

7 MR. OLSON: -- sent out the letter of the -- the
8 Notice of Demand and the response wasn't in compliance with
9 the Notice of Demand, but, rather, it was the Westland
10 Strategic Improvement Plan from November 27. And then --

11 THE COURT: Right. That's Exhibit 9 saying:
12 Here's what think is accurate.

13 MR. OLSON: Yeah.

14 THE COURT: Yeah. No, I've got that.

15 MR. OLSON: And then on December --

16 THE COURT: Okay.

17 MR. OLSON: And they do admit that there are
18 repairs needed. They identify, as I pointed out --

19 THE COURT: Yeah.

20 MR. OLSON: -- previously, 1.2 million versus 1.9
21 to the interior of the unit.

22 THE COURT: No. I think what they're arguing is:
23 We agree there's repairs, but we don't unilaterally -- like
24 you decide we want all these repairs and if we don't do it,
25 we're in default. I think that's the question of what

1 would be considered under the Agreement, what were the
2 repairs, which I just had a receiver fighting over same
3 property, slum landlord, what repairs, you know, somebody
4 had security guards, somebody else said, no, we didn't.
5 You know, I've actually had a lot of experience just from a
6 big receivership I did.

7 So, I think what they're saying is: We understand
8 that you have the right to do that, but it's a question of
9 whether you can't just say, this is what we want, and if
10 you don't give us what we want, then you're in default.

11 MR. OLSON: Well, Your Honor, first we need to
12 point out they didn't give us anything.

13 THE COURT: Well, but they gave you what they had
14 -- were doing, and gave you information to assist you, you
15 as the lender, to understand that they are taking care of
16 the property, what their duties are, they are funding, and
17 doing things --

18 MR. OLSON: But, Your Honor, that --

19 THE COURT: That's how I interpreted it.

20 MR. OLSON: -- is something --

21 THE COURT: If you look at the invoices and
22 everything they did, Mr. Olson, they did a lot.

23 MR. OLSON: Well, and I think --

24 THE COURT: It may not have been enough --

25 MR. OLSON: -- that's what they --

1 THE COURT: -- to Fannie Mae, but they did.

2 MR. OLSON: Yeah. I think that the goal behind
3 the Strategic Plan was is to let us do it our way, we want
4 to do it in a manner --

5 THE COURT: Yeah.

6 MR. OLSON: -- that is inconsistent with --

7 THE COURT: And I get the impression that the goal
8 of Fannie Mae is --

9 MR. OLSON: And --

10 THE COURT: -- let me do it my way. So, I've got
11 one person on one end going: It's going to be our way or
12 the high -- and I'm being nice. I'm being facetious a
13 little bit. Right? And the other people: Let it do our
14 way. And I think that's why we're here in litigation, to
15 be very honest. I don't know why -- no, not I guess. It's
16 very obvious. I get that. Okay.

17 MR. OLSON: Yeah. And, then, I would point out,
18 section 6.02 also requires that the property be maintained.

19 THE COURT: No. I don't think they're disputing
20 that the property shouldn't be maintained. I think they're
21 showing -- they gave us many, many exhibits showing me what
22 they're doing besides their initial 20 million investment.

23 What is this 1 million insurance policy? I just
24 had a note on -- what is that? What is the 1 million that
25 your client got in insurance proceeds? Was that --

1 MR. OLSON: My understanding is that there was
2 some fire damage on some of the units --

3 THE COURT: Oh, fire damage.

4 MR. OLSON: -- and the insurance company delivered
5 to Fannie --

6 THE COURT: Okay.

7 MR. OLSON: -- Mae approximately a million dollars
8 to put into a reserve account for the repair of those
9 units.

10 THE COURT: Okay. So, then did Fannie Mae give it
11 for those repairs, give it to the defendant so that those
12 repairs can be done?

13 MR. OLSON: Fannie Mae's position is it has no
14 obligation to do so under the contract.

15 THE COURT: Oh goodness.

16 MR. OLSON: And I believe --

17 THE COURT: Okay.

18 MR. OLSON: -- the 6th Amendment to the contract in
19 section 17 provides that if there's any kind of a default
20 under the Agreement, we don't have to do it.

