

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.

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Case No. _____ Elizabeth A. Brown
Clerk of Supreme Court

PROPOSED INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S

APPENDIX – VOLUME III OF III

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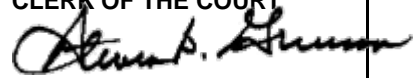
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DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-819412-B

Dept No. 13

**MOTION TO STAY PENDING APPEAL
ON AN ORDER SHORTENING TIME**

AND ALL RELATED ACTIONS

Plaintiff Federal National Mortgage Association (“Fannie Mae”), by and through its counsel, Snell & Wilmer L.L.P., files this Motion to Stay Pending Appeal on an Order Shortening Time. This Motion is made and based on the Memorandum of Points and Authorities set forth herein, the attached declaration of Bob Olson, Esq. pursuant to EDCR 2.26, all papers and pleadings already on file with the Court, and any oral argument that the Court may entertain at the time of hearing.

**DECLARATION OF BOB OLSON, ESQ. IN SUPPORT OF MOTION TO STAY
PENDING APPEAL ON AN ORDER SHORTENING TIME**

Bob L. Olson, Esq., declares as follows:

1. I am an attorney with the law firm of Snell and Wilmer L.L.P., counsel of record for Plaintiff Federal National Mortgage Association (“Fannie Mae”) in the above-entitled action. I have personal knowledge of all matters stated herein and would be able to competently testify to them and make this declaration under the penalty of perjury.

2. I make this declaration in support of Fannie Mae’s Motion to Stay Pending Appeal on an Order Shortening Time.

3. I represented Fannie Mae at the October 13, 2020 hearing on Defendants’ Motion for Preliminary Injunction wherein the primary relief Defendants sought was to enjoin Fannie Mae from continuing foreclosure proceedings against properties that Defendants own in Las Vegas, Nevada.

4. The Court granted Defendants’ Motion for Preliminary Injunction. In doing so, the Court held that there was a material issue of fact regarding whether Defendants defaulted under their Loan Agreements with Fannie Mae and verbally granted Defendants’ Motion for Preliminary Injunction. The Court ruled from the bench that Fannie Mae could not proceed with its pending foreclosure proceedings. The complete transcript from the October 13, 2020 hearing is attached hereto as **Exhibit 1**.

5. Immediately following the Court’s oral ruling, Fannie Mae ceased all activity in connection with the pending foreclosure of Defendants’ Properties, even though a written order had not been entered and Defendants had not posted the \$1,000 bond set by the Court.

6. Defendants’ counsel drafted the form of order and first sent a draft to me on October 26, 2020. On October 30, 2020, I sent Defendants’ counsel a letter setting forth the issues with the proposed form of order, namely that nearly all of the provisions were outside of the scope of the pleadings, had not been argued, and were not determined by the Court. Despite Fannie Mae’s objections, Defendants submitted their unsupported form of order.

7. On November 20, 2020, almost six weeks after the hearing on the Motion for

1 Preliminary Injunction, the Court issued its Order Granting Defendants' Motion for Preliminary
2 Injunction and Denying Application for Appointment of Receiver (the "Order").

3 8. The Order imposed many mandatory obligations upon Fannie Mae that were not
4 requested in the Defendants' moving papers, were not requested or otherwise discussed at the
5 October 13, 2020 hearing, and were not ordered by the Court at the hearing.

6 9. Through their proposed new counsel John Hofsaess,¹ Defendants have, since the
7 entry of the Order, taken efforts to enforce portions of the Order that were not requested in their
8 moving papers, were not requested or otherwise discussed at the October 13, 2020 hearing nor
9 ordered by the Court at the hearing.

10 10. For example, Defendants first sought to enforce the unsupported mandatory
11 provisions in the Order in an email and attached letter sent on November 25, 2020 at 8:36 pm (the
12 night before Thanksgiving) to Nathan Kanute and Michael Woolf² attached hereto as **Exhibit 2**.
13 The email was sent before Defendants posted the \$1,000.00 bond. The letter demands
14 "disbursements of the insurance reserves, which was submitted on September 4, 2020 related to
15 Liberty Village property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115." The letter
16 specifically refers to entry of the Order and quotes the Order's language but does not on its face
17 identify the amount of funds being sought. Instead, the reader has to examine the enclosure to
18 discover that the amount demanded is \$1,111,533.77 – a substantial amount when compared to the
19 *de minimis* \$1,000 bond the Defendants had not yet posted.

20 11. Defendants did not request a mandatory injunction against Grandbridge and Fannie
21 Mae compelling the turnover of \$1,111,533.77 in their moving papers or at the hearing, nor was
22 such a request part of the Court's oral ruling.

23 12. The second example of Defendants' efforts to enforce the unbriefed mandatory
24 provisions in the Order is Mr. Hofsaess' email and letter dated December 2, 2020 that was sent to
25 Mr. Kanute, Joseph Went and Mr. Woolf.³ That email is attached hereto as **Exhibit 3**. That letter
26

27 ¹ Fannie Mae believes that Mr. Hofsaess may be a material witness in this case which limits his ability to act as counsel
for Defendants under NRPC 3.7.

28 ² Michael Woolf is an employee of Grandbridge. Mr. Hofsaess elected to contact Mr. Woolf directly in violation of
NRPC 4.2.

³ This is another example of Mr. Hofsaess' willful failure to comply with NRPC 4.2.

1 demands that Fannie Mae: (a) rescind the Two Notices of Default and Election to Sell that Fannie
2 Mae caused to be recorded; (b) deliver monthly debt service invoices to Defendants; (c) process
3 loan payments inconsistent with the terms of the loan agreement including returning to the
4 “ordinary practice of auto-debiting Westland’s account for the amount of the non-default normal
5 monthly debt service payment each month”; and (d) return over-payments Defendants voluntarily
6 made to Fannie Mae.⁴

7 13. The actions demanded in the December 2, 2020 letter were not requested in
8 Defendants’ moving papers, were not requested at the hearing on the Motion for Preliminary
9 Injunction, and were not verbally ordered by the Court at that hearing.

10 14. There are numerous other provisions in the Order that were not requested by the
11 Defendants in their papers or at the hearing and were not verbally ordered by the Court. All of
12 these mandatory provisions adversely affect Fannie Mae.

13 15. Mr. Hofsaess’ December 2 letter explicitly states Defendants’ intention to seek relief
14 from the Court by December 8, 2020 if Fannie Mae and Grandbridge do not immediately comply
15 with their demands, and with the Order, including by disbursing \$1,111,533.77 to Defendants.

16 16. Because Defendants are likely to seek contempt sanctions or other relief if Fannie
17 Mae does not immediately comply with their demands, Fannie Mae has good cause to request that
18 this Court consider this Motion on an Order Shortening Time.

19 I hereby certify and affirm under penalties of perjury that the information contained within
20 this Declaration is true, complete and accurate to the best of my knowledge.

21 EXECUTED this 8th day of December, 2020.

22
23 s/ Bob L. Olson
24 Bob L. Olson, Esq.
25
26
27

28 ⁴ This is contrary to the “Voluntary Payment Doctrine” as articulated by the Nevada Supreme Court in *Nevada Association Services, Inc. v. Eighth Judicial District Court*, 130 Nev. 949, 338 P.3d 1250 (2014).

ORDER SHORTENING TIME

Good cause appearing therefore, it is hereby ordered that the time for hearing of the foregoing **MOTION TO STAY PENDING APPEAL ON AN ORDER SHORTENING TIME** be, and the same will be heard on the _____ day of _____, 2020, at the hour of ____a.m./p.m., in Department XIII, in the above-mentioned Court.

DISTRICT COURT JUDGE

Respectfully submitted by:
SNELL & WILMER L.L.P.

By: /s/Nathan G. Kanute
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

On November 24,⁵ this Court issued an Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver (the "Order"). In addition to denying Fannie Mae's application for appointment of a receiver and granting the injunctive relief Defendants requested – enjoining the foreclosure sale of the subject properties – the Order also included more than ten additional provisions granting various injunctive relief in Defendants' favor that were neither part of Defendants' motion nor the Court's hearing. Those provisions, added by virtue of Defendants' including them in the proposed order they submitted to the Court, impose a wide-ranging host of affirmative obligations on Fannie Mae, including ordering it to rescind Notices of Default, to withdraw Notices of Demand, and to immediately disburse more than \$1.1 million to Defendants.

⁵ The Order was issued on November 20, 2020 and the Notice of Entry of the Order was filed on November 24, 2020.

1 Fannie Mae now asks the Court for a limited stay of these additional provisions pending
2 appeal. Importantly, Fannie Mae does not by this Motion seek to stay the denial of the appointment
3 of a receiver or the injunction prohibiting its continuing with foreclosure proceedings, *i.e.*, by
4 recording a Notice of Sale and proceeding with a sale.⁶ In other words, Fannie Mae does not
5 presently seek a stay of the gravamen of the relief Defendants requested. Rather, it seeks only a
6 stay of the stunning multitude of affirmative injunctive relief provisions that made their first
7 appearance in this case in the Order, that are impermissibly mandatory, and do not satisfy the
8 applicable standards to impose such extraordinary relief.

9 As discussed below, Fannie Mae's restrained request is sound, reasonable, and supported
10 by the law. The Court should grant the Motion.

11 II. FACTUAL BACKGROUND

12 A. The Loan Documents and Related Agreements⁷

13 1. Village Square Loan

14 On November 2, 2017, Village Square LLC's predecessor-in-interest (Shamrock VII) and
15 Fannie Mae's predecessor-in-interest (SunTrust Bank) executed a Multifamily Loan and Security
16 Agreement ("Village Square Loan Agreement") setting forth the terms and obligations of the
17 parties with respect to a mortgage loan in the amount of \$9,366,00.00. *See* Verified Compl. ¶ 7
18 and its Ex. 1. Shamrock VII also executed a Multifamily Note ("Village Square Note") in favor
19 of SunTrust in the original principal amount of **\$9,366,000.00**, together with interest as detailed
20 therein. *See* Verified Compl. ¶ 8 and its Ex. 2. On November 2, 2017, Shamrock VII also entered
21 into a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and
22 Fixture Filing ("Village Square Deed of Trust")⁸ to secure, among other things, repayment of the
23 indebtedness under the Village Square Note. The Village Square Deed of Trust encumbers
24 property known as the "Village Square Property," which includes an apartment complex known
25 as the "Village Square Apartments." *See* Verified Compl. ¶ 9 and its Ex. 3. The Village Square
26

27 ⁶ Though Fannie Mae is not currently seeking a stay of all provisions of the Order, Fannie Mae in no way waives its
ability to challenge those rulings, including on appeal.

28 ⁷ Fannie Mae has abbreviated the background, as it is not seeking to stay the injunction preventing foreclosure.

⁸ The Village Square Loan Agreement, the Village Square Note, the Village Square Deed of Trust, and the documents
related thereto are hereinafter collectively referred to as the "Village Square Loan Documents."

1 Loan Documents were subsequently assigned by SunTrust to Fannie Mae. Village Square LLC
2 and Alevy Trust subsequently assumed all of the obligations under the Village Square Loan
3 Documents. *See* Verified Compl. ¶ 12 and its Ex. 5.

4 **2. Liberty Village Loan**

5 On November 2, 2017, Liberty Village LLC's predecessor-in-interest (Shamrock VI) and
6 Fannie Mae's predecessor-in-interest (SunTrust) executed a Multifamily Loan and Security
7 Agreement ("Liberty Village Loan Agreement") setting forth the terms and obligations of the
8 parties with respect to a mortgage loan in the amount of **\$29,000,000.00**. The Liberty Village
9 Loan Agreement has been amended six times relating to repairs that were required to restore the
10 Liberty Village Property, as defined below, after two events damaged the property. *See* Verified
11 Compl. ¶ 13 and its Ex. 6. Also on November 2, 2017, Shamrock VI executed a Multifamily Note
12 ("Liberty Village Note") in favor of SunTrust in the original principal amount of \$29,000,000.00,
13 together with interest. *See* Verified Compl. ¶ 14 and its Ex. 7. On the same date, Shamrock VI
14 entered into a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement
15 and Fixture Filing ("Liberty Village Deed of Trust")⁹ to secure, among other things, repayment of
16 the indebtedness under the Liberty Village Note. The Liberty Village Deed of Trust encumbers
17 property known as the "Liberty Village Property," which includes an apartment complex known
18 as the "Liberty Village Apartments" located at 4807 Nellis Oasis Lane, Las Vegas, Nevada 89115.
19 *See* Verified Compl. ¶ 15 and its Ex. 8. The Liberty Village Loan Documents were assigned by
20 SunTrust to Fannie ("Liberty Village Assumption"). Pursuant to the Liberty Village Assumption,
21 Liberty Village LLC and Alevy Trust assumed all of the obligations under the Liberty Village
22 Loan Documents. *See* Verified Compl. ¶ 18 and its Ex. 10.

23 **B. Defendants' Defaults and Fannie Mae's Rights Under the Loan Documents**

24 Following Defendants' assumption of the Loan Documents, Fannie noticed a dramatic drop
25 in the occupancy rates at the Village Square Property and Liberty Village Property (collectively
26 the "Properties"). *See* Supplemental Noakes Declaration in support of Plaintiff's Reply in Support
27

28 ⁹ The Liberty Village Loan Agreement, the Liberty Village Note, the Liberty Village Deed of Trust, and the documents related thereto are hereinafter collectively referred to as the "Liberty Village Loan Documents."

of Application for Appointment of Receiver on Order Shortening Time and Opposition to Counter-Motion for Temporary Restraining Order and/or Preliminary Injunction (“Supplemental Noakes Declaration”), ¶ 5-6 (noting the drop in occupancy from approximately 80% to 45% during the year that Defendants managed the properties). Defendants admit that the occupancy rates at the Properties declined and that Defendants’ affiliates had to inject substantial money into the Properties to cover their monthly debt service obligations due to low occupancy. *See* Defendants’ Opposition to Application for Appointment of Receiver at 10-11. Thus, Fannie Mae was justified in requesting inspection of the Properties in July 2019 pursuant to its right under Section § 6.02(d)¹⁰ of the loan agreements. Supplemental Noakes Declaration, ¶ 8.

Following Fannie Mae’s property inspections, and based on what was observed in July 2019, Fannie Mae determined that property condition assessments (“PCAs”)¹¹ were necessary to determine the extent of the Properties’ deterioration. Fannie Mae requested access to the Properties to perform the PCAs, which Defendants granted to Fannie Mae and its expert, f3, Inc. (“f3”), as evidenced by the PCAs dated September 9-11, 2019 (the “PCAs”). *See* Verified Compl. Ex. 11. The PCAs established the need for immediate repairs totaling \$2,845,980,¹² many of which

¹⁰ Section 6.02 of the Loan Agreements provide:

d) Property Inspections.

Borrower shall:

- (1) permit Lender, its agents, representatives, and designees to enter upon and inspect the Mortgaged Property (including in connection with any Preplacement or Repair, or to conduct any Environmental Inspection pursuant to the Environmental Indemnity Agreement), and shall cooperate and provide access to all areas of the Mortgage Property (subject to the rights of tenants under the Leases);

See Verified Compl., Exs. 1 and 6, § 6.02(d).

¹¹ PCAs are provided for in section 6.03(c) of the Loan Agreements which provide:

(c) Property Condition Assessment.

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

(emphasis added). *See* Verified Compl., Exs. 1 and 6, § 6.03(c).

¹² (\$1,092,835 for Village Square and \$1,753,145 for Liberty Village),

involved issues of life and safety. *Id.* at 8 (both reports).

Due to the substantial repairs needed to preserve the property, the cost of making those repairs, and the fact that the repair escrow accounts held only \$106,217 (Village Square) and \$246,047 (Liberty Village) respectively to cover the cost, Fannie Mae delivered the PCAs to Defendant, together with an October 18, 2019 Notice of Demand for each property, outlining Defendants' obligations to make the repairs and to deposit a total of \$2,845,980 (\$1,092,835 for Village Square and \$1,753,145 for Liberty Village) into certain repair and replacement accounts within the thirty (30) days required by the Loan Agreements.¹³ *See* Verified Compl., Ex. 12. The Notice of Demand also advised that the Monthly Replacement Reserve Deposit for Liberty Village was being increased by \$8,160 per month to \$26,760 per month commencing on December 1, 2019 and the Monthly Replacement Reserve Deposit for Village Square was being increased by \$1,397.42 per month to \$11,656.50 per month commencing on December 1, 2019. *Id.* Defendants' deadline to make efforts to complete the repairs and to deposit the funds in the respective accounts was November 17, 2019. Verified Compl., Exs. 1 & 6, § 13.02(a)(4) (providing thirty days' written notice before default).

Defendants failed to meet their obligations under the Loan Documents by failing to make adequate repairs and refusing to fund the repair and replacement accounts. Instead of making the required repairs and payments, Defendants attempted to unilaterally modify their obligations by

¹³ Section 13.02(a)(4) of the Loan Agreements provide:

(4) Insufficient Funds.

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

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

1 replacing the requirement that they pay into the Reserve Accounts approximately \$2.845 million
2 with merely submitting a strategic improvement plan – essentially, a proposal for making repairs.
3 *See* Counterclaim, Ex. N. However, in doing so, Defendants admitted that the properties needed
4 repairs of at least \$1,218,125.12, further supporting Fannie Mae’s demands for repairs and funds.
5 *Id.*

6 Defendants still have not funded the Reserve Accounts pursuant to the October 18, 2019
7 Notice of Demand. Pursuant to Section 14.01 of the Village Square Agreement and the Liberty
8 Village Agreement (collectively, the “Loan Agreements”), the following events constitute events
9 of default:

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

13 -and-

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

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

19 To be clear, Defendants have never attempted to fund the repair or replacement accounts
20 pursuant to their obligations under the Loan Documents. Additionally, Defendants have refused to
21 permit Fannie Mae to inspect the properties to confirm the repairs they allege they made to the
22 Properties, which are central to determining the condition of Properties and Fannie Mae’s interests.
23 Defendants’ refusal to permit Fannie Mae to inspect the Properties left Fannie Mae with no choice
24 but to initiate foreclosure proceedings against the Properties and this action against Defendants.

25 Defendant Westland Liberty Village is now trying to force Fannie Mae to deliver to it the
26 sum of \$1,111,533.77 to reimburse it for repairs that were made to fire-damaged apartment units
27 even though it is in monetary breach of the Loan Agreements by failing to fund the required \$2.845
28 million into the various reserve accounts. But Defendants’ monetary defaults permit Fannie Mae

1 to withhold any disbursements from the certain collateral accounts, including the Restoration
2 Reserve Account. Section 14.02(b) of the Liberty Village Loan Agreement states, “[i]f an Event of
3 Default has occurred and is continuing, Borrower shall immediately lose all of its rights to receive
4 disbursements from . . . any Collateral Accounts,” which includes the Liberty Village Restoration
5 Reserve Account per Section 17.03(a)(1) therein. *See* Verified Compl., Exs. 1 and 6, §§ 14.02(b)
6 and 17.03(a)(1). Section 17.03(a)(1) further states that Plaintiff is not “obligated to disburse funds
7 from the Restoration Reserve Account if an Event of Default has occurred and is continuing. *Id.*
8 Given that Events of Default have occurred and are continuing, Defendants are not entitled to
9 disbursement of any funds that are or were in the Restoration Reserve Account. *See* Order at 8,
10 ¶ (5)(j).

11 C. Procedural History

12 1. Fannie Mae Applies for the Appointment of a Receiver.

13 On August 12, 2020, Fannie Mae filed its Application for Appointment of Receiver
14 (“Application”) seeking a receiver over the Properties based on Defendants’ default. Fannie Mae
15 asserted that unless a receiver is appointed, the Village Square Property and Liberty Village may
16 continue to suffer significant damage and, due to Defendants’ refusal to fund the Reserve Accounts
17 to ensure that repairs were made to the Properties and a source of funds was available to pay for
18 those repairs, the Properties (and Fannie Mae’s interest) are at risk. Fannie Mae is in imminent
19 danger of suffering irreparable injury from the diminution in the value of the Properties.

20 2. Defendants Oppose and Countermove for Injunctive Relief.

21 On August 31, 2020, Defendants opposed Fannie Mae’s Application and filed a Counter-
22 Motion for Temporary Restraining Order and/or Preliminary Injunction (“Countermotion”)
23 primarily seeking to prevent Fannie Mae from proceeding with its foreclosures of the Properties.
24 Specifically, Defendants requested

25 “that this Honorable Court GRANT its Motion for Temporary Restraining Order
26 and Preliminary Injunction *preventing and enjoining Plaintiff from conducting*
27 *any foreclosure proceedings, foreclosure sale, or appointing a receiver related to*
28 *the Properties pending a determination of the rights and obligations of the parties*
pursuant to the Loan Agreements.”

1 **3. The Court Denies Fannie Mae's Application and Enjoins the Sale.**

2 The Court held a hearing on the Application and Countermotion on October 13, 2020 and
3 issued three rulings: (1) denying Fannie Mae's Application; (2) granting Defendants'
4 Countermotion for a preliminary injunction to enjoin the sale; and (3) ordering Defendants to post
5 a \$1,000 bond for the preliminary injunction.¹⁴ The Court's order begins on page 49, line 14 of the
6 enclosed hearing transcript and continues for a single page:

7 "Here is my ruling on the Plaintiff's Motion for Appointment of
8 Receiver. I feel there is a ***factual dispute*** on whether there is a default
9 by defendant [sic] in this case, so there is no mandatory statute that
10 says I must report -- appoint a receiver, as I feel ***there is a dispute, a***
11 ***factual dispute whether there is or is not a default***. When I go to the
12 other cases where I can use my discretion, I have to find that the
13 properties would be in danger of being lost or suffer irreparable
14 harm. And I -- based on all the facts that I've reviewed, including the
15 argument, I do not feel that these properties are -- fit the criteria, the
16 factual, to have a receiver appointed under that and I am not going to
17 appoint a receiver. I'm denying it.

18 As far as the Defendants' Countermotion for a Preliminary
19 Injunction Regarding the Notice of the Foreclosure, I applied the 65
20 standard as well as the NRS -- what's the other one? I always --
21 33.010 standard. I do find that, at this point, ***there is irreparable***
22 ***harm*** and ***that standard is met because it is property***. I also find that
23 there is a reasonable probability of success on the merits as far as
24 what -- ***there's a question of fact*** as to whether there was a default,
25 etcetera. So, I do not want the default to go forward. So, I am granting
26 the Countermotion by plaintiffs for the preliminary injunction under
27 NRS 65, NRS 33.010." (emphases added).¹⁵

28 Upon Fannie Mae's counsel's request for clarification regarding the scope of the preliminary
injunction, the Court agreed that its order granting the preliminary injunction would simply prohibit
Fannie Mae from recording a Notice of Sale after Fannie Mae had already filed its two Notices of
Default and Election to Sell against Defendants' properties:

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

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

¹⁴ See Hearing Transcript, 50:1-2, 50:12-14, and 50:23-25, attached as **Exhibit 1**.

¹⁵ Ex. 1, 49:14-50:14.

1 THE COURT: Yes. Because that would --

2 MR. OLSON: Thank you.

3 THE COURT: -- flow, Mr. Olson, from my reasoning. And I thank
4 you for helping me with that, with all the things I'm going
5 through."¹⁶

6 The Court made clear that it intended to purposefully limit its ruling to denying the
7 appointment of a receiver and granting an injunction to enjoin Fannie Mae from recording a Notice
8 of Sale and proceeding with foreclosure. The Court declined to make factual findings or legal
9 conclusions at this stage in litigation when there was a factual dispute on the record. The Court
10 also ordered Defendants' counsel to prepare the order granting the Countermotion and instructed
11 the parties to work together on the order denying the Application.¹⁷

12 **4. Despite the Limited Scope of the Court's Ruling at the Hearing, It Enters**
13 **Defendants' Form of Order, Which Expansively Granted Relief Not Sought in**
14 **their Motion nor Addressed at the Hearing.**

15 Despite the limited nature of the Court's ruling, Defendants' counsel drafted a ten-page
16 proposed order ("Proposed Order")¹⁸ that included findings of fact, conclusions of law, and a list
17 of "enjoined activities" that vastly exceeded the relief Defendants requested in the Countermotion,
18 discussed at the hearing, and the limited ruling the Court announced. Though Fannie Mae objected
19 to Defendants' Proposed Order by emailing a letter detailing the Proposed Order's overreaching
20 ruling in an attempt to prevent additional and unnecessary motion practice, and to follow the
21 Court's directive to work together on the order,¹⁹ as well as providing Defendants with an
22 appropriately drafted order of its own, Defendants lodged the Proposed Order with the Court for
23 signature on November 16, which the Court adopted without alteration.

24 In addition to the ruling the Court announced at the hearing, denying the appointment of a
25 receiver and granting Defendants' request to enjoin the foreclosure sale, the written order also
26 included a long list of injunctive relief – most of which impose affirmative burdens on Fannie Mae
27 that Defendants never requested. Specifically, the Order directed Fannie Mae to affirmatively

28 ¹⁶ *Id.* at 51:11-24.

¹⁷ *Id.* at 50:15-18.

¹⁸ The Proposed Order is attached as **Exhibit 4**.

¹⁹ The Objection Letter and email forwarding the Objection Letter are attached as **Exhibit 5**.

1 “remove from title” of the Properties the Notices of Default and Election to Sell that had been
2 recorded on July 8, 2020. Further, the Order provided the following list of *fourteen* enjoined
3 activities *that were not requested in Defendants’ moving papers*:

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

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

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

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

18 f) fail to process loan payments consistent with the terms of the loan agreement,
19 including that Fannie Mae, or its servicer, will return to the ordinary practice of auto-
20 debiting Westland’s account for the amount of the non-default normal monthly debt
service payment each month;

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

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

27 i) continue to improperly maintain the funds designated to be held in the interest
28 bearing Replacement Reserve Account for each of the Properties in the non-interest
bearing Repair Reserve Account for each of the Properties, to restore any balance

1 that has already been transferred, and to credit the Replacement Reserve Account
2 for the interest that Westland would have earned;

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

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

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

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

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

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

19 The Court ordered Defendants to post a bond in the *de minimis* sum of \$1,000.00 as security. The
20 Court issued the Order on November 20 and Notice of Entry of the Order was filed November 24.

21 On the evening of November 25, 2020, before Defendants posted their bond, their in-house
22 counsel (who is seeking permission to appear as counsel in this case) sent a demand to Fannie Mae
23 and Grandbridge demanding disbursement of more than \$1.1 million in insurance reserves related
24 to the Liberty Village property held in the Restoration Reserve Account, citing the Order’s direction
25 that Fannie Mae and Grandbridge may not “fail to disburse or turn over to Westland any funds
26 currently held or initially held in the Restoration Reserve Account.”

27 Fannie Mae filed a timely Notice of Appeal on November 30, 2020. Defendants posted
28 their \$1,000 bond on December 1, 2020. The next day, on December 2, Defendants sent a second
letter, demanding that Fannie Mae: (a) remove the Two Notices of Default and Election to Sell that
Fannie Mae caused to be recorded; (b) deliver monthly debt service invoices to Defendants; (c)
process loan payments in consistent with the terms of the loan agreement including returning to the
“ordinary practice of auto-debiting Westland’s account for the amount of the non-default normal

monthly debt service payment each month;” and (d) return over-payments Defendants voluntarily made to Fannie Mae. Fannie Mae now seeks a limited stay of the Court’s Order.

III. LEGAL ARGUMENT

A. Fannie Mae Seeks a Stay of the Additional Injunction Provisions of the Court’s Order, Which Are Mandatory and as Such Justify a Stay Pending Appeal.

1. Fannie Seeks a Limited Stay of the Court’s Order, Which Does Not Include a Stay of the Primary Relief Defendants Sought by their Countermotion.

As Fannie Mae noted above, it does not currently seek a stay of either (1) the Court’s denial of the application to appoint a receiver; or (2) the Court’s enjoining further foreclosure proceedings, including recording a Notice of Sale as to the Properties.²⁰ Notably, this was precisely the relief Defendants sought by their Opposition and Countermotion:

“Defendant respectfully requests that this Honorable Court GRANT its Motion for Temporary Restraining Order and Preliminary Injunction *preventing and enjoining Plaintiff from conducting any foreclosure proceedings, foreclosure sale, or appointing a receiver related to the Properties* pending a determination of the rights and obligations of the parties pursuant to the Loan Agreements.”²¹

Rather, Fannie Mae seeks only a stay of the expansive list of “enjoined activities”²² that far exceeded what Defendants sought by their Countermotion.

2. The Injunctive Relief Fannie Seeks to Stay Is Mandatory and Disfavored.

A preliminary injunction can take two forms – prohibitory or mandatory. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009). A prohibitory injunction – the most common type – prohibits a party from taking action and “merely freezes the positions of the parties until the court can hear the case on the merits.” *Heckler v. Lopez*, 463 U.S. 1328, 1333 (1983). The purpose is to preserve the status quo. *N.D. ex rel. Parents v. Haw. Dep’t of Educ.*, 600 F.3d 1104, 1112 n.6 (9th Cir. 2010). In contrast, a mandatory injunction

²⁰ By electing not to seek a stay of those two provisions, Fannie Mae does not waive its ability to challenge those rulings on appeal.

²¹ Countermotion, 30:2-6 (emphasis added). It is Fannie Mae’s position that the Order violates Due Process, as it granted expansive relief though it was not included in Defendants’ Countermotion or addressed at the hearing. *See Schwartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977) (recognizing that an “elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

²² Fannie Mae seeks a stay of paragraphs (2), (3), and (4) on page 7 of the Order, and paragraphs (5)(b)-(o).

1 is one that goes beyond maintaining the status quo and “orders a responsible party to take action.”
2 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015); *Dodge Bros. v. Gen. Petroleum Corp.*
3 *of Nevada*, 54 Nev. 245, 10 P.2d 341, 342 (1932) (recognizing that a “mandatory injunction” is one
4 that requires an individual to do a particular act, such as compel performance of a contract);
5 *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996) (holding that a mandatory injunction “orders a
6 responsible party to ‘take action.’”). Indeed, restoring, rather than merely maintaining the status
7 quo, requires a mandatory injunction. *Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Mem’l*
8 *Gardens, Inc.*, 88 Nev. 1, 4, 492 P.2d 123, 124 (1972).

9 For example, in *Marlyn Nutraceuticals*, the district court had ordered the defendant to stop
10 manufacturing and distributing the challenged product and to recall its already-distributed products.
11 *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879. The Ninth Circuit Court of Appeals vacated the recall
12 aspect of the order, ruling that enjoining the defendant to recall products it had already distributed
13 was mandatory and not prohibitory because it “went beyond the status quo pending litigation” and
14 instead required the defendant to take an “affirmative step.” *Id.*; see also, e.g., *Garcia*, 786 F.3d at
15 740 (requiring Google to take the affirmative action to remove and keep removing a particular
16 video whenever it was uploaded was a mandatory injunction); *State v. Ducker*, 35 Nev. 214, 127
17 P. 990, 994 (1912) (holding that requiring the delivery of water in the possession and under the
18 control of defendants to the plaintiffs was a mandatory injunction); *Elliott v. Denton & Denton*, 109
19 Nev. 979, 982, 860 P.2d 725, 727 (1993) (ordering the return of an impounded car was a mandatory
20 injunction).

21 Mandatory injunctions are “particularly disfavored.” *Garcia*, 786 F.3d at 740. Mandatory
22 injunctive relief has a higher burden and should be denied “unless the *facts and law clearly favor*
23 *the moving party.*” *Id.* (emphasis added); *Leonard v. Stoebling*, 102 Nev. 543, 551, 728 P.2d 1358,
24 1363 (1986) (A court should exercise restraint and caution in providing this type of equitable
25 relief.”). Mandatory injunctions are permissible only when “extreme or very serious damage will
26 result” that is not “capable of compensation in damages,” and the merits of the case are not
27 “doubtful.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (citing *Marlyn*
28 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)).

For reasons addressed later in the Motion, the Court gravely erred in issuing such an expansive and sweeping mandatory injunction when such an injunction was not requested and without addressing, let alone satisfying this exacting standard. With respect to Fannie Mae's request for a stay of the mandatory injunction pending appeal, the fact that the injunction is mandatory by itself supports the granting of a stay. The aspects of the Order Fannie Mae seeks to stay are unquestionably mandatory. These provisions effectively: (1) undo Defendants' default by requiring that Fannie Mae rescind the Notices of Demand and Notices of Default even though the Court found that there was a material issue of fact regarding whether the Defendants were in default; (2) require Fannie Mae to disburse more than \$1.1 million in funds upon a finding that Defendants "may" ultimately be able to show a breach of contract, effectively awarding the equivalent of a pre-judgment writ of attachment without any compliance with NRS Chapter 31;²³ (3) undo and reverse Fannie Mae's foreclosure activity rather than simply halt them as the Defendants' requested and the Court verbally ordered; and (4) force Fannie Mae to make undisclosed financial accommodations to Defendants' affiliates, who are not parties to this action and unidentified, by requiring Fannie Mae to treat them favorably with respect to future lending activity not related to the present case. In sum, the injunction provisions purport to compel specific performance of a wish list Defendants will almost certainly attempt to enforce with the Court's contempt powers. None of these activities merely maintains the status quo but instead direct a broad array of affirmative activity.

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²³ The Nevada Supreme Court has held that it is improper to try to surreptitiously obtain the equivalent of a pre-judgment writ of attachment by encumbering property with a *Notice of Lis Pendens* because it is a violation of due process. *See Levinson v. Eighth Judicial Dist. Court*, 109 Nev. 747, 752 857 P.3d 18, 21 (1993). Additionally, multiple courts have held it improper to issue an injunction that is the equivalent of a pre-judgment attachment because that remedy is available at law and the requirement of no adequate remedy at law can be satisfied. *See Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, 603 S.E.2d 905, 907-08 (S.C. 2004) (existence of statutory remedy of attachment defeats request for injunction); *Polish American Resource Corp. v. Byrczek*, 704 N.Y.S.2d 249, 250 (N.Y. 2000) ("an attachment, not an injunction, is the appropriate remedy for securing a potential judgment with property that is not the subject of the action"); *Franz v. Calaco Development Corp.*, 256 Ill.Dec. 413, 419-20, 322 Ill.App.3d 941, 947-48, 51 N.E.2d 1250, 1256-57 (2001) (law does not provide for equitable attachment and "taking away the control of property by means of an injunction for the purpose of anticipating a judgment is abhorrent to the principles of equitable jurisdiction" thus injunction relief that resembles a prejudgment writ of attachment is inappropriate). Indeed, here, Defendants not only seek to attach these funds, but execute, effecting a prejudgment execution, which is not a legal remedy.

1 **3. Fannie Mae Is Entitled to a Stay of these Mandatory Injunction Provisions**
2 **Pending Appeal.**

3 Consistent with the disfavor ascribed to mandatory injunctions, courts widely endorse
4 staying the burdens of mandatory injunctive relief pending appeal. The Nevada Supreme Court has
5 explicitly recognized Nevada's repeated recognition of the distinction between prohibitory (or
6 preventive) injunctive relief and mandatory injunctive relief, holding that a stay is appropriate when
7 appealing a mandatory injunction. *Kress v. Corey*, 65 Nev. 1, 20, 189 P.2d 352, 361 (1948). This
8 is consistent with longstanding jurisprudence granting automatic stays, stays as of right, or a
9 presumption favoring stays pending for challenges to mandatory injunctions. *See, e.g., Agric. Labor*
10 *Bd. v. Superior Court*, 196 Cal. Rptr. 920, 922 (Cal. Ct. App. 1983) (recognizing that mandatory
11 injunctions are automatically stayed on appeal, while prohibitory injunctions are not); *Ironridge*
12 *Glob. IV, Ltd. v. ScripsAmerica, Inc.*, 189 Cal. Rptr. 3d 583, 587 (2015) (holding that where an
13 injunction includes both mandatory and prohibitory relief, the mandatory injunction relief is stayed
14 pending appeal); *Tomasso Bros. v. Oct. Twenty-Four, Inc.*, 646 A.2d 133, 141 (Conn. 1994)
15 (holding that there is a presumption in favor of granting an application to stay mandatory
16 injunctions pending appeal and "reflects the burden imposed by a mandatory injunctive order");
17 *State v. Town of Haverstraw*, 641 N.Y.S.2d 879, 881 (N.Y. 1996) (same). Because Fannie Mae
18 requests to stay provisions of mandatory injunctive relief, the Court should grant a stay.

19 **B. NRAP 8 Equally Supports Fannie Mae's Requested Stay Pending Appeal.**

20 If the Court does not agree that Fannie Mae is entitled to a stay by virtue of the mandatory
21 nature of the injunctive relief, it should grant the stay nonetheless because Fannie Mae alternatively
22 satisfies the standard for stay relief under NRAP 8. In considering whether to grant a stay, the Court
23 should consider: (1) whether the object of the appeal will be defeated if the stay or injunction is
24 denied; (2) whether appellant will suffer irreparable or serious injury if the stay or injunction is
25 denied; (3) whether Respondents will suffer irreparable or serious injury if the stay or injunction is
26 granted; and (4) whether appellant is likely to prevail on the merits in the appeal. NRAP 8(c). This
27 Court has held that not all factors need be weighed equally and, depending on the type of appeal,
28 the first factor may be especially strong and counterbalance other factors. *State v. Robles-Nieves*,

129 Nev. 537, 542 (2013) (citing *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251 (2004)).

1. The Object of the Appeal Will Be Substantially Defeated Absent a Stay.

As noted above, Fannie Mae seeks a stay of the injunctive provisions of the Court's Order that go beyond enjoining foreclosure and require Fannie Mae to perform a host of affirmative activity. Those actions include rescinding Notices of Default and Election to Sell, disbursing more than \$1.1 million in funds from the Restoration Reserve Account to Defendants, abandoning Notices of Demand and Notices of Default and extending credit to Defendants' undisclosed affiliates. Absent a stay, Fannie Mae's appeal with respect to these injunction provisions will be substantially defeated. Fannie Mae will have rescinded Notices of Default and Election to Sell and will be forced to start the process anew. Should Fannie Mae prevail on appeal, a receiver would be appointed, and Fannie Mae could proceed with foreclosure. But the current form of injunction would undermine such a result on appeal. Similarly, if Fannie Mae is forced to disburse \$1.1 million to Defendants despite their default, and that aspect of the injunction is reversed on appeal, any victory would be hollow if it cannot recover the funds. Likewise, prevailing on appeal would be severely undermined if, in the meantime, Fannie Mae was forced to extend millions in credit to Defendants' undisclosed affiliates. This factor favors Fannie Mae.

2. Fannie Mae Will Suffer Irreparable or Serious Injury Absent a Stay.

For similar reasons, Fannie Mae will be seriously injured in numerous respects absent a stay. For example, (h) and (j) require Fannie Mae to disburse to Westland the more than \$1.1 million held in the Restoration Reserve Account on just ten days' notice. If Fannie Mae prevails on appeal and ultimately is entitled to those funds,²⁴ it is unlikely to recover them in light of Defendants' financial position and the fact that the injunction is secured by a grossly inadequate \$1,000 bond. It also ignores the recoupment rights²⁵ of Fannie Mae. Fannie Mae alleges Defendants are in monetary default and the amounts due under the Loan Documents, roughly \$40 million in principal, are accelerated. If the Court were ultimately to determine that Defendants

²⁴ This ruling will likely be reversed because it is the equivalent of a pre-judgment writ of attachment and Defendants have made no effort to comply with NRS Chapter 31. *See also* n.20, *supra*.

²⁵ Recoupment, which must arise out of the same transaction and involve the same parties, is defined as "[a]right of the defendant to have a deduction from the amount of the plaintiff's damages, for the reasons that plaintiff has not complied with the cross-obligations or independent covenants arising under the same contract." *Schettler v. RalRon Capital Corp.*, 128 Nev. 209, 275 P.3d 933 (2012) (quoting *Black's Law Dictionary*).

1 are in default, but not stay the roughly \$1.1 million disbursement under the Order, that amount
2 would be unavailable for Fannie Mae to recoup against the amounts owed.

3 Section (l) requires that Fannie Mae rescind the Notice of Default and Acceleration of Note
4 dated December 17, 2019. In other words, in addition to not moving forward with the foreclosure
5 sale, the Order also requires the rescission of the Notice of Default.²⁶ This would force Fannie Mae
6 to start foreclosure proceedings over, and a delay of months, even if it fully prevails in this case. It
7 was an abuse of discretion to include this language in the Order because the Court only found the
8 existence of a material issue of fact as to whether Defendants were in default and this language
9 would require Fannie Mae to start over if it prevails in this case.

10 Section (o) requires that Fannie Mae treat Defendants *and related entities* in specific ways,
11 including what fees or interest Fannie Mae can charge *in relation to new and other loans*, i.e., not
12 the loans at issue in this case. In addition to what a stunning overreach that piece of relief is, Fannie
13 Mae faces serious and irreparable injury as a result of being forced to enter future contracts with
14 Defendants and related entities under terms mandated in the Order. The Order's directing how
15 Fannie Mae may treat Westland's undisclosed affiliates with respect to other loans is deeply
16 problematic. The Court purports to constrain Fannie Mae's *future, unrelated* lending activity with
17 respect to affiliates of Defendants. Fannie Mae should not be under such court-ordered restrictions
18 in how it decides to engage in future lending activity. If the future or other loans are similar to this
19 case, the Order requires Fannie Mae to lend Defendants millions of dollars on favorable terms and
20 enter additional multi-year loan agreements with them that could lead to future litigation and loss
21 in the event of default. In addition to the serious and irreparable harm Fannie Mae faces under this
22 injunction, it also faces contempt sanctions based on its treatment of future lending opportunities
23 with Defendants, all of which should be independent business decisions.

24 Sections (k) through (m) require Fannie Mae to retract and strike Notices of Demand to
25 pretend that Fannie Mae never claimed a default even though the Court only found that there was
26 a material issue of fact regarding whether these defaults exist. Fannie Mae will be harmed by being
27

28 ²⁶ Such relief is not only without a basis, it is highly unusual as a preliminary injunction stopping a foreclosure almost never also requires a rescission of the foreclosure notices recorded or issued to date.

1 forced to initiate default proceedings anew if it prevails on appeal.

2 Section (g) requires Fannie Mae to disgorge payments Defendants voluntarily paid to
3 Fannie Mae because Defendants elected to pay more than the amount required by the Loan
4 Agreements following their default. This violates the Voluntary Payment Doctrine articulated by
5 the Nevada Supreme Court in *Nevada Ass'n Services v. Eighth Judicial Dist. Court.*, 130 Nev. 949,
6 338 P.3d 1250 (2014).

7 Sections (e), (f), (i), and (j) affirmatively require Fannie Mae to administer the loan in
8 particular ways. By purporting to issue an injunction to compel performance of certain actions,
9 such as responding to Reserve Disbursement Requests within ten days which thus, it impermissibly
10 makes an overwhelming amount of activity that would at best be redressable by contract remedies
11 instead subject to contempt proceedings.

12 **3. Defendants Will Not Suffer Irreparable or Serious Injury Absent a Stay,**
13 **Particularly as Fannie Mae Does Not Seek to Stay the Enjoining of the**
14 **Foreclosure.**

15 Defendants will not be seriously injured by a stay, particularly because Fannie Mae does
16 not seek to proceed with the foreclosure sale or the appointment of a receiver pending its appeal.²⁷
17 In other words, while Fannie Mae will seek reversal of the primary relief Defendants requested in
18 their Opposition and Countermotion, it is not asking that the Court stay those activities at this time.
19 As such, Defendants will not face either threat during the pendency of the appeal. As Defendants
20 did not move for any other relief, they can hardly claim that a stay of the previously undisclosed,
21 eleventh hour injunction provisions would cause irreparable injury.

22 **4. Fannie Mae Is Likely to Succeed on the Merits, or At Least Has Raised a**
23 **Substantial and Difficult Question on Appeal.**

24 Fannie Mae satisfies the likelihood of success on the merits factor because it has
25 demonstrated that denial of a stay will moot the appeal and, as such, the final factor this factor only
26 requires a showing that the appeal is not frivolous or made for dilatory purposes. *See Mikohn*
27 *Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004). Moreover, the appeal raises a substantial and
28 difficult question, which by itself can satisfy this factor. Lastly, Fannie Mae has strong reasons why
it is in fact likely to be successful on appeal.

²⁷ The "quiet enjoyment" provision is addressed separately below.

1 a. *Because Denying a Stay Would Moot the Appeal, Fannie Mae Need Only*
2 *Show that Its Appeal Is Not Frivolous or Made for Dilatory Purposes.*

3 The Nevada Supreme Court has held that, in circumstances where denying a stay would
4 substantially defeat the appeal, the last stay factor (likelihood of success on the merits) is “far less
5 significant” than the first stay factor (whether the object of the appeal will be defeated if the stay is
6 denied). *See State v. Robles-Nieves*, 129 Nev. 537, 546 (2013) (finding that the first stay factor
7 took on added significance because denying a stay would effectively eliminate the right to appeal
8 afforded by the statute); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004)
9 (finding that the last stay factor was less significant where the object of an appeal would be defeated
10 if a stay was denied). In these circumstances, the last stay factor “will counterbalance the first
11 factor only when the appeal appears frivolous or the stay [is] sought purely for dilatory purposes.”
12 *Id.* For example, in *Robles-Nieves*, the Court held that the first factor took on an “added significance
13 in the context of an interlocutory appeal from an order granting a suppression motion because
14 denying a stay would effectively eliminate the right to appeal . . .” 129 Nev. at 546. Similarly, in
15 *Mikohn*, the Court held that “[b]ecause the object of an appeal seeking to compel arbitration will
16 be defeated if a stay is denied, and irreparable harm will seldom figure into the analysis, a stay is
17 generally warranted [absent a showing that the appeal is frivolous or made purely for dilatory
18 purposes].” 120 Nev. at 253.

19 Here, where it cannot reasonably be disputed that denial of a stay would substantially moot
20 the appeal, the likelihood of success is of minimal relevance, and only matters to evaluate
21 frivolousness. The Order, as drafted by Defendants, effectively give them an immediate victory on
22 every issue in the case, based on a mere finding that there was a material issue of fact as to
23 Defendants’ default. Should Fannie Mae be required to comply with the many mandatory relief
24 provisions, including by disbursing funds and engaging in unrelated lending activity, success on
25 appeal could not cure that harm, rendering the object of the appeal with respect to these activities
26 moot.

27 b. *Fannie Mae Alternatively Satisfies this Factor Because It Raises Substantial*
28 *Legal Questions.*

Additionally, a stay pending appeal is appropriate when the court has ruled on a “difficult

1 legal question” or “a novel interpretation of law.” *Andrews v. Countrywide Bank NA*, 2015 WL
2 1599662, at *2 (W.D. Wash. Apr. 9, 2015). Even if this Court disagrees with Fannie Mae on the
3 merits, the nature of this dispute and the wide-ranging effect of its Order should warrant a stay
4 pending the appeal. *See, e.g., Andrews*, 2015 WL 1599662, at *2 (W.D. Wash. Apr. 9, 2015); *Gray*
5 *v. Golden Gate Nat. Recreational Area*, 2011 WL 6934433, at *1-2 (N.D. Cal. Dec. 29, 2011). In
6 this vein, courts have recognized that a “rigid application of the success-on-the-merits requirement
7 may make little sense in the context of a motion for an injunction pending appeal, because such an
8 approach would mean that injunctions under Rule 62(c) would issue only if the district court
9 concluded that it was probably incorrect in its valuation of the merits.” *Andrews v. Countrywide*
10 *Bank, NA*, 2015 WL 1599662, at *2 (2013). A “showing that serious legal questions have been
11 raised on appeal will satisfy the likelihood of success on the merits” prong. *Gray*, 2011 WL
12 6934433, at *2.²⁸

13 c. *Fannie Mae Satisfies this Factor Because It Is Likely to Succeed on Appeal.*

14 Even if the Court were to directly consider whether the appeal is likely to be successful,
15 there are strong reasons supporting that Fannie Mae will prevail on appeal. As discussed above, the
16 Court here issued a mandatory injunction, which is disfavored and subject to a higher standard than
17 ordinary injunctive relief without making the requisite findings or satisfying that standard.