21 THE COURT: Okay. That makes no sense.

22 MR. OLSON: But, Your Honor, I'd also point --

23 [Technical issues with audio/visual from 11:26:34 a.m.
24 until 11:26:44 a.m.]

25 THE COURT: Whoop, we lost you. Uh oh.

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[Pause in proceedings]

THE COURT: Where -- are they gone or?

[Pause in proceedings]

[Case continues at 11:29:32 a.m.]

THE COURT: Unfortunately, BlueJeans went down, but we're back. Is Mr. Olson there and Mr. Benedict both?

MR. OLSON: Yes, Your Honor.

THE COURT: Okay. Sorry. BlueJeans just went down on us. I don't know if they have a time limit or what. I'm not sure, for us. Okay.

MR. BENEDICT: John Benedict is present and [indiscernible].

THE COURT: Okay. Thank you very much. Okay.

I am -- here is my ruling on the Plaintiff's Motion for Appointment of Receiver. I feel there is a factual dispute on whether there is a default by defendant in this case, so there is no mandatory statute that says I must report -- appoint a receiver, as I feel there is a dispute, a factual dispute whether there is or is not a default. When I go to the other cases where I can use my discretion, I have to find that the properties would be in danger of being lost or suffer irreparable harm. And I -- based on all the facts that I've reviewed, including the argument, I do not feel that these properties are -- fit the criteria, the factual, to have a receiver appointed

1 under that and I am not going to appoint a receiver. I'm
2 denying it.

3 As far as the Defendants' Countermotion for a
4 Preliminary Injunction Regarding the Notice of the
5 Foreclosure, I applied the 65 standard as well as the NRS -
6 - what's the other one? I always -- 33.010 standard. I do
7 find that, at this point, there is irreparable harm and
8 that standard is met because it is property. I also find
9 that there is a reasonable probability of success on the
10 merits as far as what -- there's a question of fact as to
11 whether there was a default, etcetera. So, I do not want
12 the default to go forward. So, I am granting the
13 Countermotion by plaintiffs for the preliminary injunction
14 under NRS 65, NRS 33.010.

15 Mr. Benedict, will you prepare the Order for the
16 Countermotion for Preliminary Injunction? And you both can
17 decide who wants to do the Order for the Motion -- denying
18 the Motion for Appointment of Receiver.

19 Thank you very much, counsel.

20 MR. OLSON: Your Honor, --

21 THE COURT: And the bond --

22 MR. OLSON: Your Honor, I have a question.

23 THE COURT: Hold on. Let me finish. I've got to
24 get through -- I'm also going to set a bond of \$1,000 for
25 the preliminary injunction.

1 MR. OLSON: Your Honor, I do have a question
2 concerning the preliminary injunction. You stated that you
3 do not want the default or the foreclosure to go forward.
4 I just wanted to clarify that.

5 THE COURT: I don't --

6 MR. OLSON: Fannie Mae --

7 THE COURT: I'm stopping the Notice of Default.
8 Didn't you enter -- didn't your client -- let me look at my
9 notes. Didn't they enter a Notice of Default?

10 MR. OLSON: We did, Your Honor.

11 THE COURT: Okay. I want to stop -- I'm stopping
12 Fannie Mae from going forward with anything based on that
13 Notice of Default.

14 MR. OLSON: Your Honor, what I was going to
15 suggest, and I've heard your ruling, is right now Fannie
16 Mae is at the stage where it can record a Notice of Sale.
17 Fannie Mae has not done so and I was inquiring whether Your
18 Honor would just simply order that Fannie Mae is prohibited
19 at this time from recording the Notice of Sale.

20 THE COURT: Yes. Because that would --

21 MR. OLSON: Thank you.

22 THE COURT: -- flow, Mr. Olson, from my reasoning.
23 And I thank you for helping me with that, with all the
24 things I'm going through.

25 Honestly, counsel, I appreciate everything. I've

1 -- I did my very best to go through it all and I know you
2 all work very hard. And thank you for the pleadings,
3 because my job is hard but it's even harder if you don't
4 give me good pleadings like both of you did. So, I did
5 want to thank both of you. Can I tell you? From the
6 bottom of my heart. It's hard enough when you don't get
7 good pleadings. Thank you. Have a good day.