18 i. The Provisions of the Injunction Fannie Mae Seeks to Stay Here,
19 which Are Mandatory in Nature, Are Unsupported and Likely to Be
Reversed on Appeal.

20 As discussed above the aspects of the injunction Fannie Mae seeks to stay here are
21 mandatory, and thus are subject to a higher standard. The “already high standard for granting a
22 TRO or preliminary injunction is further heightened when the type of injunction sought is a
23 “mandatory injunction.” *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1156–57 (D. Or.
24 2018) (citing *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)). The burden to support a
25 mandatory injunction is “doubly demanding” and should be denied “*unless the facts and law*
26 *clearly favor* the moving party.” *Garcia*, 786 F.3d at 740 (emphasis added); *Leonard v. Stoebling*,

27
28 ²⁸ In addition to the multitude of problems with the aspects of the Order addressed by this Motion, the challenged provisions also likely violate the Housing and Economic Recovery Act (“HERA”). *See* 12 U.S.C. § 4617.

1 102 Nev. 543, 551, 728 P.2d 1358, 1363 (1986). Mandatory injunctions are permissible only when
2 “extreme or very serious damage will result” that is not “capable of compensation in damages,”
3 and the merits of the case are not “doubtful.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.
4 2017) (citing *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th
5 Cir. 2009)).

6 Here, the Court did not conclude that the facts and the law clearly favored Defendants with
7 respect to the relief it afforded. Indeed, the Court stated:

8 [H]ere is my ruling on the Plaintiff’s Motion for Appointment of Receiver. I feel
9 there is a ***factual dispute*** on whether there is a default by defendant [sic] in this case,
10 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.

11 With respect to Defendants’ request for injunctive relief, the Court held that it “applied the 65
12 standard as well as the NRS ... 33.010 standard” and found that there was the potential for
13 “irreparable harm and that standard is met because it is property.” The Court again stated that there
14 was “a reasonable probability of success on the merits as far as what -- there’s a question of fact as
15 to whether there was a default.” Indeed, even the problematic written order that Defendants
16 prepared and the Court signed concluded only that “there are substantial factual disputes related to
17 whether any default occurred” and that Fannie Mae’s pursuit of foreclosure “***may*** amount to a
18 breach of contract, failure to service the loan in good faith, and ***may*** support the other claims and
19 damages in Westland’s Counterclaim.” Order at 5.

20 The Court at no time made findings necessary to support the array of mandatory injunctive
21 relief it ordered. The Order, particularly the aspects Fannie Mae seeks to stay here, will not
22 withstand scrutiny on appeal.

23 ii. The Provisions of the Injunction Fannie Mae Seeks to Stay Here Do
24 Not Satisfy Even the Prohibitory Injunction Standard and Are Likely
to Be Reversed on Appeal.

25 Even if the Court were to treat these injunction provisions as merely prohibitory, which they
26 are not, the injunction the Court issued did not satisfy the standard. Finding that there are issues of
27 fact as to the parties’ claims does not by any standard support the sweeping mandatory injunctive
28 relief the Court ordered in Defendants’ favor here.

1 A preliminary injunction is available upon a showing that the party seeking the injunction
2 enjoys a “reasonable probability of success on the merits” and that the non-moving party’s
3 “conduct, if allowed to continue, will result in irreparable harm for which compensatory damages
4 is an inadequate remedy.” *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446
5 (1986); *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 924 P.2d 716, 719 (1996). The
6 Court “may also weigh the public interest and relative hardships of the parties ...” *Id.* (citing *Pickett*
7 *v. Comanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)). The ultimate purpose
8 of the preliminary injunction is to preserve the status quo so as to prevent irreparable harm. *Dixon*
9 *v. Thatcher et al.*, 103 Nev. 414, 415, 742 P.2d 1029 (1987). Injunctive relief is extraordinary relief,
10 and the irreparable harm must be articulated in specific terms by the issuing order or be sufficiently
11 apparent elsewhere in the record. *Dep’t of Conservation & Nat. Res., Div. of Water Res. v. Foley*,
12 121 Nev. 77, 80, 109 P.3d 760, 762 (2005)

13 The Court did not rule on each legal element underlying the injunction. Specifically, the
14 Court concluded that Defendants faced irreparable harm if the foreclosure sale was to proceed
15 because of the potential loss of property. Order at 6; Trans. at 50. However, the Court did *not*
16 conclude that Defendants enjoy a reasonable probability of success on the merits with respect to
17 *their* Counterclaim, or that any aspect of the injunction – except for preventing the foreclosure sale
18 – satisfied the irreparable harm prong. Notably, the Court vacillates between claims for which
19 Fannie Mae bears the burden (the appointment of a receiver) and the claims for which Defendants
20 bear the burden (their Counterclaim and injunctive relief).

21 While the Court concluded that there were “questions of fact”²⁹ regarding Defendants’
22 default such that it would not appoint a receiver or allow foreclosure to proceed, it made no findings
23 or conclusions supporting Defendants’ likelihood of success on their Counterclaim, noting only
24 that they “may” be able to demonstrate a breach.” Order at 5. Likewise, the Court did not decide
25 whether the alleged harms to Defendants outweigh the alleged harms to Fannie Mae with respect
26

27 ²⁹ Notably, this was not the correct standard for the Court to apply either with respect to appointing the receiver or
28 determining whether the foreclosure sale should be permitted to proceed, but rather is part of the summary judgment
standard under NRCP 56. However, because Fannie Mae does not seek to stay those aspects of the ruling by this stay
motion, it does not separately address it here.

1 to the non-foreclosure “enjoined activities.”

2 Moreover, while the stated purpose of the preliminary injunction is to maintain the status
3 quo pending litigation, the Order in fact imposed upon Fannie Mae a host of affirmative obligations,
4 none of which are analyzed or supported in the Order. Instead, the Order effectively gives
5 Defendants their very best day in Court after merely concluding that they “may” be able to support
6 their claims.

7 **C. The Court Should Stay the “Quiet Enjoyment” Provision of the Injunction Because It**
8 **Is Impermissibly Vague and Cannot Apply Here.**

9 The Order provides that the “Enjoined Parties may not interfere with Westland’s enjoyment
10 of the Properties pending a final determination of the rights and obligations of the parties pursuant
11 to the Multifamily Loan and Security Agreement entered by and between Lenders and Westland
12 on August 29, 2018.” As a preliminary matter, like the other injunctive provisions Fannie Mae
13 seeks to stay, there was no discussion regarding the covenant of quiet enjoyment in Defendants’
14 moving papers or at the hearing, making its inclusion in the Order wholly improper. This aspect of
15 the injunction is additionally improper on the merits.

16 First, no allegations or evidence in the record shows that Fannie Mae has interfered with
17 Defendants’ enjoyment of the Properties, or threatens to do so. As such, Defendants had no basis
18 to seek and the Court had no basis to issue an injunctive concerning quiet enjoyment. Injunctive
19 relief’s sole purpose is to prevent future harm to the party seeking it. *United States v. W. T. Grant*
20 *Co.*, 345 U.S. 629, 633 (1953) (citing *Swift & Co. v. United States*, 276 U.S. 311, 326 (1928)). A
21 party seeking injunctive relief must establish that it is “likely to suffer future injury.” *City of Los*
22 *Angeles v. Lyons*, 461 U.S. 95, 101, 105 (1983). Defendants have not made any such showing with
23 respect to quiet enjoyment, and thus this aspect of the injunction is without legal basis.

24 Second, the meaning of this provision is entirely unclear. “[B]ecause the violation of an
25 injunction is subject to punishment, an injunction must provide explicit notice of precisely what
26 conduct is outlawed.” *Ojeda-Enriquez v. Warden*, L.C.C., No. 69963, 2017 WL 7915501, at
27 *1 (Nev. App. Dec. 14, 2017). Here, particularly in light of the above, it is entirely unclear what
28 supposed activity the Order is meant to enjoin and fails to put Fannie Mae on notice of the

1 prohibited activity.

2 Third, “quiet enjoyment” does not apply to the parties’ relationship in any event. The
3 covenant of quiet enjoyment generally is an obligation of a landlord, such as Defendants, to their
4 tenants. *See Winchell v. Schiff*, 193 P.3d 946, 952 (2008) (finding that to prove a sufficient issue
5 for breach of the covenant of quiet enjoyment, the tenant need only provide evidence demonstrating
6 constructive eviction); *see also Las Vegas Oriental v. Sabella’s of Nev.*, 97 Nev. 311, 313, 630 P.2d
7 255, 256 (1981) (finding that constructive eviction occurs when, through the actions or inaction of
8 the landlord, the whole or a substantial part of the premises is rendered unfit for occupancy for the
9 purpose for which it was leased).³⁰

10 Finally, if Defendants’ intention in including this provision is to prevent Fannie Mae from
11 inspecting the Properties, it is improper. As noted above, Section 6.02(d) of the Loan Agreements
12 unambiguously entitles Fannie Mae to inspect the Properties and the Court previously indicated
13 that inspection of the Properties is an issue that should be addressed in discovery. No basis supports
14 enjoining a right Fannie Mae explicitly enjoys under the Loan Agreements and available in
15 discovery. Indeed, if the Court believes that the Defendants’ evidence of recent repairs is relevant
16 to their default status, Fannie Mae must be permitted access to the Properties to confirm that repairs
17 were in fact made and ascertain the quality of those repairs. Yet to date, Defendants have refused
18 to cooperate with Fannie Mae’s reasonable—and contractually obligated—request for inspection.
19 If Defendants’ “quiet enjoyment” injunction is designed to thwart Fannie Mae’s ability to inspect
20 the Properties – which is crucial both under the contract and within the current litigation – its
21 purpose is improper and should be stayed pending its reversal on appeal.

22 **D. The Bond Is Grossly Inadequate.**

23 The express purpose of posting a security bond is to protect a party from damages incurred
24 as a result of a wrongful injunction. *Am. Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 591,
25 854 P.2d 868, 870 (1993). Moreover, a defendant’s recovery for damages is generally limited to
26 the amount of the bond. *Tracy v. Capozzi*, 98 Nev. 120, 125, 642 P.2d 591, 594 (1982).

27
28 ³⁰ If Defendants meant by this provision to enjoin the foreclosure, it is entirely duplicative of the provision enjoining
foreclosure.

1 Here, Fannie Mae contends that Defendants are in default on their obligations under the
2 Loan Agreements and were required to cure by, *inter alia*, depositing approximately \$2.845 million
3 into the Repair Escrow Account, and provide an additional amount per month to cover the
4 insufficient funds in the Replacement Reserve Account. In addition to denying Fannie Mae's
5 application for a receiver and preventing it from proceeding with foreclosure, the Order also
6 requires Fannie Mae to disburse more than \$1.1 million to Defendants from the Restoration Reserve
7 Account. Despite Defendants' benefiting by a swing of more than \$3.9 million, the Court ordered
8 them to post only \$1,000 as a bond to secure this injunction.

9 Notably, the Court ordered the \$1,000 at the hearing, before Defendants included the vast,
10 additional injunctive relief in the form of its proposed order. As such, when the Court set the bond
11 amount, it had not considered the additional relief Defendants would seek. Regardless, such a
12 de minimis bond is insufficient as a matter of law to secure the damage to Fannie Mae. Defendants'
13 demand that Fannie Mae immediately disburse more than \$1.1 million is itself obviously
14 disproportionate to the ordered bond. If that ordered disbursement is wrongful, Fannie Mae likely
15 stands to recover a maximum of \$1,000. The disparity between the losses Fannie Mae stands to
16 suffer and the unfair windfall Defendants stand to receive shocks the conscience.

17 The gross insufficiency of the bond amount in light of the obligations at stake in the Order
18 is ample justification for a stay pending appeal, to prevent Fannie Mae from suffering wrongful
19 injunction damages without recourse.

20 IV. CONCLUSION

21 For the foregoing reasons, this Court should grant Fannie Mae's request for a stay pending
22 appeal.

23 Dated: December 8, 2020.

SNELL & WILMER L.L.P.

24 By: /s/Nathan G. Kanute

Nathan G. Kanute, Esq. (NV Bar No. 12413)

25 Bob L. Olson, Esq. (NV Bar No. 3783)

26 Kelly H. Dove, Esq. (NV Bar No. 10569)

27 *Attorneys for Plaintiff Federal National*
28 *Mortgage Association*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **MOTION TO STAY PENDING APPEAL ON AN ORDER SHORTENING TIME** by the method indicated:

_____ U. S. Mail
_____ U.S. Certified Mail
_____ Facsimile Transmission
_____ Federal Express
 X Electronic Service
_____ E-mail

and addressed to the following:

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DATED: December 8, 2020

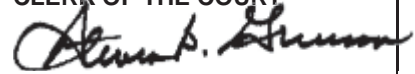
/s/ Lara J. Taylor

An Employee of Snell & Wilmer L.L.P.

4821-9517-9475

EXHIBIT 1 - Transcript of 10/13/2020 Hearing

EXHIBIT 1 - Transcript of 10/12/2020 Hearing



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 a 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.

13

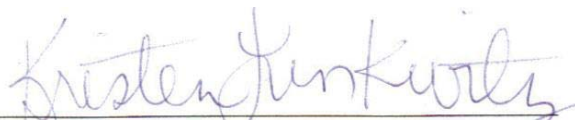
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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

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EXHIBIT 2 - 11/25/20 Email with Attachments

EXHIBIT 2 - 11/25/20 Email with Attachments

From: John Hofsaess <john.h@westlandreg.com>
Sent: Wednesday, November 25, 2020 8:36 PM
To: Michael Woolf; Kanute, Nathan
Subject: RE: 330455178 - Westland Liberty Village LLC- Notice of Demand
Attachments: 2020-11-25 Letter to M Woolf & N Kanute.pdf; Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl. Wire_....pdf

[EXTERNAL] john.h@westlandreg.com

Dear Mr. Woolf & Mr. Kanute,

Please see the attached letter, which reiterates Westland Liberty Village LLC's Restoration Reserve Disbursement Request.

Very truly yours,



John W. Hofsaess
Counsel
O: (310) 438-5147 (Direct)
O: (310) 639-0782 x386 (Main)
E: John.H@WestlandREG.com

Westland Real Estate Group
520 West Willow Street
Long Beach, CA 90806



WESTLAND

Real Estate Group

INVEST ► DEVELOP ► MANAGE

John W. Hofsaess
Counsel
Tel: (310) 438-5147
John.H@WestlandREG.com

November 25, 2020

VIA EMAIL & FIRST CLASS MAIL

Michael Woolf
Grandbridge Real Estate Capital, LLC
227 West Monroe Street, Suite 1000
Chicago, IL 60606
mwoolf@cohenfinancial.com

Nathan Kanute
Snell & Wilmer
50 W. Liberty Street, Suite 510
Reno, NV 89501
nkanute@swlaw.com

Re: Request for Reimbursement of Insurance Reserves
Liberty Village Apartments – 4870 Nellis Oasis Lane, Las Vegas, NV 89115
Servicer Loan No. 330455178
Related Case No. A-20-819412-B

Dear Mr. Woolf and Mr. Kanute:

Please accept this letter as Westland Liberty Village LLC's ("Westland") reiteration of the request for disbursement of the insurance reserves, which was submitted on September 4, 2020, related to the Liberty Village property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.¹

Notably, while Westland previously submitted this request to Grandbridge on September 4, 2020, Fannie Mae took the position that Westland was not entitled to a disbursement of funds due to a purported default. I am advised that the Honorable Kerry Earley entered an Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver, dated November 20, 2020 (the "Order"). Further, it is my understanding that the Order provides that Grandbridge and Fannie Mae are enjoined from and may not "fail to disburse or turn over to Westland any funds currently held or initially held in the Restoration Reserve Account, which funds were earmarked for the repair of the fire-damaged buildings, Buildings 3426 and 3517, regardless of whether Fannie Mae continues to maintain those funds in the same account or has transferred those funds to another account." See Order, at 8-9, ¶ 5(h). Finally, it is my understanding that Fannie Mae and Grandbridge previously received notice of entry of the Order.

¹ While this is a routine servicing request that is wholly unrelated to litigation, Westland Liberty Village LLC ("Borrower") is submitting this request jointly to Grandbridge Real Estate Capital ("Grandbridge"), the Loan's servicer, and to Snell & Wilmer, Fannie Mae's counsel in the litigation between the parties. Westland is doing so consistent with Fannie Mae's counsel's prior demand that all communications from Borrower be directed through counsel in response to the submission of a prior reserve disbursement request, dated September 4, 2020, despite that the loan documents provide routine servicing requests should be submitted to the servicer.

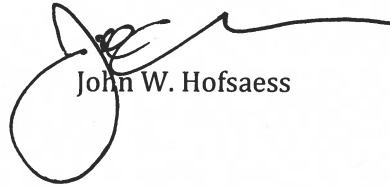
Letter to M. Woolf & N. Kanute

November 25, 2020

Page 2 of 2

As such, consistent with Judge Earley's Order, to the extent that Fannie Mae and Grandbridge are not already processing the reimbursement payment, Westland reiterates its September 4, 2020 request for the immediate release of all funds held in the Restoration Reserve Account. For your convenience, I am attaching another copy of the Reserve Reimbursement Request. If I can be of any additional assistance in your disbursement of those funds, please feel free to contact me at (310) 438-5147 or at John.H@WestlandREG.com.

Very truly yours,



John W. Hofsaess

Enclosures



Unit Number	Description of Item	Invoice #	Invoice Date	Supplier	Qty. Purchased	Total Priced paid (Not including tax or labor)	Labor Cost If other than vendor	Tax	Total Paid	Check Amount	Check Number
3426	Rehab Deposit	3426-INSEST	8/13/2019	Juve Gonzalez & Son's Inc					187,419.75	187,419.75	1667
3426	Rehab Progress Pymt #1	3426-INSEST Prog #1	10/6/2019	Juve Gonzalez & Son's Inc					61,589.16	61,589.16	1818
3426	Rehab Progress Pymt #2	3426-INSEST Prog #2	11/26/2019	Juve Gonzalez & Son's Inc					85,577.04	85,577.04	2003
3426	Rehab Progress Pymt #3	3426-INSEST Prog #3	1/9/2020	Juve Gonzalez & Son's Inc					53,569.62	53,569.62	2145
3426	Rehab Final	LV-3426FINAL	3/17/2020	Juve Gonzalez & Son's Inc					147,329.43	147,329.43	2528
3426	Bldg 3426 Permit fees Reimb	LV-3426-BD19-37881	2/21/2020	Juve Gonzalez & Son's Inc					3,808.49	7,228.98	2301
3426	Asbestos Testing		3/11/2019	Certified Property Restoration					650.00	1,300.00	1412
3426	Truss/Coordination Reimb	19-4-22 Bldg 3426	4/22/2019	Oscar O'keefe Architect					875.00	875.00	1405
3426	Appliances	H3318-299951	5/7/2020	Home depot credit Services					11,449.94	62,031.67	2838
3426	Demolition		8/16/2018	Copper Creek Construction					36,135.62	36,135.62	16604
3426	Plans Deposit	18-9-20 Bldg 3426	9/20/2018	Oscar O'keefe Architect					8,900.00	8,900.00	1008
3426	Plans Final	19-1-7 Bldg 3426	1/7/2019	Oscar O'keefe Architect					8,900.00	8,900.00	1226
Totals					0	0	0	0	606,204.05		

Borrower Certification:

The undersign hereby certifies that the work has been completed in a good workman like manner and in accordance with any plans and/or specification previously submitted to the Lender. In addition, the undersigned certifies that all such repairs are in compliance with all applicable laws, ordinances, rules, and regulation of any governmental authority, agency, or instrumentality having jurisdiction over the project. The Undersigned also certifies that neither the Borrower nor its management firm have any ownership interest or profit sharing agreement with any of the suppliers or vendors listed on the request which has not been disclosed on the back of the request or under separate attached to this request. All repairs and items listed are compliant to the Fannie Mae Agreement that is in effect between Lender, Borrower and Fannie Mae.

Total Amount Invoiced: 606,204.05

Total Disbursement Requested: Full balance of funds in Bldg 3426 repair escrow

Please provide instructions for the disbursement:

Wire ☒ ACH ☐

Bank Name	ABA Number
City National Bank	122016066

Account Number	Account Name
363567800	Westland Liberty Village

Contact for Wire Confirmation (Name)	Wire Confirmation Call (Telephone Number)
Marilu Garcia	(310) 639-7130 X:201

BY: Ruth Garcia
Ruth Garcia/ Residential Asset Manager



Unit Number	Description of Item	Invoice #	Invoice Date	Supplier	Qty. Purchased	Total Priced paid (Not including tax or labor)	Labor Cost If other than vendor	Tax	Total Paid	Check Amount	Check Number
3517	Rehab Deposit	3517-1NSEST	8/13/2019	Juve Gonzalez & Son's					160,477.45	160,477.45	1668
3517	Rehab Progress Payment #1	3517-INSEST Prog #1	10/09/2019	Juve Gonzalez & Son's					60,111.18	60,111.18	1819
3517	Rehab Progress Payment #2	3517-INSEST Prog #2	10/9/2019	Juve Gonzalez & Son's					68,837.04	68,837.04	1820
3517	Rehab Progress Payment #3	3517-INSEST Prog #3	11/27/2019	Juve Gonzalez & Son's					46,627.38	46,627.38	1987
3517	Rehab Final	3517-INSEST Final	12/26/2019	Juve Gonzalez & Son's					122,453.95	122,453.95	2105
3517	Rehab Carpet Install	LV-3517 ODCPT	1/29/2020	Juve Gonzalez & Son's					2,300.00	2,300.00	2226
3517	Demo	19-7-2 Bldg 3517	7/2/2019	Certified Prop. Restoration					5,850.00	5,850.00	1576
3517	Permits Fees Reimb	LV-3517-BD19-36811	2/21/2020	Juve Gonzalez & Son's					3,420.49	7,228.98	2301
3517	Damage Assessment Request	19-6-13 Bldg 3517	6/13/2019	Clark County Dept. of Bldg and Fire Prevention					110.00	110.00	1518
3517	Asbestos Testing	2286	3/11/2019	Certified Prop. Restoration					650.00	1,300.00	1412
Borrower Certification:					Totals	0	0	0	470,837.49		

The undersign hereby certifies that the work has been completed in a good workman like manner and in accordance with any plans and/or specification previously submitted to the Lender. In addition, the undersigned certifies that all such repairs are in compliance with all applicable laws, ordinances, rules, and regulation of any governmental authority, agency, or instrumentally having jurisdiction over the project. The Undersigned also certifies that neither the Borrower nor its management firm have any ownership interest or profit sharing agreement with any of the suppliers or vendors listed on the request which has not been disclosed on the back of the request or under separate attached to this request. All repairs and items listed are compliant to the Fannie Mae Agreement that is in effect between Lender, Borrower and Fannie Mae.

Total Amount Invoiced: 505,329.72

Total Disbursement Requested: Full balance of funds in Bldg 3517 repair escrow

Please provide instructions for the disbursement:

Bank Name

City National Bank

ABA Number

122016066

Account Number

363567800

Account Name

Westland Liberty Village

Contact for Wire Confirmation (Name)

Marilu Garcia

Wire Confirmation Call (Telephone Number)

(310) 639-7130 X:201



Unit Number	Description of Item	Invoice #	Invoice Date	Supplier	Qty. Purchased	Total Priced paid (Not including tax or labor)	Labor Cost If other than vendor	Tax	Total Paid	Check Amount	Check Number
3517	Truss/ Coordination Reimb	19-4-22 Bldg 3517	4/22/2019	Oscar O'keefe Architect					875.00	875.00	1406
3517	Appliances	H3318-278271	12/23/2019	Home depot Credit Services					15,817.23	34,031.86	2223
3517	Plans Deposit	18-9-20 Bldg 3517	9/20/2018	Oscar O'keefe Architect					8,900.00	8,900.00	1007
3517	Plans Final	19-1-3 Bldg 3517	1/7/2019	Oscar O'keefe Architect					8,900.00	8,900.00	1225
Totals						0	0	0	34,492.23		

Borrower Certification:

The undersign hereby certifies that the work has been completed in a good workman like manner and in accordance with any plans and/or specification previously submitted to the Lender. In addition, the undersigned certifies that all such repairs are in compliance with all applicable laws, ordinances, rules, and regulation of any governmental authority, agency, or instrumentality having jurisdiction over the project. The Undersigned also certifies that neither the Borrower nor its management firm have any ownership interest or profit sharing agreement with any of the suppliers or vendors listed on the request which has not been disclosed on the back of the request or under separate attached to this request. All repairs and items listed are compliant to the Fannie Mae Agreement that is in effect between Lender, Borrower and Fannie Mae.

Total Amount Invoiced: 505,329.72

Total Disbursement Requested: Full balance of funds in Bldg 3517 repair escrow

Please provide instructions for the disbursement:

Bank Name		Wire	<input checked="" type="checkbox"/>	ACH	<input type="checkbox"/>
City National Bank					

ABA Number	
122016066	

Account Number	
363567800	

Account Name	
Westland Liberty Village	

Contact for Wire Confirmation (Name)	
Marilu Garcia	

Wire Confirmation Call (Telephone Number)	
(310) 639-7130 X:201	

BY: *Ruth Garcia*

Ruth Garcia/ Residential Asset Manager

Westland Liberty Village
Insurance Claim Disbursement Request
Summary Page

Building	Amount
Bldg 3426	606,204.05
Bldg 3517	470,837.49
Bldg 3517 (2)	34,492.23
Total	1,111,533.77

Certificate Of Completion

Envelope Id: 0900AA0868D94811B74A5F12E672D44C	Status: Completed
Subject: Cohen Financial Reserve Disbursement Form (Fannie Mae Loans) incl....	
Source Envelope:	
Document Pages: 4	Signatures: 3
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Disabled	Ruth Garcia
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	Ruth.G@WestlandREG.com
	IP Address: 10.103.48.215

Record Tracking

Status: Original	Holder: Ruth Garcia	Location: DocuSign
9/4/2020 1:30:18 PM	Ruth.G@WestlandREG.com	

Signer Events

Signature	Timestamp
Ruth Garcia	Sent: 9/4/2020 1:30:19 PM
Ruth.G@WestlandREG.com	Viewed: 9/4/2020 1:30:24 PM
Ruth Garcia	Signed: 9/4/2020 1:30:51 PM
Security Level: Email, Account Authentication (None)	Freeform Signing
Signature Adoption: Pre-selected Style	
Using IP Address: 47.145.124.147	

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent	Hashed/Encrypted	9/4/2020 1:30:19 PM
Certified Delivered	Security Checked	9/4/2020 1:30:24 PM
Signing Complete	Security Checked	9/4/2020 1:30:51 PM
Completed	Security Checked	9/4/2020 1:30:51 PM

Payment Events

Status

Timestamps

EXHIBIT 3 - 12/2/20 Email with Attachment

EXHIBIT 3 - 12/2/20 Email with Attachment

From: John Hofsaess <john.h@westlandreg.com>
Sent: Wednesday, December 2, 2020 1:07 PM
To: mwoolf@cohenfinancial.com; JGWent@hollandhart.com; Kanute, Nathan
Cc: John Benedict
Subject: Demand for Compliance with Order Granting Defendant's Motion for Preliminary Injunction and Denying Application for Appointment of Receiver, Servicer Loan Nos. 330455178 & 330455177
Attachments: 2020-12-02 Letter to M Woolf-J Went-N Kanute.pdf

[EXTERNAL] john.h@westlandreg.com

Dear Mr. Woolf, Mr. Went and Mr. Kanute,

Please see the attached letter regarding certain servicing items that were addressed by the Court's Order. As Westland's December 2020 payment is imminently due and would normally be withdrawn by auto-debit on December 4, 2020, please advise whether Fannie Mae and Grandbridge will be complying with the Court's Order.

Thank you for your attention to this matter.

Very truly yours,



John W. Hofsaess
O: (310) 438-5147 (Direct)
O: (310) 639-0782 x386 (Main)
E: John.H@WestlandREG.com

Westland Real Estate Group
520 West Willow Street
Long Beach, CA 90806



WESTLAND

Real Estate Group

INVEST ► DEVELOP ► MANAGE

John W. Hofsaess

Counsel

Tel: (310) 438-5147

John.H@WestlandREG.com

December 2, 2020

VIA EMAIL & FIRST CLASS MAIL

Michael Woolf
Grandbridge Real Estate Capital, LLC
227 West Monroe Street, Suite 1000
Chicago, IL 60606
mwoolf@cohenfinancial.com

Nathan Kanute, Esq.
Snell & Wilmer
50 W. Liberty Street, Suite 510
Reno, NV 89501
nkanute@swlaw.com

Joseph Went, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
JGWent@hollandhart.com

Re: Demand for Compliance with Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver
Liberty Village Apartments – 4870 Nellis Oasis Lane, Las Vegas, NV 89115
Servicer Loan No. 330455178
Village Square Apartments – 5025 Nellis Oasis Lane, Las Vegas, NV 89115
Servicer Loan No. 330455177
Related Case No. A-20-819412-B

Dear Mr. Woolf, Mr. Went and Mr. Kanute:

Please accept this letter as Westland Liberty Village LLC's and Westland Village Square LLC's ("Westland") demand for Grandbridge Real Estate Capital ("Grandbridge") and Federal National Mortgage Association ("Fannie Mae, or together with Grandbridge, the "Lenders") to comply with the Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver, dated November 20, 2020 (the "Order").¹ Notably, while

¹ While the loan documents require Lenders to perform the acts listed in this letter, and thus this should be a routine servicing matter, Lenders have not complied with their obligations. As such, Westland is submitting this request jointly to Grandbridge, the Loan's servicer, as well as Holland & Hart, Grandbridge's counsel, and Snell & Wilmer, Fannie Mae's counsel, in the litigation between the parties, in order to put Lenders on notice of their lack of compliance with the Court's Order. Westland is noticing both Grandbridge and both of Lenders' counsel consistent with Fannie Mae's counsel's prior demand that all communications from Borrower be directed through counsel in response to the submission of a prior reserve disbursement request, dated September 4, 2020, and Grandbridge's counsel's similar demand on November 20, 2020. Counsel has

the Order *requires Lenders to perform several acts that would require little if any effort*, Lenders still appear not to have complied with the Order. In particular, Westland reminds Lenders that the Court ordered that they must not:

- 1) continue to maintain the Liberty Village Notice of Default and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed from the title of the Liberty Village Property (Order, Relief ¶ 2);
- 2) continue to maintain the Village Square Notice of Default and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed from the title of the Village Square Property (Order, Relief ¶ 3);
- 3) fail to turn over to Westland the monthly debt service invoices for the Property, which have been withheld between February 2020 and present, and on a going forward basis, Fannie Mae or its servicer will forward the monthly statements Fannie Mae's servicers produce for any borrower who is not in default (Order, Relief ¶ 5(e));
- 4) fail to process loan payments consistent with the terms of the loan agreement, including that Fannie Mae, or its servicer, will return to the ordinary practice of auto-debiting Westland's account for the amount of the non-default normal monthly debt service payment each month (Order, Relief ¶ 5(f));
- 5) retain possession of any funds paid in excess of the non-default monthly debt service payments, which excess funds Westland paid between February 2020 and the present based on the refusal of Fannie Mae's servicer to produce monthly statements to Westland (Order, Relief ¶ 5(g)).

In relation to the above elements of the Order, Westland notes that it has: 1) not received any information to support that the Notice of Default and Election to Sell has been removed from the title to each property, 2) not received the monthly debt service invoice applicable to the December 1, 2020 payment, and 3) that it has not received the return of any funds that Westland overpaid with its monthly debt payments since February 2020. Additionally, as the next payment monthly debt payment is currently due today, and would normally be withdrawn by auto-debiting on the fourth of this month, Westland needs to know whether Grandbridge will be auto-debiting that payment consistent with the Court's Order.² However, this problem will only grow more complicated, because next month Westland will be converting from an interest only loan payment to a full loan payment, which will render it exceedingly difficult for Westland to determine the proper payment amount to the extent that Lenders still have not forwarded a monthly debt service invoice.

made these demands despite the loan documents providing that routine servicing requests should be submitted to the servicer.

² If Westland does not hear from Grandbridge in response to this letter by noon on December 4, 2020, it will be submitting a payment in order to meet any monthly obligation that day.

On that basis, if within the next week, by no later than December 8, 2020, Lenders have not either complied with the obligations set forth above, or at least responded to confirm that such efforts are in process, then Westland will be required to seek additional assistance from the Court. If you need to discuss the foregoing, please feel free to contact me at (310) 438-5147 or at John.H@WestlandREG.com.

Very truly yours,



John W. Hofsaess

cc: John Benedict, Esq. (via email)

EXHIBIT 4 - Proposed Order

EXHIBIT 4 - Proposed Order

1 ORDR

JOHN BENEDICT, ESQ.

Nevada Bar No. 005581

2 **LAW OFFICES OF JOHN BENEDICT**

2190 E. Pebble Road, Suite 260

3 Las Vegas, NV 89123

Telephone: (702) 333-3770

4 Facsimile: (702) 361-3685

E-Mail: John@BenedictLaw.com

5
6 Attorneys for Defendants/Counterclaimants/ Third
Party Plaintiffs Westland Liberty Village, LLC &
7 Westland Village Square LLC

8
9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

12
13 Plaintiff,

14 vs.

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

17 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.

18
19 **AND ALL RELATED ACTIONS**

20
21 Defendants' Counter-Motion for a Preliminary Injunction having come before the Court on
22 October 13, 2020, and John Benedict, Esq. appearing on behalf of Defendants Westland Liberty
23 Village LLC and Westland Village Square LLC, and Bob Olson, Esq. appearing on behalf of
24 Plaintiff Federal National Mortgage Association.

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

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

8 ***FINDINGS OF FACT***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

//

//

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.

23 //

24 //

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

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

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

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

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

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

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

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

24 //

25 //

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

3 a) appoint a receiver;

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

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

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

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

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

1 service payment each month;

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

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

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

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

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

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

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

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

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

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

10 Dated: October ____, 2020

The Honorable Kerry Earley
DISTRICT COURT JUDGE

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1 Agreed as to Form and Content:

2
3 SNELL & WILMER L.L.P.

4
5 By: _____
6 Nathan G. Kanute, Esq.
7 Bob L. Olson, Esq.
8 David L. Edelblute, Esq.
9 3883 Howard Hughes Parkway, Suite 1100
10 Las Vegas, NV 89169

11 *Attorneys for Plaintiff Federal National*
12 *Mortgage Association*

13 LAW OFFICES OF JOHN BENEDICT

14 By: _____
15 John Benedict, Esq.
16 2190 E. Pebble Road, Suite 260
17 Las Vegas, Nevada 89123

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

20
21 *Respectfully Submitted:*

22
23 Dated: September ___, 2020

24 LAW OFFICES OF JOHN BENEDICT

25 By: _____
26 John Benedict, Esq.
27 2190 E. Pebble Road, Suite 260
28 Las Vegas, Nevada 89123

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

EXHIBIT 5 - 10/30/20 Email with Attachments

EXHIBIT 5 - 10/30/20 Email with Attachments

From: Kanute, Nathan
Sent: Friday, October 30, 2020 3:45 PM
To: John Benedict
Cc: Olson, Bob
Subject: RE: DRAFT order re: Granting Preliminary Injunction and Denying Application for Receiver
Attachments: 2020 1030 FNMA-Westland_Ltr BLO to J Benedict re Proposed Order_w_encl 4843-2694-3696_1.pdf;
2020 1013 Hearing Transcript - FNMA_Liberty Village 4813-4115-9376_1.pdf

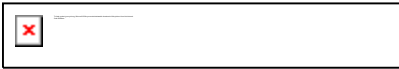
John,

Please see the attached letter from Bob with two enclosures (one at the end of the letter and one separately attached).

Any comments on the JCCR?

Thanks,
Nathan

Nathan G. Kanute
Snell & Wilmer L.L.P.
50 W. Liberty Street, Suite 510
Reno, Nevada 89501
Office: 775.785.5419
nkanute@swlaw.com www.swlaw.com
Pronouns (he/him/his)



Albuquerque, Boise, Denver, Las Vegas, Los Cabos, Los Angeles, Orange County, Phoenix, Portland, Reno, Salt Lake City, San Diego, Seattle, Tucson, and Washington D.C.

From: John Benedict <John@benedictlaw.com>
Sent: Monday, October 26, 2020 4:01 PM
To: Olson, Bob <bolson@swlaw.com>; Kanute, Nathan <nkanute@swlaw.com>
Subject: DRAFT order re: Granting Preliminary Injunction and Denying Application for Receiver

[EXTERNAL] john@benedictlaw.com

Gentlemen,

I'll take a look at the JCCR.
Here is the Order from the recent hearing and joint motion practice.

Thanks.

Sincerely,

John Benedict, Esq.

Martindale-Hubbell® Preeminent Peer Review Rating™
with Very High Criteria for General Ethics

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SEATTLE
TUCSON
WASHINGTON DC

October 30, 2020

VIA EMAIL

John Benedict, Esq.
Law Offices of John Benedict
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
john@benedictlaw.com

Re: Federal National Mortgage Association v. Westland Liberty Village, LLC, et al.
Clark County District Court Case No. A-20-819412-B
***Objection to Proposed Order Granting Defendants' Motion for Preliminary
Injunction and Denying Application for Appointment of Receiver
("Application")***

Dear John:

I am writing to you regarding Westland Liberty Village, LLC and Westland Village Square, LLC's ("Defendants") Proposed Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver ("Proposed Order"). Plaintiff Federal National Mortgage Association ("Fannie Mae") objects to Defendants' Proposed Order for multiple reasons. The Proposed Order's inclusion of findings of fact and conclusions of law is extremely flawed based on the Court's actual ruling at the hearing on the underlying motions.

First, Defendants' proposed findings of fact are completely unsupported by the record. The Court's order begins on page 49, line 14 of the enclosed hearing transcript and continues for a single page:

"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 [sic] 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 under that and I am not going to appoint a receiver. I'm denying it.

As far as the Defendants' Countermotion for a Preliminary Injunction Regarding the Notice of the Foreclosure, I applied the 65 standard as well as the NRS -- what's the other one? I always -- 33.010 standard. I do find that, at this point, there is irreparable harm and that standard is met because it is property. I also find that there is a reasonable probability of success on the merits as far as what -- *there's a question of fact* as to whether there was a default, etcetera. So, I do not want the default to go forward. So, I am granting the Countermotion by plaintiffs for the preliminary injunction under NRS 65, NRS 33.010." (emphases added).

Clearly, the Court did not make any of the self-serving and clearly erroneous "findings of fact" proposed by Defendants:

- **Findings of Fact No. 1** – While all parties agree Fannie Mae obtained property condition assessments at the Liberty Village Property and Village Square Property, the Court did not make this finding of fact as part of its decision.
- **Findings of Fact Nos. 2-5** – Defendants' self-interested inclusion of evidence they submitted to support their Countermotion was not included in the Court's decision. These purported "findings of fact" are particularly egregious, because Defendants are attempting to poison the well moving forward.
- **Finding of Fact No. 6** – The Court did not mention Section 6.03(c) of the loan agreements in its ruling. This is a legal conclusion concerning Defendants' counterclaim for declaratory relief, which the Court did not consider at this hearing.
- **Findings of Fact Nos. 7-8** – The Court makes no mention of Defendants' reserve commitments at the time they assumed the loan agreements. The Court also did not make the finding of fact or legal conclusion that Defendants "fully funded" the reserve accounts on the day they assumed the loans.
- **Findings of Fact No. 9** – The Court did not reference Defendants' reserve payments or make any finding of fact as to Defendants' performance under the loan agreements. The Court only stated that there is a *factual dispute* regarding Defendants' default.
- **Findings of Fact No. 10** – While the parties agree that Grandbridge Real Estate Capital, LLC ("Grandbridge") forwarded a Notice of Demand to each of the Defendants on October 18, 2019, the Court did not make this finding of fact as part of its decision.
- **Findings of Fact No. 11** – Fannie Mae has not made the alleged "admission". More importantly, the Court did not make this finding of fact as part of its decision.
- **Findings of Fact No. 12** – While the parties agree that a Notice of Default and Accelerations of Note was sent to each Defendants on December 17, 2019, the Court did

not make this finding of fact as part of its decision. Fannie Mae has not made the remaining “admissions”.

- **Findings of Fact No. 13** – While the parties agree that Demand and Notice Pursuant to NRS 107A.270 was sent to each of the Defendants on December 17, 2019, the Court did not make this finding of fact as part of its decision.
- **Findings of Fact No. 14** – While Fannie Mae agrees that it pursued foreclosure against the properties, the Court did not make this finding of fact as part of its decision.

Second, the Court’s Order contains three simple conclusions of law: (1) the Court denied Fannie Mae’s Application; (2) the Court granted Defendants’ Countermotion for a Preliminary Injunction Regarding the Notice of Foreclosure; and (3) the Court ordered a \$1,000 bond for the preliminary injunction. *See* Hearing Transcript, 50:1-2, 50:12-14, and 50:23-25. Yet, Defendants’ “conclusions of law” go far beyond the Court’s Order:

- **Conclusions of Law Nos. 1-4** – Fannie Mae has no objection to the accuracy of the stated legal standards; however, it is Fannie Mae’s position that findings of fact and conclusions of law are not procedurally necessary on preliminary motions that are not final judgments. *See* EDCR 1.90(a)(5) (prescribing time limits for findings of fact and conclusions of law as “following trial”).
- **Conclusions of Law No. 5** – The Court did not decide that Fannie Mae “failed to establish that any default has occurred.” Instead, the Court found “there’s a question of fact as to whether there a was default, etcetera . . .” *Id.* at 50:8-11. Thus, inclusion of any other evidentiary details contrary to the record is erroneous.
- **Conclusions of Law No. 6** – Although the Court determined irreparable harm exists because the subject matter is property, it did not hold that Defendants’ alleged investments into the properties, the alleged equity in the properties, or the “improved living conditions” would support a basis for irreparable harm. The Court stated, “at this point, there is irreparable harm and that standard is met because it is property.” *Id.* at 50:6-8. Defendants’ inclusion of details outside the record is contrary to the record and misleading.
- **Conclusions of Law No. 7** – The Court did not decide whether the alleged harms to Defendants outweigh the alleged harms to Fannie Mae.
- **Conclusions of Law No. 8** – While the purpose of a preliminary injunction is to maintain the status quo pending litigation, the Court did not make this conclusion on the record. Moreover, the Proposed Order discussed below makes it clear that the Defendants are trying to obtain ultimate relief against Fannie Mae on every issue in the case rather than simply trying to maintain the status quo pending litigation.
- **Conclusions of Law No. 9** – The language in this conclusion of law is not supported by the record. The Court did not comment on the Defendants meeting their burden of proof or the competency of its evidence.
- **Conclusions of Law No. 10** – This “conclusion of law” is a gross misstatement of the Court’s ruling. The Court stated, “I’m also going to set a bond of \$1,000 for the preliminary injunction.” *Id.* at 50:23-25. The Court did not make any additional statements regarding

its rationale for a \$1,000 bond. The conclusions regarding Defendants' supposed "substantial investment in the collateral" and "substantial funds" in the reserve accounts was not part of the Court's decision.

- **Conclusions of Law No. 11** – Again, the Court determined that a factual dispute existed regarding whether there is a default that was sufficient to permit the Court to exercise its discretion to deny Fannie Mae's Application. However, the Court did not address irreparable harm or substantial loss to collateral to Fannie Mae.

Third, Defendants attempt to include favorable language into the order denying the Application, which is unsupported by the record. Upon Fannie Mae's counsel's request for clarification during the hearing, the Court agreed that its order would simply prohibit Fannie Mae from recording the Notice of Sale:

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

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

THE COURT: Yes. Because that would --

MR. OLSON: Thank you.

THE COURT: -- flow, Mr. Olson, from my reasoning. And I thank you for helping me with that, with all the things I'm going through."
Id. at 51:11-24.

The balance of the Proposed Order relates to the activities that are to be enjoined. Before going over each provision of the Proposed Order, note that the relief Defendants sought in their papers was quite limited. In the Countermotion Defendants requested the following "enjoined activities":

"Based on the foregoing, Defendant respectfully requests that this Honorable Court GRANT its Motion for Temporary Restraining Order and Preliminary Injunction *preventing and enjoining Plaintiff from conducting any foreclosure proceedings, foreclosure sale, or appointing a receiver related to the Properties* pending a determination of the rights and obligations of the parties pursuant to the Loan Agreements." Countermotion, 30:2-6 (emphasis added).

Defendants' proposed "enjoined actives" in the Proposed Order exceeds the relief they requested in their Countermotion to an almost unprecedented level.

The only provision of the Proposed Order that resembles the Court's ruling is paragraph (1), although it does not mention that Fannie Mae is prohibited from recording the Notices of Sale (something Fannie Mae has not done even though the injunction is not in place).

Paragraphs (2) and (3) of the Proposed Order is not supported by the record. At no time did the Court order Fannie Mae to immediately remove the Notices of Default and Election to Sell Under Deed of Trust. Rather, the Court stated, "I'm stopping Fannie Mae from going forward with anything based on the Notice of Default." These paragraphs need to be deleted in their entirety from the Proposed Order.

Paragraph (4) of the Proposed Order purports to enjoin Fannie Mae from interfering with Defendants' enjoyment of the Properties. This should not have been included in the Proposed Order for multiple reasons. First, there are no allegations or evidence in the record or the Defendants' moving papers suggesting that Fannie Mae has interfered with anyone's enjoyment of the Properties. Second, there was no discussion whatsoever on the record regarding the covenant of quiet enjoyment. Third, the covenant of quiet enjoyment generally is an obligation of a landlord, such as Defendant, to its tenants. *See Winchell v. Schiff*, 193 P.3d 946, 952 (2008) (finding that to prove a sufficient issue for breach of the covenant of quiet enjoyment, the tenant need only provide evidence demonstrating constructive eviction); *see also Las Vegas Oriental v. Sabella's of Nev.*, 97 Nev. 311, 313, 630 P.2d 255, 256 (1981) (finding that constructive eviction occurs when, through the actions or inaction of the landlord, the whole or a substantial part of the premises is rendered unfit for occupancy for the purpose for which it was leased.) The covenant of quiet enjoyment has no application in this case.

Paragraph (5) of the Proposed Order should only state that Fannie Mae's application to appoint a receiver is denied. Everything else in the Proposed Order, including all of its subparagraphs, were not requested nor ordered by the Court.

Paragraph (5)(a) of the Proposed Order is counter-intuitive and should be deleted. The Court denied the request to appoint a receiver. It is up to the Court to determine whether or not to appoint a receiver. That is not something to be enjoined.

Paragraph (5)(b) of the Proposed Order was not ordered by the Court. While the Court enjoined Fannie Mae from proceeding with the pending foreclosure proceedings, it did not make any rulings like those contained in Paragraph 5(b).