8 MR. BENEDICT: Thank you, Your Honor, for your
9 time.

10

11 PROCEEDING CONCLUDED AT 11:33 A.M.

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1 **CERTIFICATION**

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4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

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24

25

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

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

Hearing Date: October 13, 2020

Hearing Time: 10:30 a.m.

AND ALL RELATED ACTIONS

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

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

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

8 ***FINDINGS OF FACT***

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

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

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

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

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

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

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

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

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

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

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

4 12. Fannie Mae admits forwarding a Notice of Default and Acceleration of Note, dated
5 December 17, 2019, which sought to hold Westland in default under the loan agreements that were
6 assumed with Fannie Mae for not depositing the additional \$2.85 million Fannie Mae demanded,
7 sought acceleration of the note for each Property, and sought not only the full principal balance but
8 also default interest and costs. Fannie Mae further admits that, due to the asserted default, it holds
9 \$1,000,000.00 in insurance proceeds from work Westland had performed, and paid for, at the
10 Properties. Based solely on that purported default, Fannie Mae has refused to turn those funds over
11 to Westland.

12 13. Fannie Mae admits forwarding a Demand and Notice Pursuant to NRS 107A.270,
13 dated December 17, 2019, which sought to revoke Westland's license to collect rents at the
14 Properties, which is based solely on the purported default arising from not depositing an additional
15 \$2.85 million into reserves.

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

20 ***CONCLUSIONS OF LAW***

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

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

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

8 3. A preliminary injunction is available upon a showing that the party seeking the
9 injunction enjoys a "reasonable probability of success on the merits" and that the non-moving
10 party's "conduct, if allowed to continue, will result in irreparable harm for which compensatory
11 damages is an inadequate remedy." *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444,
12 446 (1986); *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 924 P.2d 716, 719 (1996). The
13 Court "may also weigh the public interest and relative hardships of the parties ..." *Id.* (citing *Pickett*
14 *v. Commanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)).

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

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

25 //

26 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 a) appoint a receiver;

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

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

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

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

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

1 service payment each month;

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

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

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

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

20 k) continue to maintain the Notice of Demand, dated October 18, 2019, which will be
21 held to be retracted and stricken;

22 l) continue to maintain the Notice of Default and Acceleration of Note, dated
23 December 17, 2019, which will be deemed retracted and stricken;


24 m) continue to maintain the Demand and Notice Pursuant to NRS 107A.270, dated
25 December 17, 2019, which will be deemed retracted and stricken;

26 n) otherwise displace Westland from the operation or management of the Property;

1 o) take any adverse action against any Westland entity in relation to other loans,
2 discriminate against or blacklist any Westland entity on new loan or loan refinancing
3 applications, including by placing Westland on “a-check,” adding a fee to any loan
4 quoted or adding an interest rate surcharge to such applications, based on the
5 purported default that arose from failing to deposit the additional \$2.85 million into
6 escrow as requested.

7 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bond amount related to this
8 preliminary injunction shall be \$1,000.00 for Defendants, which Defendants may also meet by
9 depositing \$1000.00 cash with this Court. **IT IS SO ORDERED.**

10 Dated: November __, 2020



The Honorable Kerry Earley
DISTRICT COURT JUDGE
Kerry Earley
District Court Judge

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12 //
13 //

1 Agreed as to Form and Content:
2

3 SNELL & WILMER L.L.P.
4

5 By: **DOES NOT APPROVE**
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7 Bob L. Olson, Esq.
8 David L. Edelblute, Esq.
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12 *Mortgage Association*

13 LAW OFFICES OF JOHN BENEDICT

14 By: **/s/ John Benedict**
15 John Benedict, Esq.
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17 Las Vegas, Nevada 89123

18 *Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village,*
19 *LLC & Westland Village Square LLC*

20 *Respectfully Submitted:*
21

22 Dated: November 16, 2020

23 LAW OFFICES OF JOHN BENEDICT

24 By: **/s/ John Benedict**
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28 *Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village,*
LLC & Westland Village Square LLC

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Federal National Mortgage,
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/20/2020

16 Joseph Went	jgwent@hollandhart.com
17 Sydney Gambia	srgambia@hollandhart.com
18 Brian Dziminski	brian@dziminskilaw.com
19 John Benedict	john@benedictlaw.com
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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/23/2020

John Benedict	2190 E. Pebble Road Suite 260 Las Vegas, NV, 89123
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