Paragraph 5(c), of the Proposed Order, purports to enjoin Fannie Mae from doing a lot of things that the Court simply did not order. The only thing contained in paragraph 5(c) that the Court ordered was that Fannie Mae cannot proceed with the pending foreclosure proceedings against the Westland Properties. That is already contained in paragraph 1 of the Proposed Order.

Paragraph 5(d) of the Proposed Order prohibits Fannie Mae from interfering with the management and operation of the properties. Like the vast majority of the Proposed Order, the Defendants did not request such relief, it was not discussed on the record and, most important, the Court simply did not issue such a ruling.

Paragraph 5(e) of the Proposed Order requires Fannie Mae to turnover monthly debt service invoices for the properties. This was not requested in the papers, was not discussed on the record and was not ordered by the Court.

Paragraph 5(f) of the Proposed Order purports to direct how Fannie Mae should process loan payments. Again, this was not requested in the Defendants' papers, was not discussed on the record and was not ordered by the Court.

Paragraph 5(g) of the Proposed Order purports to prohibit Fannie Mae from retaining possession of any funds paid in excess of the non-default monthly debt service payments. Again, this was not requested in the Defendants' papers, was not discussed on the record and was not ordered by the Court. Moreover, any such ruling would violate the "voluntary payment doctrine" as articulated by the Nevada Supreme Court in *Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 338 P.2d 1250 (2014).

Paragraph 5(h) of the Proposed Order purports to require Fannie Mae to turn over to Defendants any funds currently held or initially held in the Restoration Account earmarked for repair of fire-damaged buildings. While there was a discussion of the fire insurance proceeds on the record, the Court did not order Fannie Mae to make any payments to Defendants.

Paragraph 5(i) of the Proposed Order seems to be an extension of the relief Defendants are hoping to obtain in paragraph 5(h). This was not requested in the papers, not discussed at the hearing and was not ordered by the Court.

Paragraph 5(j) of the Proposed Order purports to require Fannie Mae to respond to Reserve Disbursement Requests within ten days. Like almost everything else in the Proposed Order, this was not addressed or ordered by the Court.

Paragraphs 5(k), (l) and (m) of the Proposed Order purport to require Fannie Mae to retract and strike the Notice of Demand, the Notice of Default and Acceleration of Note and Demand and Notice Pursuant to NRS 107.270. While these documents were discussed on the record, this relief was not requested and the Court did not order this.

Paragraph 5(n) of the Proposed Order purports to prohibit Fannie Mae from displacing Defendants from the operation or management of the Property. This simply was not ordered by the Court. Moreover, the record is devoid of any evidence that Fannie Mae has taken any actions to displace Defendants from the operation or management of the Properties other than its justified request for a receiver before this Court.

John Benedict, Esq.

October 30, 2020

Page 7

Paragraph 5(o) of the Proposed Order is perhaps the most audacious paragraph of the Proposed Order. It purports to bar Fannie Mae from taking any adverse action against Defendants or any other related entities (undisclosed strangers to this litigation) on any existing loans or loan refinancing applications. This was never requested in any of the Defendants' papers, was not discussed at the hearing and was not ordered by the Court. Moreover, the effect of this proposed language is to require Fannie Mae to accept future refinancing applications from undisclosed Westland entities – something the Court simply cannot require.

Simply put, Defendants' Proposed Order is one of the most over-reaching orders I have seen in over 30 years of practice. If Defendants submit this Proposed Order, which goes far beyond the relief they requested, the issues discussed at the hearing, and the Court's ruling, they may be in violation of Nevada Rule of Professional Conduct 3.3 and Nevada Supreme Court Rule 172 for lack of candor toward the tribunal. Please be assured that if the Proposed Order is submitted to the Court, this correspondence will be disclosed to the Court as well.

In order to avoid unnecessary motion practice, the more prudent approach would be to submit the enclosed order to the Court which is consistent with the papers the Defendants filed, the discussion on the record and the Court's ruling. Please confirm that we can e-sign and submit the enclosed form of order to the Court. If you do not agree and intend to submit any other form of order to the Court, please copy us on any communication to the Court.

I request your urgent attention in this matter.

Sincerely,

SNELL & WILMER



Bob L. Olson

BLO/dle
Enclosure

Nathan G. Kanute, Esq.
Nevada Bar No. 12413
Bob L. Olson, Esq.
Nevada Bar No. 3783
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dedelblute@swlaw.com

Attorneys for Plaintiff Federal National Mortgage Association

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-819412-C

Dept No. 13

**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

This matter came before the Court pursuant to Plaintiff Federal National Mortgage Association's ("Fannie Mae") Application for Appointment of Receiver (the "Application") and Westland Liberty Village LLC's and Westland Village Square LLC's (collectively, "Westland") Counter-Motion for a Temporary Restraining Order and Preliminary Injunction (the "Counter-Motion"); a hearing on the Application and Counter-Motion was held on October 13, 2020, at which John Benedict, Esq. appeared on behalf of Westland and Bob Olson, Esq. appeared on behalf of Fannie Mae; the Court heard and considered the arguments presented by counsel at the hearing

1 and reviewed the Application, Counter-Motion, all supporting declarations and affidavits, and all
2 papers and pleadings on file in this case; the Court set forth its reasoning behind its rulings on the
3 Application and Counter-Motion on the record at the hearing, pursuant to Nev. R. Civ. P. 52(a)(3);
4 for the reasons set forth on the record

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

6 1. The Application is DENIED, without prejudice.

7 2. The Counter-Motion is GRANTED, as more fully set forth herein. A preliminary
8 injunction is issued prohibiting Fannie Mae from taking any further actions to proceed with the
9 pending foreclosure proceedings on the multi-family apartment communities owned by Westland
10 and located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-
11 161, 140-08-711-273 and 140-08-712-289] (the "Liberty Village Property") and 5025 Nellis Oasis
12 Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-702-002 and 140-08-702-003] (the
13 "Village Square Property", collectively with the Liberty Village Property, the "Properties"). The
14 preliminary injunction shall be effective upon Westland's posting of the required bond and will
15 remain in effect until entry of an order of this Court lifting the preliminary injunction. The
16 preliminary injunction has no effect on any actions taken by Fannie Mae before October 13, 2020
17 to foreclose on the Properties, including, but not limited to the recording of notices of default and
18 elections to sell.

19 3. Westland shall post a \$1,000.00 bond before the preliminary injunction provided for
20 herein is effective. Westland may meet the bond obligation by depositing \$1,000.00 cash with the
21 Court.

22 **IT IS SO ORDERED**

23 Dated this ____ of _____, 2020.

24
25 _____
26 DISTRICT COURT JUDGE

27 ///

28 ///

1 Respectfully Submitted:

2
3 Dated this ____ of October 2020.

4 SNELL & WILMER L.L.P.

5
6 _____
7 Nathan G. Kanute, Esq.
8 Bob L. Olson, Esq.
9 David L. Edelblute, Esq.
10 3883 Howard Hughes Parkway, Suite 1100
11 Las Vegas, Nevada 89169
12 *Attorneys for Plaintiff Federal National*
13 *Mortgage Association*
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IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION; AND GRANDBRIDGE
REAL ESTATE CAPITAL, LLC,
Appellants,

vs.

WESTLAND LIBERTY VILLAGE, LLC,
A NEVADA LIMITED LIABILITY
COMPANY; AND WESTLAND
VILLAGE SQUARE, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondents.

No. 82174

FILED

FEB 11 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING STAY IN PART AND DENYING STAY IN PART

This is an appeal from a district court preliminary injunction in a business dispute. In the preliminary injunction order, the district court denied appellant Federal National Mortgage Association's (Fannie Mae) motion for a receiver based on an alleged default and granted respondents Westland Liberty Village, LLC, and Westland Village Square, LLC's motion for a preliminary injunction, enjoining foreclosure proceedings and several other actions stemming from the alleged default.

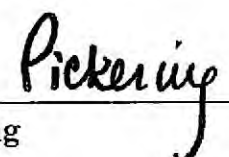
Fannie Mae has filed a motion for stay pending appeal, seeking to stay portions of the preliminary injunction other than those enjoining foreclosure proceedings. In particular, Fannie Mae seeks to stay directives (2) – (4) and (5)(b) – (o) of the district court's order. Appellant Grandbridge Real Estate Capital, LLC, has joined Fannie Mae's stay motion. Respondents have filed an opposition, and Fannie Mae has filed a reply.


When considering a motion for a stay, we consider the following factors: whether (1) the object of the appeal will be defeated absent a stay, (2) appellants will suffer irreparable or serious harm without a stay, (3) respondents will suffer irreparable or serious harm if a stay is granted, and (4) appellants are likely to prevail on the merits of the appeal. NRAP 8(c); *see also Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000). Additionally, we may consider the public interest in granting or denying a stay. *Clark Cty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 134 Nev. 174, 179 n.1, 415 P.3d 16, 20 n.1 (2018) (Cherry, J., concurring and dissenting) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (providing that courts will consider, as one factor, "where the public interest lies" when deciding a stay motion)).

Having considered the parties' arguments and supporting documents in light of the above factors and the public interest, we conclude that only a partial stay of the district court's injunction pending appeal is warranted. In particular, we stay paragraphs (2) and (3) of the district court's injunction directing that Fannie Mae remove the notices of default and election to sell from the properties' titles, such that the notices remain of record pending resolution of this appeal and further order of this court. The remainder of the requested relief is denied subject to a decision on the merits of this appeal.

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon

cc: Chief Judge, Eighth Judicial District Court
Hon. Mark Denton, District Judge
Eleissa C. Lavelle, Settlement Judge
Snell & Wilmer, LLP/Las Vegas
Holland & Hart LLP/Las Vegas
Snell & Wilmer, LLP/Reno
Campbell & Williams
Law Offices of John Benedict
John W. Hofsaess
Eighth District Court Clerk

Dugan, Sonja

From: Williams, Maricris
Sent: Thursday, February 11, 2021 9:23 AM
To: Dugan, Sonja
Subject: FW: Notification of Electronic Filing in FED. NAT'L MORTG. ASS'N VS. WESTLAND LIBERTY VILLAGE, LLC, No. 82174

From: efiling@nvcourts.nv.gov
Sent: Thursday, February 11, 2021 9:22:35 AM (UTC-08:00) Pacific Time (US & Canada)
To: Williams, Maricris
Subject: Notification of Electronic Filing in FED. NAT'L MORTG. ASS'N VS. WESTLAND LIBERTY VILLAGE, LLC, No. 82174

[EXTERNAL] efiling@nvcourts.nv.gov

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Feb 11 2021 09:22 a.m.

Case Title: FED. NAT'L MORTG. ASS'N VS. WESTLAND LIBERTY VILLAGE, LLC

Docket Number: 82174

Case Category: Civil Appeal

Document Category: Filed Order Granting Stay in Part and Denying Stay in Part. we conclude that only a partial stay of the district court's injunction pending appeal is warranted. In particular, we stay paragraphs (2) and (3) of the district court's injunction directing that Fannie Mae remove the notices of default and election to sell from the properties' titles, such that the notices remain of record pending resolution of this appeal and further order of this court. The remainder of the requested relief is denied subject to a decision on the merits of this appeal. (SC)

Submitted by: Issued by Court

Official File Stamp: Feb 11 2021 08:43 a.m.

Filing Status: Accepted and Filed

Docket Text: Filed Order Granting Stay in Part and Denying Stay in Part. we conclude that only a partial stay of the district court's injunction pending appeal is warranted. In particular, we stay paragraphs (2) and (3) of the district court's injunction directing that Fannie

Mae remove the notices of default and election to sell from the properties' titles, such that the notices remain of record pending resolution of this appeal and further order of this court. The remainder of the requested relief is denied subject to a decision on the merits of this appeal. (SC)

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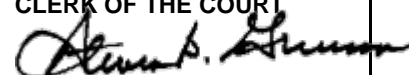
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DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-819412-B

Dept No. 13

**FEDERAL NATIONAL MORTGAGE
ASSOCIATION'S ANSWER TO
COUNTERCLAIM**

AND ALL RELATED ACTIONS.

Counterdefendant Federal National Mortgage Association ("Fannie Mae"), by and through its counsel, Snell & Wilmer L.L.P., hereby submits this answer (the "Answer") to counterclaim ("Counterclaim"), filed by Westland Liberty Village, LLC ("Liberty Village") and Westland Village Square, LLC ("Village Square") (collectively, "Counterclaimants") as follows:

PRELIMINARY STATEMENT

In answering the Counterclaim, Fannie Mae states that it is responding to allegations on behalf of itself only—even where the allegations pertain to alleged conduct by Fannie Mae and third-party defendants, Grandbridge Real Estate Capital, LLC ("Grandbridge")—and is not responding on behalf of any other party. To the extent allegations concern parties, individuals, or

1 entities other than Fannie Mae, a response to those allegations is not required. To the extent a
2 response is required, Fannie Mae denies such allegations.

3 The Counterclaim contains purported excerpts from, and references to, a number of
4 documents. Such documents speak for themselves, and Fannie Mae refers to the respective
5 documents for the complete contents thereof. To the extent Fannie Mae responds below that a
6 document speaks for itself, such an assertion shall not be deemed to be an admission that
7 Counterclaimants' self-serving view of said documents are truthful, accurate, or complete.

8 Except as expressly admitted herein, Fannie Mae generally denies the allegations set forth
9 in the Counterclaim. Paragraph numbers in this Answer correspond and respond to the allegations
10 in the numbered paragraphs of the Counterclaim. To the extent allegations in a numbered
11 paragraph of the Counterclaim purport to cite to, refer to, or characterize allegations in other
12 paragraphs of the Counterclaim, Fannie Mae incorporates and reasserts its response to each such
13 paragraph as if set forth fully therein. Any allegations contained in the Counterclaim that state a
14 legal conclusion do not require a response and, to the extent that any response is required, such
15 allegations are denied. Fannie Mae generally denies any averments in the Counterclaim's
16 headings, unnumbered paragraphs, and prayer for relief.

17 ANSWER

18 Subject to the foregoing Preliminary Statement, Fannie Mae responds to the Counterclaim
19 as follows:

20 **I. STATEMENT OF THE CASE**

21 1. Paragraph 1 states a legal conclusion to which no response is required. To the extent
22 a response is required, Fannie Mae denies the allegations contained therein.

23 2. Paragraph 2 states a legal conclusion to which no response is required. To the extent
24 a response is required, Fannie Mae denies the allegations contained therein.

25 3. Paragraph 3 states a legal conclusion to which no response is required. To the extent
26 a response is required, Fannie Mae denies the allegations contained therein.

27 4. Paragraph 4 states a legal conclusion to which no response is required. To the extent
28 a response is required, Fannie Mae denies the allegations contained therein.

II. PARTIES

5. Paragraph 5 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

6. Paragraph 6 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

7. Fannie Mae admits the allegations contained in Paragraph 7.

8. Paragraph 8 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

9. Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, Fannie Mae denies the allegations contained therein.

III. FACTS COMMON TO ALL CAUSES OF ACTION

10. Paragraph 10 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae denies the allegations contained therein.

Westland's Real Estate Wherewithal

11. Paragraph 11 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

12. Paragraph 12 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations

1 contained therein.

2 13. Paragraph 13 does not contain allegations against Fannie Mae and, thus, does not
3 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
4 information sufficient to form a belief as to the truth of the statement and denies the allegations
5 contained therein.

6 a. Paragraph 13(a) does not contain allegations against Fannie Mae and, thus,
7 does not require a response. To the extent a response is required, Fannie Mae does not have
8 knowledge or information sufficient to form a belief as to the truth of the statement and
9 denies the allegations contained therein.

10 b. Paragraph 13(b) does not contain allegations against Fannie Mae and, thus,
11 does not require a response. To the extent a response is required, Fannie Mae does not have
12 knowledge or information sufficient to form a belief as to the truth of the statement and
13 denies the allegations contained therein.

14 c. Paragraph 13(c) does not contain allegations against Fannie Mae and, thus,
15 does not require a response. To the extent a response is required, Fannie Mae does not have
16 knowledge or information sufficient to form a belief as to the truth of the statement and
17 denies the allegations contained therein.

18 d. Paragraph 13(d) does not contain allegations against Fannie Mae and, thus,
19 does not require a response. To the extent a response is required, Fannie Mae does not have
20 knowledge or information sufficient to form a belief as to the truth of the statement and
21 denies the allegations contained therein.

22 e. Paragraph 13(e) does not contain allegations against Fannie Mae and, thus,
23 does not require a response. To the extent a response is required, Fannie Mae does not have
24 knowledge or information sufficient to form a belief as to the truth of the statement and
25 denies the allegations contained therein.

26 f. Paragraph 13(f) does not contain allegations against Fannie Mae and, thus,
27 does not require a response. To the extent a response is required, Fannie Mae does not have
28 knowledge or information sufficient to form a belief as to the truth of the statement and

denies the allegations contained therein.

g. Paragraph 13(g) does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

h. Paragraph 13(h) does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

i. Paragraph 13(i) does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

14. Paragraph 14 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

The Westland Liberty Property & Square Property Ownership

15. Paragraph 15 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

16. Paragraph 16 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

17. Paragraph 17 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or

1 information sufficient to form a belief as to the truth of the statement and denies the allegations
2 contained therein.

3 18. Paragraph 18 does not contain allegations against Fannie Mae and, thus, does not
4 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
5 information sufficient to form a belief as to the truth of the statement and denies the allegations
6 contained therein.

7 **The Shamrock Purchase**

8 19. Paragraph 19 does not contain allegations against Fannie Mae and, thus, does not
9 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
10 information sufficient to form a belief as to the truth of the statement and denies the allegations
11 contained therein.

12 20. Paragraph 20 does not contain allegations against Fannie Mae and, thus, does not
13 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
14 information sufficient to form a belief as to the truth of the statement and denies the allegations
15 contained therein.

16 21. Paragraph 21 does not contain allegations against Fannie Mae and, thus, does not
17 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
18 information sufficient to form a belief as to the truth of the statement and denies the allegations
19 contained therein.

20 22. Paragraph 22 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
22 information sufficient to form a belief as to the truth of the statement and denies the allegations
23 contained therein.

24 23. Paragraph 23 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae denies the allegations
26 contained therein.

27 24. Paragraph 24 does not contain allegations against Fannie Mae and, thus, does not
28 require a response. To the extent a response is required, Fannie Mae does not have knowledge or

1 information sufficient to form a belief as to the truth of the statement and denies the allegations
2 contained therein.

3 **The Properties' Condition During the Shamrock Years**

4 25. Paragraph 25 does not contain allegations against Fannie Mae and, thus, does not
5 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
6 information sufficient to form a belief as to the truth of the statement and denies the allegations
7 contained therein.

8 26. Paragraph 26 does not contain allegations against Fannie Mae and, thus, does not
9 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
10 information sufficient to form a belief as to the truth of the statement and denies the allegations
11 contained therein.

12 27. Paragraph 27 does not contain allegations against Fannie Mae and, thus, does not
13 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
14 information sufficient to form a belief as to the truth of the statement and denies the allegations
15 contained therein.

16 28. Paragraph 28 does not contain allegations against Fannie Mae and, thus, does not
17 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
18 information sufficient to form a belief as to the truth of the statement and denies the allegations
19 contained therein.

20 29. Paragraph 29 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
22 information sufficient to form a belief as to the truth of the statement and denies the allegations
23 contained therein.

24 30. Paragraph 30 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
26 information sufficient to form a belief as to the truth of the statement and denies the allegations
27 contained therein.

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1 31. Paragraph 31 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
3 information sufficient to form a belief as to the truth of the statement and denies the allegations
4 contained therein.

5 32. Paragraph 32 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
7 information sufficient to form a belief as to the truth of the statement and denies the allegations
8 contained therein.

9 33. Paragraph 33 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
11 information sufficient to form a belief as to the truth of the statement and denies the allegations
12 contained therein.

13 34. Paragraph 34 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
15 information sufficient to form a belief as to the truth of the statement and denies the allegations
16 contained therein.

17 35. Paragraph 35 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. To the extent a response is required, Fannie Mae denies the allegations
19 contained therein.

20 36. Paragraph 36 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
22 information sufficient to form a belief as to the truth of the statement and denies the allegations
23 contained therein.

24 37. Paragraph 37 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
26 information sufficient to form a belief as to the truth of the statement and denies the allegations
27 contained therein.

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1 38. Paragraph 38 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
3 information sufficient to form a belief as to the truth of the statement and denies the allegations
4 contained therein.

5 39. Paragraph 39 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
7 information sufficient to form a belief as to the truth of the statement and denies the allegations
8 contained therein.

9 40. Paragraph 40 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
11 information sufficient to form a belief as to the truth of the statement and denies the allegations
12 contained therein.

13 **Shamrock's Exit Strategy & The Loan Agreements**

14 41. Paragraph 41 does not contain allegations against Fannie Mae and, thus, does not
15 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
16 information sufficient to form a belief as to the truth of the statement and denies the allegations
17 contained therein.

18 42. Paragraph 42 does not contain allegations against Fannie Mae and, thus, does not
19 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
20 information sufficient to form a belief as to the truth of the statement and denies the allegations
21 contained therein.

22 43. Paragraph 43 does not contain allegations against Fannie Mae and, thus, does not
23 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
24 information sufficient to form a belief as to the truth of the statement and denies the allegations
25 contained therein.

26 44. Paragraph 44 does not contain allegations against Fannie Mae and, thus, does not
27 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
28 information sufficient to form a belief as to the truth of the statement and denies the allegations

1 contained therein.

2 45. Paragraph 45 does not contain allegations against Fannie Mae and, thus, does not
3 require a response. To the extent a response is required, Fannie Mae admits that the “Shamrock
4 Entities” secured loans for the “Liberty Property” and “Square Property”. Fannie Mae does not
5 have knowledge or information sufficient to form a belief as to the truth of the remaining
6 statements and denies the remaining allegations contained therein.

7 46. Answering Paragraph 46, Fannie Mae admits that Grandbridge is one of Fannie
8 Mae’s Delegated Underwriting and Servicing (“DUS”) lenders. Fannie Mae does not have
9 knowledge or information sufficient to form a belief as to the truth of the remaining statements
10 and denies the remaining allegations contained therein.

11 47. Answering Paragraph 47, Fannie Mae admits that certain information regarding its
12 DUS lending practices can be found at
13 <https://fm.fanniemae.com/powerofpartnershiparbor/index.html> and that the website speaks for
14 itself. To the extent a further response is required, Fannie Mae denies the allegations contained
15 therein.

16 48. Answering Paragraph 48, Fannie Mae does not have knowledge or information
17 sufficient to form a belief as to the truth of the statement and denies the allegations contained
18 therein.

19 49. Answering Paragraph 49, Fannie Mae does not have knowledge or information
20 sufficient to form a belief as to the truth of the statement and denies the allegations contained
21 therein.

22 50. Answering Paragraph 50, Fannie Mae admits that its DUS lenders must follow
23 certain criteria for loans and that its DUS lenders are subject to review. Fannie Mae does not have
24 knowledge or information sufficient to form a belief as to the truth of the remaining statements
25 and denies the remaining allegations contained therein.

26 51. Answering Paragraph 51, Fannie Mae does not have knowledge or information
27 sufficient to form a belief as to the truth of the statement and denies the allegations contained
28 therein.

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

52. Paragraph 52 states a legal conclusion to which no response is required. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the statement and denies the allegations contained therein.

53. Paragraph 53 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae admits that "CBRE" conducted property condition assessments at the Liberty Village Property and Village Square Property in 2017. Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

54. Paragraph 54 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae states that the "CBRE Property Condition Assessment Report for Liberty Village" and "CBRE Property Condition Assessment Report for Village Square" speak for themselves. Fannie Mae admits that the CBRE property condition assessments contain the quoted language in Paragraph 54 and denies any factual or legal conclusion implied by the allegations contained therein.

55. Paragraph 55 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae states that the CBRE Property Condition Assessment Report for Liberty Village and CBRE Property Condition Assessment Report for Village Square speak for themselves. Fannie Mae admits that the CBRE property condition assessments contain the quoted language in Paragraph 55 and denies any factual or legal conclusion implied by the allegations contained therein.

56. Answering Paragraph 56, Fannie Mae states that the CBRE Property Condition Assessment Report for Liberty Village and CBRE Property Condition Assessment Report for Village Square speak for themselves. Fannie Mae admits that it did not require the Shamrock Entities to immediately deposit any funds into a reserve account for unit repairs in 2017. Fannie Mae denies the remaining allegations contained therein.

57. Answering Paragraph 57, Fannie Mae states that the CBRE Property Condition Assessment Report for Liberty Village and CBRE Property Condition Assessment Report for

1 Village Square speak for themselves. Fannie Mae admits that it required the Shamrock Entities to
2 fund the monthly replacement reserve for “down units”. Fannie Mae denies the remaining
3 allegations contained therein.

4 58. Answering Paragraph 58, Fannie Mae states that the CBRE Property Condition
5 Assessment Report for Liberty Village and CBRE Property Condition Assessment Report for
6 Village Square speak for themselves. Fannie Mae admits that it required the Shamrock Entities to
7 fund the monthly replacement reserve based on a depreciable schedule. Fannie Mae does not have
8 knowledge or information sufficient to form a belief as to the truth of the remaining statements
9 and denies the remaining allegations contained therein.

10 59. Paragraph 59 does not contain allegations against Fannie Mae and, thus, does not
11 require a response. To the extent a response is required, Fannie Mae denies the allegations
12 contained therein.

13 60. Paragraph 60 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. To the extent a response is required, Fannie Mae admits that it required the
15 Shamrock Entities to fund reserve and repair accounts related to property improvements. Fannie
16 Mae denies the remaining allegations contained therein.

17 61. Paragraph 61 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. To the extent a response is required, Fannie Mae states that the Liberty Village
19 Loan Agreement and Village Square Loan Agreement speak for themselves. Fannie Mae admits
20 that it required the Shamrock Entities to fund the initial replacement reserve and initial repair
21 reserve accounts. Fannie Mae does not have knowledge or information sufficient to form a belief
22 as to the truth of the remaining statements and denies the remaining allegations contained therein.

23 62. Paragraph 62 does not contain allegations against Fannie Mae and, thus, does not
24 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
25 information sufficient to form a belief as to the truth of the statement and denies the allegations
26 contained therein.

27 63. Answering Paragraph 63, Fannie Mae admits that CBRE performed property
28 condition assessments on the Liberty Village Property and Village Square Property in 2017.

1 Fannie Mae denies the remaining allegations therein.

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

3 64. Paragraph 64 does not contain allegations against Fannie Mae and, thus, does not
4 require a response. To the extent a response is required, Fannie Mae admits that Counterclaimants
5 completed their purchases of the Liberty Square Property and Village Square Property on or about
6 August 29, 2018.

7 65. Paragraph 65 does not contain allegations against Fannie Mae and, thus, does not
8 require a response. To the extent a response is required, Fannie Mae states that the Purchase and
9 Sale Agreement for Liberty Village speaks for itself. Fannie Mae does not have knowledge or
10 information sufficient to form a belief as to the truth of the remaining statements and denies the
11 remaining allegations contained therein.

12 66. Paragraph 66 does not contain allegations against Fannie Mae and, thus, does not
13 require a response. To the extent a response is required, Fannie Mae states that the Purchase and
14 Sale Agreement for Village Square speaks for itself. Fannie Mae does not have knowledge or
15 information sufficient to form a belief as to the truth of the remaining statements and denies the
16 remaining allegations contained therein.

17 67. Paragraph 67 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. To the extent a response is required, Fannie Mae states that the Assumption
19 Closing Statement for Liberty Village and Assumption Closing Statement for Village Square
20 speak for themselves. Fannie Mae does not have knowledge or information sufficient to form a
21 belief as to the truth of the remaining statements and denies the remaining allegations contained
22 therein.

23 68. Paragraph 68 does not contain allegations against Fannie Mae and, thus, does not
24 require a response. To the extent a response is required, Fannie Mae states that the Assumption
25 Closing Statement for Liberty Village and Assumption Closing Statement for Village Square
26 speak for themselves. Fannie Mae does not have knowledge or information sufficient to form a
27 belief as to the truth of the remaining statements and denies the remaining allegations contained
28 therein.

1 69. Paragraph 69 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae states that the Liberty Square
3 Loan Agreement and Village Square Loan Agreement speak for themselves. Fannie Mae admits
4 that Article 13.02(a)(3)(B) of the “Loan Agreements” permits Fannie Mae to require a property
5 condition assessment upon assignment of the Loan Agreements and that it may require additional
6 repair or replacement reserves at the time of transfer. Fannie Mae further admits that it did not
7 conduct a property condition assessment at the Liberty Village Property and/or Village Square
8 Property at the time Counterclaimants’ assumed of the Loan Agreements.

9 70. Answering Paragraph 70, Fannie Mae admits that it did not conduct a property
10 condition assessment at the Liberty Village Property and/or Village Square Property or require
11 additional repair or replacement reserves at the time Counterclaimants’ assumed of the Loan
12 Agreements and avers that it had no duty, contractual or otherwise, to conduct a property condition
13 assessment at that time.

14 71. Paragraph 71 does not contain allegations against Fannie Mae and, thus, does not
15 require a response. To the extent a response is required, Fannie Mae states that the Assumption
16 Approval Letter for Liberty Village and Assumption Approval Letter for Village Square speak for
17 themselves. Fannie Mae admits that it did not require additional Replacement Reserves or Repair
18 Reserves at the time Counterclaimants’ assumed the Loan Agreements and that the total reserves
19 for both Properties totaled \$143,319.30 at that time.

20 72. Paragraph 72 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. To the extent a response is required, Fannie Mae states that the Assumption
22 Approval Letter for Liberty Village and Assumption Approval Letter for Village Square speak for
23 themselves. Fannie Mae does not have knowledge or information sufficient to form a belief as to
24 the truth of the remaining statements and denies the remaining allegations contained therein.

25 73. Paragraph 73 does not contain allegations against Fannie Mae and, thus, does not
26 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
27 information sufficient to form a belief as to the truth of the statements and denies the allegations
28 contained therein.

1 74. Paragraph 74 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
3 information sufficient to form a belief as to the truth of the statements and denies the allegations
4 contained therein.

5 75. Paragraph 75 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
7 information sufficient to form a belief as to the truth of the statements and denies the allegations
8 contained therein.

9 76. Paragraph 76 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
11 information sufficient to form a belief as to the truth of the statements and denies the allegations
12 contained therein.

13 77. Paragraph 77 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. To the extent a response is required, Fannie Mae admits that Grandbridge is
15 one of its DUS lenders and that Counterclaimants assumed the loans for the Properties. Fannie
16 Mae does not have knowledge or information sufficient to form a belief as to the truth of the
17 remaining statements and denies the remaining allegations contained therein.

18 78. Paragraph 78 contains a legal conclusion to which no response is required. To the
19 extent a response is required, Fannie Mae does not have knowledge or information sufficient to
20 form a belief as to the truth of the remaining statements and denies the remaining allegations
21 contained therein.

22 79. Paragraph 79 does not contain allegations against Fannie Mae and, thus, does not
23 require a response. Further, Paragraph 79 contains a legal conclusion to which no response is
24 required. To the extent a response is required, Fannie Mae does not have knowledge or information
25 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
26 allegations contained therein.

27 80. Paragraph 80 does not contain allegations against Fannie Mae and, thus, does not
28 require a response. To the extent a response is required, Fannie Mae does not have knowledge or

1 information sufficient to form a belief as to the truth of the remaining statements and denies the
2 remaining allegations contained therein.

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

4 81. Paragraph 81 does not contain allegations against Fannie Mae and, thus, does not
5 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
6 information sufficient to form a belief as to the truth of the remaining statements and denies the
7 remaining allegations contained therein.

8 82. Paragraph 82 does not contain allegations against Fannie Mae and, thus, does not
9 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
10 information sufficient to form a belief as to the truth of the remaining statements and denies the
11 remaining allegations contained therein.

12 83. Paragraph 83 does not contain allegations against Fannie Mae and, thus, does not
13 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
14 information sufficient to form a belief as to the truth of the remaining statements and denies the
15 remaining allegations contained therein.

16 84. Paragraph 84 contains a legal conclusion to which no response is required. To the
17 extent a response is required, Fannie Mae does not have knowledge or information sufficient to
18 form a belief as to the truth of the remaining statements and denies the remaining allegations
19 contained therein.

20 85. Paragraph 85 contains a legal conclusion to which no response is required. To the
21 extent a response is required, Fannie Mae does not have knowledge or information sufficient to
22 form a belief as to the truth of the remaining statements and denies the remaining allegations
23 contained therein.

24 86. Paragraph 86 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
26 information sufficient to form a belief as to the truth of the remaining statements and denies the
27 remaining allegations contained therein.

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1 87. Paragraph 87 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
3 information sufficient to form a belief as to the truth of the remaining statements and denies the
4 remaining allegations contained therein.

5 88. Paragraph 88 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
7 information sufficient to form a belief as to the truth of the remaining statements and denies the
8 remaining allegations contained therein.

9 89. Paragraph 89 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
11 information sufficient to form a belief as to the truth of the remaining statements and denies the
12 remaining allegations contained therein.

13 a. Paragraph 89(a) does not contain allegations against Fannie Mae and, thus,
14 does not require a response. To the extent a response is required, Fannie
15 Mae does not have knowledge or information sufficient to form a belief as
16 to the truth of the remaining statements and denies the remaining allegations
17 contained therein.

18 b. Paragraph 89(b) does not contain allegations against Fannie Mae and, thus,
19 does not require a response. To the extent a response is required, Fannie
20 Mae does not have knowledge or information sufficient to form a belief as
21 to the truth of the remaining statements and denies the remaining allegations
22 contained therein.

23 c. Paragraph 89(c) does not contain allegations against Fannie Mae and, thus,
24 does not require a response. To the extent a response is required, Fannie
25 Mae does not have knowledge or information sufficient to form a belief as
26 to the truth of the remaining statements and denies the remaining allegations
27 contained therein.
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1 90. Paragraph 90 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
3 information sufficient to form a belief as to the truth of the remaining statements and denies the
4 remaining allegations contained therein.

5 91. Paragraph 91 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
7 information sufficient to form a belief as to the truth of the remaining statements and denies the
8 remaining allegations contained therein.

9 92. Paragraph 92 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
11 information sufficient to form a belief as to the truth of the remaining statements and denies the
12 remaining allegations contained therein.

13 93. Paragraph 93 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
15 information sufficient to form a belief as to the truth of the remaining statements and denies the
16 remaining allegations contained therein.

17 94. Paragraph 94 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
19 information sufficient to form a belief as to the truth of the remaining statements and denies the
20 remaining allegations contained therein.

21 95. Paragraph 95 does not contain allegations against Fannie Mae and, thus, does not
22 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
23 information sufficient to form a belief as to the truth of the remaining statements and denies the
24 remaining allegations contained therein.

25 96. Paragraph 96 does not contain allegations against Fannie Mae and, thus, does not
26 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
27 information sufficient to form a belief as to the truth of the remaining statements and denies the
28 remaining allegations contained therein.

1 97. Paragraph 97 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
3 information sufficient to form a belief as to the truth of the remaining statements and denies the
4 remaining allegations contained therein.

5 98. Paragraph 98 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. Further, Fannie Mae states that the Nuisance Notice speaks for itself. To the
7 extent a response is required, Fannie Mae does not have knowledge or information sufficient to
8 form a belief as to the truth of the remaining statements and denies the remaining allegations
9 contained therein.

10 99. Paragraph 99 does not contain allegations against Fannie Mae and, thus, does not
11 require a response. Further, Fannie Mae states that the Letter of Nevada State Apartment
12 Association Executive Director and Letter of County Commissioner speak for themselves. To the
13 extent a response is required, Fannie Mae does not have knowledge or information sufficient to
14 form a belief as to the truth of the remaining statements and denies the remaining allegations
15 contained therein.

16 100. Paragraph 100 does not contain allegations against Fannie Mae and, thus, does not
17 require a response. To the extent a response is required, Fannie Mae admits that the Properties
18 experienced a dramatic decrease in occupancy rate during Westland's management of the
19 Properties. Fannie Mae does not have knowledge or information sufficient to form a belief as to
20 the truth of the remaining statements and denies the remaining allegations contained therein.

21 101. Paragraph 101 does not contain allegations against Fannie Mae and, thus, does not
22 require a response. To the extent a response is required, Fannie Mae admits that the occupancy
23 rate at the Properties was at or around 44% in July 2019. Fannie Mae does not have knowledge or
24 information sufficient to form a belief as to the truth of the remaining statements and denies the
25 remaining allegations contained therein.

26 102. Paragraph 102 does not contain allegations against Fannie Mae and, thus, does not
27 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
28 information sufficient to form a belief as to the truth of the remaining statements and denies the

1 remaining allegations contained therein.

2 103. Paragraph 103 does not contain allegations against Fannie Mae and, thus, does not
3 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
4 information sufficient to form a belief as to the truth of the remaining statements and denies the
5 remaining allegations contained therein.

6 104. Paragraph 104 does not contain allegations against Fannie Mae and, thus, does not
7 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
8 information sufficient to form a belief as to the truth of the remaining statements and denies the
9 remaining allegations contained therein.

10 105. Paragraph 105 does not contain allegations against Fannie Mae and, thus, does not
11 require a response. To the extent a response is required, Fannie Mae states that the Westland
12 Strategic Plan speaks for itself. Fannie Mae does not have knowledge or information sufficient to
13 form a belief as to the truth of the remaining statements and denies the remaining allegations
14 contained therein.

15 106. Paragraph 106 does not contain allegations against Fannie Mae and, thus, does not
16 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
17 information sufficient to form a belief as to the truth of the remaining statements and denies the
18 remaining allegations contained therein.

19 107. Paragraph 107 does not contain allegations against Fannie Mae and, thus, does not
20 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
21 information sufficient to form a belief as to the truth of the remaining statements and denies the
22 remaining allegations contained therein.

23 108. Paragraph 108 does not contain allegations against Fannie Mae and, thus, does not
24 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
25 information sufficient to form a belief as to the truth of the remaining statements and denies the
26 remaining allegations contained therein.

27 109. Paragraph 109 does not contain allegations against Fannie Mae and, thus, does not
28 require a response. To the extent a response is required, Fannie Mae denies that the Properties

1 have been “restored”. Fannie Mae does not have knowledge or information sufficient to form a
2 belief as to the truth of the remaining statements and denies the remaining allegations contained
3 therein.

4 110. Paragraph 110 does not contain allegations against Fannie Mae and, thus, does not
5 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
6 information sufficient to form a belief as to the truth of the remaining statements and denies the
7 remaining allegations contained therein.

8 111. Paragraph 111 does not contain allegations against Fannie Mae and, thus, does not
9 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
10 information sufficient to form a belief as to the truth of the remaining statements and denies the
11 remaining allegations contained therein.

12 112. Paragraph 112 does not contain allegations against Fannie Mae and, thus, does not
13 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
14 information sufficient to form a belief as to the truth of the remaining statements and denies the
15 remaining allegations contained therein.

16 113. Paragraph 113 does not contain allegations against Fannie Mae and, thus, does not
17 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
18 information sufficient to form a belief as to the truth of the remaining statements and denies the
19 remaining allegations contained therein.

20 114. Paragraph 114 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
22 information sufficient to form a belief as to the truth of the remaining statements and denies the
23 remaining allegations contained therein.

24 115. Paragraph 115 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
26 information sufficient to form a belief as to the truth of the remaining statements and denies the
27 remaining allegations contained therein.

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116. Paragraph 116 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

117. Paragraph 117 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

118. Paragraph 118 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

119. Paragraph 119 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

120. Paragraph 120 does not contain allegations against Fannie Mae and, thus, does not require a response. Further, Paragraph 120 contains a legal conclusion to which no response is required. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

Grandbridge's Servicing of the Loans since the Assumption

121. Answering Paragraph 121, Fannie Mae denies that it modified its level of scrutiny for Grandbridge's underwriting in connection with this matter. Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

122. Answering Paragraph 122, Fannie Mae denies the allegations therein.

123. Answering Paragraph 123, Fannie Mae denies the allegations therein.

1 124. Answering Paragraph 124, Fannie Mae admits that, after it conducted property
2 inspections and after its expert, f3 Inc., performed property condition assessments due to the
3 deteriorating condition of the Properties from the time Counterclaimants assumed the loans, that
4 Fannie Mae directed Grandbridge to obtain additional reserve and repair funding from
5 Counterclaimants pursuant to its rights under the Loan Agreements. Fannie Mae denies the
6 remaining allegations therein.

7 125. Paragraph 125 does not contain allegations against Fannie Mae and, thus, does not
8 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
9 information sufficient to form a belief as to the truth of the remaining statements and denies the
10 remaining allegations contained therein.

11 126. Paragraph 126 contains a legal conclusion to which no response is required. To the
12 extent a response is required, Fannie Mae admits that the Loan Agreements provide Fannie Mae
13 the right to “adjust the deposits required from Westland” and that Counterclaimants assumed those
14 terms when they signed the assumption and assignment agreements referenced therein. Fannie
15 Mae denies the remaining allegations therein.

16 **The Loan Agreements’ Requirements for Adjustments to Deposits**

17 127. Paragraph 127 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. Further, Paragraph 127 contains a legal conclusion to which no response is
19 required. To the extent a response is required, Fannie Mae states that the Loan Agreements speak
20 for themselves. Fannie Mae admits that Section 13.02(a)(3) permits Fannie Mae to adjust deposits
21 under certain circumstances. Fannie Mae denies the remaining allegations therein.

22 128. Paragraph 128 does not contain allegations against Fannie Mae and, thus, does not
23 require a response. Further, Paragraph 128 contains a legal conclusion to which no response is
24 required. To the extent a response is required, Fannie Mae states that the Loan Agreements speak
25 for themselves. Fannie Mae admits that the loan terms were for 84 months and that Section
26 13.02(a)(3)(A) permits adjustments based on mandatory property condition assessments set forth
27 therein. Fannie Mae denies the inference that Section 13.02(a)(3)(A) is determinative or relevant
28 to the facts of this matter.

1 129. Paragraph 129 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. Further, Paragraph 129 contains a legal conclusion to which no response is
3 required. To the extent a response is required, Fannie Mae states that the Loan Agreements speak
4 for themselves. Fannie Mae admits that Section 13.02(a)(3)(A) requires a property condition
5 assessment between the sixth and ninth month of the tenth year of a loan for non-affordable
6 housing properties. Fannie Mae denies the remaining allegations therein.

7 130. Paragraph 130 does not contain allegations against Fannie Mae and, thus, does not
8 require a response. Further, Paragraph 130 contains a legal conclusion to which no response is
9 required. To the extent a response is required, Fannie Mae states that the Loan Agreements speak
10 for themselves. Fannie Mae denies the allegations contained therein.

11 131. Answering Paragraph 131, Fannie Mae denies the allegations contained therein.

12 132. Answering Paragraph 132, Fannie Mae denies the allegations contained therein.

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

14 133. Paragraph 133 does not contain allegations against Fannie Mae and, thus, does not
15 require a response. Further, Paragraph 133 contains a legal conclusion to which no response is
16 required. To the extent a response is required, Fannie Mae states that the Loan Agreements speak
17 for themselves. Fannie Mae admits that it may conduct property condition assessments when it
18 determines that the condition of the Properties has deteriorated. Fannie Mae denies the remaining
19 allegations contained therein.

20 134. Answering Paragraph 134, Fannie Mae denies the allegations contained therein.

21 135. Paragraph 135 contains a legal conclusion to which no response is required. To the
22 extent a response is required, Fannie Mae admits that it has authority to—but is not required to—
23 conduct property condition assessments upon any transfer of the Properties and assignment and
24 assumption of the Loan Agreements. Fannie Mae denies the remaining allegations contained
25 therein.

26 136. Answering Paragraph 136, Fannie Mae denies the allegations contained therein.

27 137. Answering Paragraph 137, Fannie Mae admits that Grandbridge requested access
28 to conduct property condition assessments through f3, Inc. in mid-2019 and that Counterclaimants

1 consented to the property condition assessment. Fannie Mae denies the remaining allegations
2 contained therein.

3 138. Answering Paragraph 138, Fannie Mae denies the allegations contained therein.

4 139. Paragraph 139 does not contain allegations against Fannie Mae and, thus, does not
5 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
6 information sufficient to form a belief as to the truth of the remaining statements and denies the
7 remaining allegations contained therein.

8 140. Paragraph 140 does not contain allegations against Fannie Mae and, thus, does not
9 require a response. To the extent a response is required, Fannie Mae admits that Counterclaimants
10 provided f3, Inc. access to conduct property condition assessments in 2019. Fannie Mae does not
11 have knowledge or information sufficient to form a belief as to the truth of the remaining
12 statements and denies the remaining allegations contained therein.

13 141. Paragraph 141 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. Further, Paragraph 141 contains a legal conclusion to which no response is
15 required. To the extent a response is required, Fannie Mae denies that it has not “been honest about
16 their intentions”. Fannie Mae further denies that Counterclaimants are not required to permit
17 Fannie Mae to inspect the Properties pursuant to the Loan Agreements. Fannie Mae does not have
18 knowledge or information sufficient to form a belief as to the truth of the remaining statements
19 and denies the remaining allegations contained therein.

20 142. Answering Paragraph 142, Fannie Mae admits that f3, Inc. is one of its vendors
21 used to determine the deteriorating nature of multifamily properties. Fannie Mae denies the
22 remaining allegations contained therein.

23 143. Paragraph 143 does not contain allegations against Fannie Mae and, thus, does not
24 require a response. To the extent a response is required, Fannie Mae denies the allegations
25 contained therein.

26 144. Paragraph 144 does not contain allegations against Fannie Mae and, thus, does not
27 require a response. Further, Paragraph 144 contains a legal conclusion to which no response is
28 required. To the extent a response is required, Fannie Mae does not have knowledge or information

1 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
2 allegations contained therein.

3 145. Answering Paragraph 145, Fannie Mae admits that CBRE inspected approximately
4 10% of the open units at the Properties. Fannie Mae denies the remaining allegations contained
5 therein.

6 146. Paragraph 146 does not contain allegations against Fannie Mae and, thus, does not
7 require a response. To the extent a response is required, Fannie Mae states that f3, Inc.'s property
8 condition assessments speak for themselves. Fannie Mae further admits that f3 inspected 352 units
9 at the Liberty Village Property and 211 units at the Village Square Property. Fannie Mae does not
10 have knowledge or information sufficient to form a belief as to the truth of the remaining
11 statements and denies the remaining allegations contained therein.

12 147. Paragraph 147 does not contain allegations against Fannie Mae and, thus, does not
13 require a response. To the extent a response is required, Fannie Mae states that f3, Inc.'s property
14 condition assessments speak for themselves. Fannie Mae admits that f3, Inc.'s property condition
15 assessments highlighted the ongoing deterioration at the Properties, which required additional
16 monthly fees per unit based on depreciation.

17 148. Paragraph 148 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. To the extent a response is required, Fannie Mae states that f3, Inc.'s property
19 condition assessments speak for themselves. Fannie Mae admits that f3, Inc.'s property condition
20 assessments highlighted the ongoing deterioration at the Properties, which required additional
21 monthly fees per unit based on depreciation.

22 149. Paragraph 149 does not contain allegations against Fannie Mae and, thus, does not
23 require a response. Further, Paragraph 149 contains a legal conclusion to which no response is
24 required. To the extent a response is required, Fannie Mae denies the allegations contained therein.

25 150. Paragraph 150 does not contain allegations against Fannie Mae and, thus, does not
26 require a response. To the extent a response is required, Fannie Mae denies that it "changed the
27 rules after the fact" or changed the standard for conducting property condition assessments at any
28 time. Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth

1 of the remaining statements and denies the remaining allegations contained therein.

2 151. Answering Paragraph 151, Fannie Mae admits that it demanded that
3 Counterclaimants deposit an additional \$2,706,150.00 into the Liberty Village and Village Square
4 replacement and repair reserve accounts to cover the cost of the damages listed in the f3, Inc.
5 property condition assessments.

6 152. Paragraph 152 does not contain allegations against Fannie Mae and, thus, does not
7 require a response. To the extent a response is required, Fannie Mae states that the f3, Inc. property
8 condition assessments speak for themselves. Fannie Mae admits that the f3, Inc. property condition
9 assessments identified repairs and replacements totaling over \$2.7 million dollars at the Properties.
10 Fannie Mae denies the remaining allegations therein, including those incorporated by footnote 10.

11 153. Answering Paragraph 153, Fannie Mae states that the December 2019 default
12 notices speak for themselves. Fannie Mae denies that the default notices were “non-specific”.
13 Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of
14 the remaining statements and denies the remaining allegations contained therein.

15 154. Paragraph 154 does not contain allegations against Fannie Mae and, thus, does not
16 require a response. Further, Paragraph 154 contains a legal conclusion to which no response is
17 required. To the extent a response is required, Fannie Mae denies that Counterclaimants have
18 continued to fully perform on the loans. Fannie Mae does not have knowledge or information
19 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
20 allegations contained therein.

21 155. Paragraph 155 contains a legal conclusion to which no response is required. To the
22 extent a response is required, Fannie Mae denies that it engaged in deceptive practices and that the
23 f3, Inc. property condition assessments were “improperly obtained” because Fannie Mae based its
24 request to conduct those assessments on deterioration observed during visual inspections and
25 because Counterclaimants permitted access to the Properties, as they were required to do under
26 the Loan Agreements. Fannie Mae denies the remaining allegations contained therein.

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

28 156. Paragraph 156 contains legal conclusions to which no response is required. To the

1 extent a response is required, Fannie Mae states that the Loan Agreements speak for themselves.
2 Fannie Mae further admits that it asserted a default, in part, based on Counterclaimants' failure to
3 fund reserve accounts as required and that Fannie Mae could request additional reserves pursuant
4 to Section 13.02(a)(4) of the Loan Agreements. Fannie Mae denies the remaining allegations
5 contained therein.

6 157. Paragraph 157 contains legal conclusions to which no response is required. To the
7 extent a response is required, Fannie Mae states that the Loan Agreements speak for themselves.
8 Fannie Mae denies the allegations contained therein.

9 158. Paragraph 158 contains legal conclusions to which no response is required. To the
10 extent a response is required, Fannie Mae states that the Loan Agreements speak for themselves.
11 Fannie Mae further admits that Section 13.02(a)(4) permits Fannie Mae to request additional
12 reserve deposits to cover the cost of Replacement Reserves, Required Repairs, Additional Lender
13 Repairs, Additional Lender Replacements and Borrower Requested Replacements. Fannie Mae
14 denies the remaining allegations contained therein.

15 159. Paragraph 159 does not contain allegations against Fannie Mae and, thus, does not
16 require a response. To the extent a response is required, Fannie Mae states that the Loan
17 Agreements speak for themselves. Fannie Mae does not have knowledge or information sufficient
18 to form a belief as to the truth of the remaining statements and denies the remaining allegations
19 contained therein.

20 160. Paragraph 160 contains legal conclusions to which no response is required. To the
21 extent a response is required, Fannie Mae states that the Assumption Approval Letter for Liberty
22 Village and Assumption Approval Letter for Village Square speak for themselves. Fannie Mae
23 admits that it did not require additional Required Repairs Escrow funds at the time
24 Counterclaimants assumed the loans. Fannie Mae denies the remaining allegations contained
25 therein.

26 161. Paragraph 161 does not contain allegations against Fannie Mae and, thus, does not
27 require a response. Paragraph 161 contains a legal conclusion to which no response is required.
28 To the extent a response is required, Fannie Mae denies the allegations contained therein.

1 162. Paragraph 162 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. Paragraph 162 contains legal conclusions to which no response is required. To
3 the extent a response is required, Fannie Mae states that the Loan Agreements speak for
4 themselves. Fannie Mae admits that Schedule 1 of the Loan Agreements states, in part, that
5 “Additional Lender Repairs” are “repairs of the type listed on the Required Repair Schedule but
6 not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged
7 Property in good order and repair (ordinary wear and tear excepted) and in good marketable
8 condition or to prevent deterioration of the Mortgaged Property.” Fannie Mae denies the remaining
9 allegations contained therein.

10 163. Paragraph 163 does not contain allegations against Fannie Mae and, thus, does not
11 require a response. To the extent a response is required, Fannie Mae states that the f3, Inc. property
12 condition assessments speak for themselves. Fannie Mae denies that the f3, Inc. property condition
13 assessments demand a deposit of approximately \$2.7 million dollars for “immediate repairs”.

14 164. Paragraph 164 does not contain allegations against Fannie Mae and, thus, does not
15 require a response. To the extent a response is required, Fannie Mae states that the f3, Inc. property
16 condition assessments speak for themselves. Fannie Mae admits that approximately \$1,908,760 of
17 the “immediate repairs” detailed in the f3, Inc. property condition assessments related to critical
18 issues in vacant apartments. Fannie Mae denies the remaining allegations contained therein.

19 165. Paragraph 165 does not contain allegations against Fannie Mae and, thus, does not
20 require a response. To the extent a response is required, Fannie Mae states that the CBRE Property
21 Condition Assessment Report for Liberty Village and CBRE Property Condition Assessment
22 Report for Village Square speak for themselves. Fannie Mae denies the remaining allegations
23 contained therein.

24 166. Paragraph 166 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae states that the f3, Inc. property
26 condition assessments speak for themselves. Fannie Mae denies the remaining allegations
27 contained therein.

28 167. Paragraph 167 does not contain allegations against Fannie Mae and, thus, does not

1 require a response. Paragraph 167 contains legal conclusions to which no response is required. To
2 the extent a response is required, Fannie Mae states that the Loan Agreements speak for
3 themselves. Fannie Mae does not have knowledge or information sufficient to form a belief as to
4 the truth of the remaining statements and denies the remaining allegations contained therein.

5 168. Paragraph 168 contains legal conclusions to which no response is required. To the
6 extent a response is required, Fannie Mae denies the allegations contained therein.

7 169. Paragraph 169 contains legal conclusions to which no response is required. To the
8 extent a response is required, Fannie Mae states that the Loan Agreements speak for themselves.
9 Fannie Mae admits that Schedule 1 of the Loan Agreements states, in part, that “Additional Lender
10 Repairs” are “repairs of the type listed on the Required Repair Schedule but not otherwise
11 identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good
12 order and repair (ordinary wear and tear excepted) and in good marketable condition or to prevent
13 deterioration of the Mortgaged Property.” Fannie Mae denies the remaining allegations contained
14 therein.

15 170. Paragraph 170 does not contain allegations against Fannie Mae and, thus, does not
16 require a response. Paragraph 170 contains legal conclusions to which no response is required. To
17 the extent a response is required, Fannie Mae denies the allegations contained therein.

18 171. Paragraph 171 does not contain allegations against Fannie Mae and, thus, does not
19 require a response. Paragraph 171 contains legal conclusions to which no response is required. To
20 the extent a response is required, Fannie Mae denies the allegations contained therein.

21 172. Paragraph 172 does not contain allegations against Fannie Mae and, thus, does not
22 require a response. Paragraph 172 contains legal conclusions to which no response is required. To
23 the extent a response is required, Fannie Mae states that the Loan Agreements speak for
24 themselves. Fannie Mae denies the remaining allegations contained therein.

25 173. Paragraph 173 does not contain allegations against Fannie Mae and, thus, does not
26 require a response. Paragraph 173 contains legal conclusions to which no response is required. To
27 the extent a response is required, Fannie Mae states that the Loan Agreements speak for
28 themselves. Fannie Mae denies the remaining allegations contained therein.

1 174. Paragraph 174 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. Paragraph 174 contains legal conclusions to which no response is required. To
3 the extent a response is required, Fannie Mae states that the Loan Agreements speak for
4 themselves. Fannie Mae denies the remaining allegations contained therein.

5 175. Paragraph 175 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. Paragraph 175 contains legal conclusions to which no response is required. To
7 the extent a response is required, Fannie Mae denies the allegations contained therein.

8 176. Paragraph 176 contains legal conclusions to which no response is required. To the
9 extent a response is required, Fannie Mae denies the allegations contained therein.

10 **The Abandoned Default**

11 177. Paragraph 177 contains legal conclusions to which no response is required. To the
12 extent a response is required, Fannie Mae states that the December 2019 default notices speak for
13 themselves. Fannie Mae admits that Counterclaimants defaulted under the Loan Agreements, in
14 part, by failing to maintain the Properties in accordance with Article 6 of the Loan Agreements.
15 Fannie Mae denies the remaining allegations contained therein.

16 178. Paragraph 178 contains legal conclusions to which no response is required. To the
17 extent a response is required, Fannie Mae denies the allegations contained therein.

18 179. Paragraph 179 contains legal conclusions to which no response is required. To the
19 extent a response is required, Fannie Mae denies the allegations contained therein.

20 180. Paragraph 180 contains legal conclusions to which no response is required. To the
21 extent a response is required, Fannie Mae denies the allegations contained therein.

22 **The Purported Default**

23 181. Paragraph 181 does not contain allegations against Fannie Mae and, thus, does not
24 require a response. To the extent a response is required, Fannie Mae states that the October 2019
25 notices of demand speak for themselves. Fannie Mae admits that Grandbridge forwarded a letter
26 to Counterclaimants regarding the f3, Inc. property condition assessments conducted from
27 September 9 through 11, 2019, which included a “schedule of needed repairs” as an attachment.

28 182. Paragraph 182 does not contain allegations against Fannie Mae and, thus, does not

1 require a response. To the extent a response is required, Fannie Mae states that the October 2019
2 notices of demand speak for themselves. Fannie Mae admits that the notices identified various
3 defects in the physical conditions at the Properties amounting to, in part, Additional Lender
4 Repairs and Additional Lender Replacements under the Loan Agreements and that the notices
5 informed Grandbridge that it would be required to “execute an Amendment to the Loan Agreement
6 reflecting the amendment and restatement of Schedules 5 and 6 thereto with the repairs and
7 replacements identified on Exhibit A hereto.”

8 183. Paragraph 183 does not contain allegations against Fannie Mae and, thus, does not
9 require a response. To the extent a response is required, Fannie Mae states that the October 2019
10 notices of demand speak for themselves. Fannie Mae admits the allegations contained therein.

11 184. Paragraph 184 does not contain allegations against Fannie Mae and, thus, does not
12 require a response. To the extent a response is required, Fannie Mae states that the October 2019
13 notices of demand speak for themselves. Fannie Mae admits that the notices agreed “to allow the
14 Borrower to transfer 75% of the current balance in the Replacement Reserve (after Lender’s
15 receipt of the Borrower’s 10/01/2019 loan payment) in the total amount of \$246,047.00 to the
16 Repairs Escrow Account and to credit such amount to the Demand Amount.” Fannie Mae denies
17 the remaining allegations therein.

18 185. Paragraph 185 does not contain allegations against Fannie Mae and, thus, does not
19 require a response. Paragraph 185 contains legal conclusions to which no response is required. To
20 the extent a response is required, Fannie Mae denies the allegations contained therein.

21 186. Answering Paragraph 186, Fannie Mae denies the allegations contained therein.

22 187. Paragraph 187 does not contain allegations against Fannie Mae and, thus, does not
23 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
24 information sufficient to form a belief as to the truth of the statement and denies the allegations
25 contained therein.

26 188. Answering Paragraph 188, Fannie Mae admits that it refused Counterclaimants’
27 untimely request for more time to cure their defaults and/or to respond to the October 2019 notices
28 of demand.

1 189. Paragraph 189 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, Fannie Mae states that the Letter of John
3 Hofsaess, dated November 13, 2019, speaks for itself. Fannie Mae admits the allegations contained
4 therein.

5 190. Paragraph 190 does not contain allegations against Fannie Mae and, thus, does not
6 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
7 information sufficient to form a belief as to the truth of the statement and denies the allegations
8 contained therein.

9 191. Paragraph 191 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
11 information sufficient to form a belief as to the truth of the statement and denies the allegations
12 contained therein.

13 192. Answering Paragraph 192, Fannie Mae denies the allegations contained therein.

14 193. Paragraph 193 does not contain allegations against Fannie Mae and, thus, does not
15 require a response. To the extent a response is required, Fannie Mae states that Counterclaimants'
16 "Strategic Plan" speaks for itself. Fannie Mae admits that Counterclaimants sent Fannie Mae their
17 Strategic Plan, which included, among other things, a budget for repairs and a self-serving
18 declaration that Counterclaimants completed repairs identified in the f3, Inc. property condition
19 assessments. Fannie Mae does not have knowledge or information sufficient to form a belief as to
20 the truth of the remaining statements and denies the remaining allegations contained therein.

21 194. Paragraph 194 does not contain allegations against Fannie Mae and, thus, does not
22 require a response. To the extent a response is required, Fannie Mae states that the December 2019
23 notices of default speak for themselves. Fannie Mae does not have knowledge or information
24 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
25 allegations contained therein.

26 195. Paragraph 195 does not contain allegations against Fannie Mae and, thus, does not
27 require a response. To the extent a response is required, Fannie Mae states that Counterclaimants'
28 Letter of John Hofsaess, dated December 23, 2019, speaks for itself. Fannie Mae admits that

1 Counterclaimants forwarded a letter to Fannie Mae requesting additional details of their defaults
2 under the Loan Agreements after the time default cure period had lapsed. Fannie Mae denies the
3 remaining allegations contained therein.

4 196. Paragraph 196 does not contain allegations against Fannie Mae and, thus, does not
5 require a response. To the extent a response is required, Fannie Mae states that Counterclaimants'
6 Letter of John Hofsaess, dated January 6, 2020 speaks for itself. Fannie Mae admits that
7 Counterclaimants forwarded a letter to Fannie Mae. Fannie Mae denies the remaining allegations
8 contained therein.

9 197. Answering Paragraph 197, Fannie Mae admits a pre-negotiation letter was sent to
10 Counterclaimants and states that the pre-negotiation letter speaks for itself. Fannie Mae denies the
11 allegations contained therein.

12 198. Answering Paragraph 198, Fannie Mae admits that it declined to agree to
13 Counterclaimants' request for adjustments to Fannie Mae's demand after Counterclaimants
14 defaulted on their obligations in the Loan Agreements. Fannie Mae denies the remaining
15 allegations contained therein.

16 199. Answering Paragraph 199, Fannie Mae admits that Counterclaimants defaulted on
17 their obligations in the Loan Agreement. Fannie Mae further admits that Grandbridge accepted an
18 ACH payment from Counterclaimants to pay their January 2020 loan obligations.

19 200. Paragraph 200 contains a legal conclusion to which no response is required. To the
20 extent a response is required, Fannie Mae admits that Grandbridge acted properly when it did not
21 withdraw an ACH payment in February 2020. Fannie Mae denies the remaining allegations
22 contained therein.

23 201. Paragraph 201 does not contain allegations against Fannie Mae and, thus, does not
24 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
25 information sufficient to form a belief as to the truth of the remaining statements and denies the
26 remaining allegations contained therein.

27 202. Paragraph 202 does not contain allegations against Fannie Mae and, thus, does not
28 require a response. To the extent a response is required, Fannie Mae does not have knowledge or

1 information sufficient to form a belief as to the truth of the remaining statements and denies the
2 remaining allegations contained therein.

3 203. Paragraph 203 does not contain allegations against Fannie Mae and, thus, does not
4 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
5 information sufficient to form a belief as to the truth of the statement and denies the allegations
6 contained therein.

7 204. Paragraph 204 does not contain allegations against Fannie Mae and, thus, does not
8 require a response. To the extent a response is required, Fannie Mae states that the non—waiver
9 letters speak for themselves. Fannie Mae admits that it confirmed receipt of the payments
10 references in a series of non-waiver letters. Fannie Mae does not have knowledge or information
11 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
12 allegations contained therein.

13 205. Paragraph 205 contains a legal conclusion to which no response is required. To the
14 extent a response is required, Fannie Mae admits that it agreed to discuss Counterclaimants'
15 defaults under the Loan Agreements upon certain conditions, including Counterclaimants'
16 agreement to pay for the costs associated with their defaults, as provided for in the Loan
17 Agreements. Fannie Mae denies the remaining allegations contained therein.

18 206. Answering Paragraph 206, Fannie Mae admits that it agreed to discuss
19 Counterclaimants' defaults under the Loan Agreements upon certain conditions, including
20 Counterclaimants' agreement to provide Fannie Mae with an update regarding the Properties'
21 conditions and subject to Counterclaimants meeting their obligations in the Loan Agreements.
22 Fannie Mae denies the remaining allegations contained therein.

23 207. Answering Paragraph 207, Fannie Mae admits that it agreed to discuss
24 Counterclaimants' defaults under the Loan Agreements upon certain conditions, including
25 Counterclaimants' agreement to provide Fannie Mae with an update regarding the Properties'
26 conditions and subject to Counterclaimants meeting their obligations in the Loan Agreements.
27 Fannie Mae also admits that Counterclaimants produced work orders showing alleged work
28 performed at the Properties. Fannie Mae denies the remaining allegations contained therein.

1 208. Paragraph 208 contains legal conclusions to which no response is required. To the
2 extent a response is required, Fannie Mae states that the July 2020 Notice of Defaults and Elections
3 to Sell the Properties speak for themselves. Fannie Mae admits that it sent proper Notices of
4 Default and Elections to Sell the Properties to Counterclaimants based on their continuing defaults
5 of the Loan Agreements. Fannie Mae further admits that Counterclaimants continued to make
6 partial payments. Fannie Mae denies that Counterclaimants' actions rendered their defaults moot.
7 Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of
8 the remaining statements and denies the remaining allegations contained therein.

9 209. Paragraph 209 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, does not have knowledge or information
11 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
12 allegations contained therein.

13 210. Paragraph 210 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. To the extent a response is required, does not have knowledge or information
15 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
16 allegations contained therein.

17 211. Paragraph 211 does not contain allegations against Fannie Mae and, thus, does not
18 require a response. To the extent a response is required, does not have knowledge or information
19 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
20 allegations contained therein.

21 212. Paragraph 212 does not contain allegations against Fannie Mae and, thus, does not
22 require a response. To the extent a response is required, does not have knowledge or information
23 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
24 allegations contained therein.

25 213. Paragraph 213 does not contain allegations against Fannie Mae and, thus, does not
26 require a response. To the extent a response is required, does not have knowledge or information
27 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
28 allegations contained therein.

1 **IV. COUNTERCLAIMS**

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

4 214. Answering Paragraph 214, Fannie Mae incorporates by reference the statements,
5 responses, and allegations previously set forth in this Answer as if fully set forth herein.

6 215. Answering Paragraph 215, the document referenced therein speaks for itself and,
7 thus, no response is required. To the extent the Counterclaim misquotes, misstates, or otherwise
8 mischaracterizes the contents of said document or legal obligations contained therein, the
9 allegations are denied.

10 216. Answering Paragraph 216, the document referenced therein speaks for itself, and
11 thus, no response is required. To the extent the Counterclaim misquotes, misstates, or otherwise
12 mischaracterizes the contents of said document or legal obligations contained therein, the
13 allegations are denied.

14 217. Answering Paragraph 217, Fannie Mae admits that Grandbridge assigned its
15 interest in the Loan Agreements to Fannie Mae and that Grandbridge continued to act Fannie
16 Mae's servicer. Fannie Mae further admits that Counterclaimants assumed the original borrower's
17 obligations under the Loan Agreements.

18 218. Paragraph 218 does not contain allegations against Fannie Mae and, thus, does not
19 require a response. To the extent a response is required, does not have knowledge or information
20 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
21 allegations contained therein.

22 219. Answering Paragraph 219, the documents referenced therein speak for themselves
23 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
24 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
25 the allegations are denied.

26 220. Paragraph 220 does not contain allegations against Fannie Mae and, thus, does not
27 require a response. To the extent a response is required, the documents referenced therein speak
28 for themselves. Fannie Mae denies that Liberty LLC has performed all of the duties and obligations

1 required of it under the Loan Agreements. Fannie Mae does not have knowledge or information
2 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
3 allegations contained therein.

4 221. Paragraph 221 does not contain allegations against Fannie Mae and, thus, does not
5 require a response. To the extent a response is required, the documents referenced therein speak
6 for themselves. Fannie Mae denies that Liberty LLC has performed all of the duties and obligations
7 required of it under the Loan Agreements. Fannie Mae does not have knowledge or information
8 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
9 allegations contained therein.

10 222. Paragraph 222 states a legal conclusion to which no response is required. To the
11 extent a response is required, Fannie Mae denies the allegations contained therein.

12 223. Paragraph 223 states a legal conclusion to which no response is required. To the
13 extent a response is required, Fannie Mae denies the allegations contained therein.

14 224. Answering Paragraph, Fannie Mae denies the allegations contained therein and
15 denies that Counterclaimants are entitled to any relief.

16 225. Answering Paragraph 225, Fannie Mae denies the allegations contained therein and
17 denies that Counterclaimants are entitled to any relief.

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

20 226. Answering Paragraph 226, Fannie Mae incorporates by reference the statements,
21 responses, and allegations previously set forth in this Answer as if fully set forth herein.

22 227. Answering Paragraph 227, the document referenced therein speaks for itself and,
23 thus, no response is required. To the extent the Counterclaim misquotes, misstates, or otherwise
24 mischaracterizes the contents of said document or legal obligations contained therein, the
25 allegations are denied.

26 228. Answering Paragraph 228, the document referenced therein speaks for itself, and
27 thus, no response is required. To the extent the Counterclaim misquotes, misstates, or otherwise
28 mischaracterizes the contents of said document or legal obligations contained therein, the

1 allegations are denied.

2 229. Answering Paragraph 229, Fannie Mae admits that Grandbridge assigned its
3 interest in the Loan Agreements to Fannie Mae and that Grandbridge continued to act Fannie
4 Mae's servicer. Fannie Mae further admits that Counterclaimants assumed the original borrower's
5 obligations under the Loan Agreements.

6 230. Paragraph 230 does not contain allegations against Fannie Mae and, thus, does not
7 require a response. To the extent a response is required, does not have knowledge or information
8 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
9 allegations contained therein.

10 231. Answering Paragraph 231, the documents referenced therein speak for themselves
11 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
12 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
13 the allegations are denied.

14 232. Paragraph 232 does not contain allegations against Fannie Mae and, thus, does not
15 require a response. To the extent a response is required, the documents referenced therein speak
16 for themselves. Fannie Mae denies that Liberty LLC has performed all of the duties and obligations
17 required of it under the Loan Agreements. Fannie Mae does not have knowledge or information
18 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
19 allegations contained therein.

20 233. Paragraph 233 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. To the extent a response is required, the documents referenced therein speak
22 for themselves. Fannie Mae denies that Liberty LLC has performed all of the duties and obligations
23 required of it under the Loan Agreements. Fannie Mae does not have knowledge or information
24 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
25 allegations contained therein.

26 234. Paragraph 234 states a legal conclusion to which no response is required. To the
27 extent a response is required, Fannie Mae denies the allegations contained therein.

28 235. Paragraph 235 states a legal conclusion to which no response is required. To the

1 extent a response is required, Fannie Mae denies the allegations contained therein.

2 236. Answering Paragraph 236, Fannie Mae denies the allegations contained therein and
3 denies that Counterclaimants are entitled to any relief.

4 237. Answering Paragraph 237, Fannie Mae denies the allegations contained therein and
5 denies that Counterclaimants are entitled to any relief.

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

8 238. Answering Paragraph 238, Fannie Mae incorporates by reference the statements,
9 responses, and allegations previously set forth in this Answer as if fully set forth herein.

10 239. Answering Paragraph 239, the documents referenced therein speak for themselves
11 and, thus, no response is required. Fannie Mae admits the allegations contained therein.

12 240. Answering Paragraph 240, the documents referenced therein speak for themselves
13 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
14 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
15 the allegations are denied.

16 241. Paragraph 241 states a legal conclusion to which no response is required. To the
17 extent a response is required, Fannie Mae admits that all contracts in Nevada contain an implied
18 covenant of good faith and fair dealing.

19 242. Paragraph 242 does not contain allegations against Fannie Mae and, thus, does not
20 require a response. Paragraph 242 states a legal conclusion to which no response is required. To
21 the extent a response is required, Fannie Mae denies the allegations contained therein.

22 243. Paragraph 243 states a legal conclusion to which no response is required. To the
23 extent a response is required, Fannie Mae denies the allegations contained therein.

24 244. Paragraph 244 does not contain allegations against Fannie Mae and, thus, does not
25 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
26 information sufficient to form a belief as to the truth of the remaining statements and denies the
27 remaining allegations contained therein.

28 245. Paragraph 245 states a legal conclusion to which no response is required. To the

1 extent a response is required, Fannie Mae denies the allegations contained therein.

2 246. Paragraph 246 states a legal conclusion to which no response is required. To the
3 extent a response is required, Fannie Mae denies the allegations contained therein.

4 247. Answering Paragraph 247, Fannie Mae denies the allegations contained therein and
5 denies that Counterclaimants are entitled to any relief.

6 248. Answering Paragraph 248, Fannie Mae denies the allegations contained therein and
7 denies that Counterclaimants are entitled to any relief.

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

9 249. Answering Paragraph 249, Fannie Mae incorporates by reference the statements,
10 responses, and allegations previously set forth in this Answer as if fully set forth herein.

11 250. Paragraph 250 states a legal conclusion to which no response is required. To the
12 extent a response is required, Fannie Mae denies the allegations contained therein.

13 251. Answering Paragraph 251, Fannie Mae admits that Counterclaimants and Fannie
14 Mae are adverse parties in this dispute.

15 252. Paragraph 252 states a legal conclusion to which no response is required. To the
16 extent a response is required, Fannie Mae admits that the dispute involves, in part, the terms of the
17 Loan Agreements, which speak for themselves. To the extent the Counterclaim misquotes,
18 misstates, or otherwise mischaracterizes the contents of said document or legal obligations
19 contained therein, the allegations are denied.

20 253. Paragraph 253 does not contain allegations against Fannie Mae and, thus, does not
21 require a response. Paragraph 253 states a legal conclusion to which no response is required. To
22 the extent a response is required, Fannie Mae denies the allegations contained therein.

23 254. Paragraph 254 states a legal conclusion to which no response is required. To the
24 extent a response is required, Fannie Mae admits that it forwarded notices of demand to
25 Counterclaimants in October 2019 and denies the remaining allegations contained therein.

26 255. Paragraph 255 states a legal conclusion to which no response is required. To the
27 extent a response is required, Fannie Mae admits that it forwarded Notices of Default and Elections
28 to Sell the Properties in July 2020 due to Counterclaimants' failure to cure their defaults under the

1 Loan Agreements and denies the remaining allegations contained therein.

2 256. Paragraph 256 states a legal conclusion to which no response is required. To the
3 extent a response is required, Fannie Mae admits that it filed a complaint seeking the appointment
4 of a receiver due to Counterclaimants' failure to cure their defaults under the Loan Agreements
5 and denies the remaining allegations contained therein.

6 257. Paragraph 257 does not contain allegations against Fannie Mae and, thus, does not
7 require a response. To the extent a response is required, the Loan Agreements speak for themselves
8 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
9 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
10 the allegations are denied.

11 258. Paragraph 258 does not contain allegations against Fannie Mae and, thus, does not
12 require a response. To the extent a response is required, the Loan Agreements speak for themselves
13 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
14 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
15 the allegations are denied. Fannie Mae further denies that Counterclaimants are entitled to any
16 relief.

17 259. Answering Paragraph 259, Fannie Mae denies the allegations contained therein and
18 denies that Counterclaimants are entitled to any relief.

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

20 260. Answering Paragraph 260, Fannie Mae incorporates by reference the statements,
21 responses, and allegations previously set forth in this Answer as if fully set forth herein.

22 261. Paragraph 261 does not contain allegations against Fannie Mae and, thus, does not
23 require a response. Paragraph 261 states a legal conclusion to which no response is required. To
24 the extent a response is required, Fannie Mae denies the allegations contained therein.

25 262. Answering Paragraph 262, Fannie Mae Fannie Mae does not have knowledge or
26 information sufficient to form a belief as to the truth of the remaining statements and denies the
27 remaining allegations contained therein.

28 263. Answering Paragraph 263, the documents referenced therein speak for themselves

1 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
2 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
3 the allegations are denied.

4 264. Answering Paragraph 264, the documents referenced therein speak for themselves
5 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
6 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
7 the allegations are denied.

8 265. Answering Paragraph 265, Fannie Mae denies the allegations contained therein.

9 266. Answering Paragraph 266, Fannie Mae denies the allegations contained therein.

10 267. Answering Paragraph 267, Fannie Mae denies the allegations contained therein.

11 268. Answering Paragraph 268, Fannie Mae denies the allegations contained therein.

12 269. Answering Paragraph 269, Fannie Mae denies the allegations contained therein.

13 270. Paragraph 270 does not contain allegations against Fannie Mae and, thus, does not
14 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
15 information sufficient to form a belief as to the truth of the statements and denies the allegations
16 contained therein.

17 271. Answering Paragraph, Fannie Mae denies that it made material misstatements and
18 omissions. Fannie Mae does not have knowledge or information sufficient to form a belief as to
19 the truth of the remaining statements and denies the remaining allegations contained therein.

20 272. Answering Paragraph 272, Fannie Mae denies that it or Grandbridge made material
21 misstatements and omissions. Fannie Mae does not have knowledge or information sufficient to
22 form a belief as to the truth of the remaining statements and denies the allegations contained
23 therein.

24 273. Answering Paragraph 273, Fannie Mae denies the allegations contained therein and
25 denies that Counterclaimants are entitled to any relief.

26 274. Answering Paragraph 274, Fannie Mae denies the allegations contained therein and
27 denies that Counterclaimants are entitled to any relief.

28 ///

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

275. Answering Paragraph 275, Fannie Mae incorporates by reference the statements, responses, and allegations previously set forth in this Answer as if fully set forth herein.

276. Answering Paragraph 276, Fannie Mae Fannie Mae denies the allegations contained therein and incorporated by reference.

277. Answering Paragraph 277, the document referenced therein speaks for itself and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or otherwise mischaracterizes the contents of said document or legal obligations contained therein, the allegations are denied.

278. Paragraph 278 does not contain allegations against Fannie Mae and, thus, does not require a response. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

279. Answering Paragraph 279, Fannie Mae denies the allegation contained therein.

280. Answering Paragraph 280, Fannie Mae denies the allegations contained therein.

281. Paragraph 281 states a legal conclusion to which no response is required. To the extent a response is required, Fannie Mae admits that all parties to the Loan Agreements have a duty to not make material misrepresentations.

282. Paragraph 282 states a legal conclusion to which no response is required. To the extent a response is required, Fannie Mae does not have knowledge or information sufficient to form a belief as to the truth of the remaining statements and denies the remaining allegations contained therein.

283. Answering Paragraph 283, Fannie Mae denies the allegations contained therein and denies that Counterclaimants are entitled to any relief.

g. SEVENTH CAUSE OF ACTION (CONVERSION)

284. Answering Paragraph 284, Fannie Mae incorporates by reference the statements, responses, and allegations previously set forth in this Answer as if fully set forth herein.

1 285. Answering Paragraph 285, Fannie Mae admits the allegations set forth therein to
2 the extent they refer to Fannie Mae. Fannie Mae does not have knowledge or information sufficient
3 to form a belief as to the truth of the remaining statements and denies the remaining allegations
4 contained therein.

5 286. Answering Paragraph 286, the documents referenced therein speak for themselves
6 and, thus, no response is required. To the extent the Counterclaim misquotes, misstates, or
7 otherwise mischaracterizes the contents of said document or legal obligations contained therein,
8 the allegations are denied. Fannie Mae does not have knowledge or information sufficient to form
9 a belief as to the truth of the remaining statements and denies the remaining allegations contained
10 therein.

11 287. Paragraph 287 does not contain allegations against Fannie Mae and, thus, does not
12 require a response. To the extent a response is required, Fannie Mae admits that fire insurance
13 claim proceeds were deposited into an escrow account. Fannie Mae denies the remaining
14 allegations therein.

15 288. Paragraph 288 does not contain allegations against Fannie Mae and, thus, does not
16 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
17 information sufficient to form a belief as to the truth of the remaining statements and denies the
18 remaining allegations contained therein.

19 289. Paragraph 289 does not contain allegations against Fannie Mae and, thus, does not
20 require a response. To the extent a response is required, Fannie Mae does not have knowledge or
21 information sufficient to form a belief as to the truth of the remaining statements and denies the
22 remaining allegations contained therein.

23 290. Answering Paragraph 290, Fannie Mae denies the allegations contained therein.

24 291. Answering Paragraph 291, Fannie Mae denies the allegations contained therein.

25 292. Answering Paragraph 292, Fannie Mae denies the allegations contained therein.

26 293. Answering Paragraph 293, Fannie Mae denies the allegations contained therein.

27 294. Answering Paragraph 294, Fannie Mae denies the allegations contained therein and
28 denies that Counterclaimants are entitled to any relief.

1 295. Answering Paragraph 295, Fannie Mae denies the allegations contained therein and
2 denies that Counterclaimants are entitled to any relief.

3 296. Answering Paragraph 296, Fannie Mae denies the allegations contained therein and
4 denies that Counterclaimants are entitled to any relief.

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

6 297. Answering Paragraph 297, Fannie Mae incorporates by reference the statements,
7 responses, and allegations previously set forth in this Answer as if fully set forth herein.

8 298. Answering Paragraph 298, Fannie Mae admits the allegations contained therein.

9 299. Paragraph 299 does not contain allegations against Fannie Mae and, thus, does not
10 require a response. To the extent a response is required, Fannie Mae denies the statements
11 contained therein.

12 300. Answering Paragraph 300, Fannie Mae denies the allegation contained therein.

13 301. Answering Paragraph 301, Fannie Mae denies the allegations contained therein.

14 302. Paragraph 302 states a legal conclusion to which no response is required. To the
15 extent a response is required, Fannie Mae denies the statements contained therein.

16 303. Answering Paragraph 303, Fannie Mae denies the statements contained therein and
17 denies that Counterclaimants are entitled to any relief.

18 304. Paragraph 304 states a legal conclusion to which no response is required. To the
19 extent a response is required, Fannie Mae denies the statements contained therein.

20 305. Answering Paragraph 305, Fannie Mae denies the allegations contained therein and
21 denies that Counterclaimants are entitled to any relief.

22 306. Answering Paragraph 306, Fannie Mae denies the allegations contained therein and
23 denies that Counterclaimants are entitled to any relief.

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

26 307. Answering Paragraph 307, Fannie Mae incorporates by reference the statements,
27 responses, and allegations previously set forth in this Answer as if fully set forth herein.

28 308. Answering Paragraph 308, Fannie Mae admits the allegations contained therein.

1 309. Paragraph 309 does not contain allegations against Fannie Mae and, thus, does not
2 require a response. To the extent a response is required, the documents referenced therein speak
3 for themselves and, thus, no response is required. To the extent the Counterclaim misquotes,
4 misstates, or otherwise mischaracterizes the contents of said document or legal obligations
5 contained therein, the allegations are denied.

6 310. Paragraph 310 does not contain allegations against Fannie Mae and, thus, does not
7 require a response. To the extent a response is required, the documents referenced therein speak
8 for themselves and, thus, no response is required. To the extent the Counterclaim misquotes,
9 misstates, or otherwise mischaracterizes the contents of said document or legal obligations
10 contained therein, the allegations are denied.

11 311. Paragraph 311 does not contain allegations against Fannie Mae and, thus, does not
12 require a response. To the extent a response is required, the documents referenced therein speak
13 for themselves and, thus, no response is required. To the extent the Counterclaim misquotes,
14 misstates, or otherwise mischaracterizes the contents of said document or legal obligations
15 contained therein, the allegations are denied.

16 312. Paragraph 312 does not contain allegations against Fannie Mae and, thus, does not
17 require a response. To the extent a response is required, the documents referenced therein speak
18 for themselves and, thus, no response is required. To the extent the Counterclaim misquotes,
19 misstates, or otherwise mischaracterizes the contents of said document or legal obligations
20 contained therein, the allegations are denied.

21 313. Answering Paragraph 313, Fannie Mae denies the remaining allegations contained
22 therein.

23 314. Answering Paragraph 314, Fannie Mae denies the allegations contained therein.

24 315. Answering Paragraph 315, Fannie Mae does not have knowledge or information
25 sufficient to form a belief as to the truth of the remaining statements and denies the remaining
26 allegations contained therein.

27 316. Paragraph 316 does not contain allegations against Fannie Mae and, thus, does not
28 require a response. To the extent a response is required, Fannie Mae does not have knowledge or

1 information sufficient to form a belief as to the truth of the remaining statements and denies the
2 remaining allegations contained therein.

3 317. Answering Paragraph 317, Fannie Mae denies the allegations set forth therein and
4 denies that Counterclaimants are entitled to any relief.

5 318. Answering Paragraph 318, denies the allegations set forth therein and denies that
6 Counterclaimants are entitled to any relief.

7 319. Answering Paragraph 319, Fannie Mae denies the allegations set forth therein and
8 denies that Counterclaimants are entitled to any relief.

9 Fannie Mae denies that Counterclaimants are entitled to any relief set forth in their prayer
10 for relief.

11 **AFFIRMATIVE DEFENSES**

12 As a separate defense, Fannie Mae asserts the following affirmative defenses:

13 **FIRST AFFIRMATIVE DEFENSE**

14 Counterclaimants' contract-based claims are barred by the doctrine of recoupment.

15 **SECOND AFFIRMATIVE DEFENSE**

16 Counterclaimants' claims for relief are barred by the doctrine of estoppel because
17 Counterclaimants defaulted on the Loan Agreements prior to Fannie Mae's alleged actions
18 supporting Counterclaimants' claims.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Counterclaimants' claims for relief are barred by the doctrine of unclean hands because
21 Counterclaimants defaulted on the Loan Agreements prior to Fannie Mae's alleged actions
22 supporting Counterclaimants' claims. Further, as alleged in Fannie Mae's Verified Complaint,
23 Counterclaimants have acted, and continue to act, in direct violation of the Loan Agreements by,
24 *inter alia*, failing to meet their payment and repair obligations therein.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 Counterclaimants' claims for relief are barred by the doctrine of laches because
27 Counterclaimants failed to bring their counterclaims against Fannie Mae in a timely manner. The
28 issues underlying this matter first arose in 2019 and continued into 2020. Despite ongoing

1 communications between the parties regarding Counterclaimants' defaults under the Loan
2 Agreements, Counterclaimants failed to raise any issues and/or potential claims against Fannie
3 Mae until they filed their Counterclaim nearly a year later on August 31, 2020.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Counterclaimants' claims for relief are barred by the doctrine of waiver because
6 Counterclaimants waived their right to any claims arising from the Loan Agreements due to their
7 material defaults, which occurred earlier in time than the allegations against Fannie Mae.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 Counterclaimants have suffered no damages and, therefore, are not entitled to relief.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Counterclaimants' claims for relief are barred by ratification and acquiescence, because
12 Counterclaimants acknowledged significant damages at the Properties through their "Strategic
13 Plan" and allegedly began attempting to cure some of their defaults by making repairs.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 Counterclaimants' claims for relief are barred by fraud because Counterclaimants have
16 falsely represented that they have repaired the Properties when, in fact, the Properties remain in
17 disrepair. Counterclaimants purposefully mislead Fannie Mae in an attempt to induce Fannie Mae
18 to not enforce its rights in the Loan Agreements by, *inter alia*, not pursuing foreclosure
19 proceedings and lowering the required reserve amounts in the repair and replacement accounts for
20 the Properties.

21 **NINTH AFFIRMATIVE DEFENSE**

22 Counterclaimants' claims for relief are barred by their prior material breaches as alleged
23 in the Verified Complaint.

24 **TENTH AFFIRMATIVE DEFENSE**

25 Counterclaimants' claims for relief are barred by their failure to mitigate damages because
26 Counterclaimants were or should have been aware of the potential damages arising from their
27 defaults under the Loan Agreements and nonetheless refused to cure their defaults under the Loan
28 Documents or to fund the requested reserve and challenge it later.

ELEVENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred because Counterclaimants acted in bad faith by preventing Fannie Mae's access to the Properties for over a year, in direct violation of the Loan Agreements, so that Fannie Mae could assess the condition of the Properties, thereby leaving Fannie Mae with no choice but to initiate foreclosure proceedings against the Properties and to initiate legal proceedings against Counterclaimants.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred by promissory estoppel because Counterclaimants assured Fannie Mae that it made, and is continuing to make, significant repairs to the Properties in an attempt to induce Fannie Mae stop enforcing its rights under the Loan Agreements. Those promises are false, and Counterclaimants should be barred from any recovery.

THIRTEENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred under the doctrine of *in pari delicto* because, even if Fannie Mae took the actions alleged in the Counterclaim, Counterclaimants bear, at minimum, equal responsibility for the issues alleged in this matter.

FOURTEENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred because Counterclaimants would be unjustly enriched if they were permitted to obtain any recovery in this action. Counterclaimants have not suffered any actual damages—only the threat of future losses due to their own actions—and any damages awarded would result in a windfall to Counterclaimants.

FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred because Fannie Mae has substantially performed under the Loan Agreements and other Loan Documents.

SIXTEENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims are barred as a result of an invalid modification, because the Assumption Approval Letters do not, and should not, modify Fannie Mae's ability to request additional reserve deposits pursuant to the plain terms of the Loan Agreements.

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SEVENTEENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims should be dismissed because Counterclaimants failed to name a necessary and/or indispensable party to this action – the entities they purchased the Properties from.

EIGHTEENTH AFFIRMATIVE DEFENSE

Counterclaimants' damages, if any claims succeed, should be reduced by the doctrines of setoff, offset and/or contribution because Counterclaimants owe money to Fannie Mae under the Loan Agreements or because the non-party, Shamrock Entities, received the payments Counterclaimants paid to purchase the Properties.

NINETEENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred by the doctrine of assumption of risk because Counterclaimants knowingly assumed the obligations in the Loan Agreements after completing their own due diligence, including the risk of loss of their investments in the event they defaulted on the Loan Agreements.

TWENTIETH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred by the statute of limitations.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Fannie Mae acted reasonably and in good faith at all times material herein. Accordingly, Counterclaimants are barred from any recovery in this action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Counterclaimants' breach of contract claims are barred by their failure to satisfy conditions precedent. Namely, Counterclaimants failed to perform their payment and repair obligations.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Counterclaimants should not be granted any declaratory relief, because Counterclaimants' self-serving interpretation of the Loan Agreements contradicts the plain language therein.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for fraud are barred because Fannie Mae did not make a false statement and/or omit any material statements.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to injunctive relief because there exists an adequate remedy at law.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to injunctive relief because they cannot show a likelihood of success on the merits.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to injunctive relief because they will not be irreparably harmed without an injunction.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to any punitive damages, if any of their claims are successful, because Fannie Mae's conduct was not oppressive, nor did Fannie Mae act with malice, oppression, or fraud. Further, Counterclaimants' Counterclaim fails to set forth any facts which would support a basis for punitive or exemplary damages against Fannie Mae. Additionally, Fannie Mae is a federal instrumentality, under the conservatorship of the Federal Housing Finance Agency, and, as such, punitive damages cannot be awarded against Fannie Mae.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Counterclaimants claims are barred, in whole or in part, by the economic loss doctrine.

THIRTIETH AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to equitable relief for rescission or reformation of the Loan Agreements because the parties did not share any misconceptions regarding the Loan Agreements' terms.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to equitable relief for rescission or reformation of the Loan Agreements because, even if there was a mistake by either party, the misconception did not affect the material purpose and/or material terms of the Loan Agreements.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Counterclaimants are not entitled to their claims for declaratory, injunctive, or other

1 equitable relief against Fannie Mae pursuant to 12 USC § 4617(f), because such actions restrain
2 or affect the exercise of powers or functions of the Federal Housing Finance Agency in its capacity
3 as conservator over Fannie Mae.

4 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

5 Counterclaimants are not entitled to maintain some or all of their claims against Fannie
6 Mae under the Housing and Economic Recovery Act of 2008 (“HERA”).

7 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

8 Fannie Mae’s performance under the Loan Documents is excused by Counterclaimants
9 non-performance.

10 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

11 Counterclaimants lack standing to assert claims and recover the damages they seek.

12 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

13 Counterclaimants claims are barred by the voluntary payment doctrine.

14 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

15 Counterclaimants claims arise from a purchase and sale agreement that Counterclaimants
16 entered into with a third party prior to the assumption of the Fannie Mae Loan Documents. Fannie
17 Mae is not a party to or in privity with any party to the contracts by which Counterclaims acquired
18 the properties. Counterclaimants did not detrimentally rely on any representation from Fannie Mae
19 when entering into the purchase and sale agreements for the properties.

20 **RESERVATION OF RIGHT TO ADD AFFIRMATIVE DEFENSES**

21 By alleging the matters set forth above as “Affirmative Defenses,” Fannie Mae does not
22 thereby allege or admit that it has the burden of proof or the burden of persuasion with respect to
23 any of those matters. Fannie Mae presently has insufficient knowledge or information on which
24 to form a belief as to whether it may have additional, as yet unstated, defenses available.
25 Accordingly, Fannie Mae hereby gives notice that it intends to rely upon such other and further
26 defenses that may become available or apparent during discovery or pre-trial proceedings in this
27 case and hereby reserves its rights to assert such defenses. Because the facts have not been fully
28 developed, Fannie Mae affirmatively pleads accord and satisfaction; arbitration and award;

1 assumption of risk; contributory negligence; discharge in bankruptcy; duress; estoppel; failure of
2 consideration; fraud; illegality; injury by fellow servant; laches; license; payment; release; res
3 judicata; statute of frauds; statute of limitations; and waiver. Fannie Mae further reserves the right
4 to amend its Answer and affirmative defenses accordingly and to delete affirmative defenses that
5 Fannie Mae determines are not applicable during the course of this litigation.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Fannie Mae respectfully requests relief as follows:

- 8 1. That Counterclaimants take nothing by way of their Counterclaim;
- 9 2. That the Counterclaim be dismissed with prejudice;
- 10 3. That Fannie Mae be awarded its attorneys' fees and costs; and
- 11 4. For such other and further relief as the Court may deem just and proper.

12 Dated: February 18, 2021.

SNELL & WILMER L.L.P.

13 By: /s/ Nathan G. Kanute

14 Nathan G. Kanute, Esq. (NV Bar No. 12413)
15 Bob L. Olson, Esq. (NV Bar No. 3783)
16 David L. Edelblute, Esq. (NV Bar No. 14049)

17 *Attorneys for Plaintiff Federal National*
18 *Mortgage Association*
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **FEDERAL NATIONAL MORTGAGE ASSOCIATION'S ANSWER TO COUNTERCLAIM** by the method indicated:

_____ U. S. Mail
_____ U.S. Certified Mail
_____ Facsimile Transmission
_____ Federal Express
 X Electronic Service
_____ E-mail

and addressed to the following:

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DATED: February 18, 2021.

/s/ Lara J. Taylor
An Employee of Snell & Wilmer L.L.P.