IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Plaintiff,
vs.
WESTLAND LIBERTY VILLAGE, LLC, a Nevada limited liability company; and WESTLAND VILLAGE SQUARE,

No. 83695

**AMENDED DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department XIII

County Clark Judge Honorable Mark Denton

District Ct. Case No. A-20-819412-B

2. Attorney filing this docketing statement:

Attorney Leslie Bryan Hart / Michael Johnson Telephone 775-788-2228

Firm Fennemore Craig, P.C. / Arnold & Porter

Address 7800 Rancharrah Parkway
Reno, Nevada 89511

601 Massachusetts Avenue, NW
Washington, DC 20001

Client(s) Federal Housing Finance Agency, in its capacity as Conservator of Fannie Mae

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

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

Attorney Brian W. Barnes Telephone (202) 220-9623

Firm Cooper & Kirk PLLC

Address Pro Hac Vice
1523 New Hampshire, N.W.
Washington, DC 20036
E-Mail: bbarnes@coperkirk.com

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

Attorney John G. Benedict Telephone

Firm Law Offices of John Benedict

Address 2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
john@benedictlaw.com

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

(List additional counsel on separate sheet if necessary)

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☒ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): ____________
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☒ Other disposition (specify): Motion to Dissolve

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

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

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

Federal National Mortgage Association v. Westland Liberty Village, LLC, Westland Village Square, LLC, Case No. 82174 (FHFA as amicus).

Federal Housing Finance Agency v. Eighth Judicial District Court and Westland Liberty Village, LLC, Westland Village Square, LLC, Federal National Mortgage Association, Case No. 82666 (FHFA's petition for a writ of prohibition).

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

N/A

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

Federal National Mortgage Association ("Fannie Mae") brought suit on August 12, 2020 against Respondents seeking the appointment of a receiver for two multifamily properties in default that are owned by Respondents. In response, Respondents filed an opposition and countermotion for a temporary restraining order and preliminary injunction. On November 20, 2020, the district court granted Respondents' request for injunctive relief. The injunction directly impacts the powers of Federal Housing Finance Agency ("FHFA"), the conservator of Fannie Mae since 2008, in violation of federal law. The district court granted FHFA's motion to intervene on June 11, 2021. FHFA filed a motion to dissolve the injunction on June 14, 2021 on the basis that 12 U.S.C. 4617(f) precluded the district court from entering the injunction. Fannie Mae joined that motion. On September 22, 2021, the district court denied that motion to dissolve, stating that it was unconvinced dissolution "is warranted in that the injunction was issued after extensive development of the issues in this Court and is now the subject of extensive litigation on the pending appeal."

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

1. Did the district court err in not dissolving an injunction issued in contravention of 12 U.S.C. § 4617(f), a federal law that bars courts from an injunction on FHFA as conservator of Fannie Mae and the Fannie Mae conservatorship?

2. Is the limitation on injunctive relief that 12 U.S.C. § 4617(f), which provides that "no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator," a jurisdictional bar rendering the subject injunction void ab initio?

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

Federal National Mortgage Association v. Westland Liberty Village, LLC, Westland Village Square, LLC, Case No. 82174: Raises several issues, including those presented relating to 12 U.S.C. § 4617(f), by this latest appeal. [FHFA is an amicus, but not a party, to this appeal.]

Federal Housing Finance Agency v. Eighth Judicial District Court and Westland Liberty Village, LLC, Westland Village Square, LLC, Federal National Mortgage Association, Case No. 82666: Raises the same issues as those presented by this latest appeal. [This is FHFA's petition for a writ of prohibition.]

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: This appeal concerns the limitation of a state court's jurisdiction to enter injunctive relief against FHFA and its conservatee Fannie Mae in violation of 12 U.S.C. § 4617(f). Under the Supremacy Clause of the United States Constitution, this federal law applies to state and federal courts alike. Adherence to this federal law in the context of Fannie Mae's conservatorship is a matter of first impression in Nevada and has important state-wide and national implications for Fannie Mae and Freddie Mac, two entities under federal conservatorship and the two most significant actors in the secondary mortgage market.

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

This appeal should be retained by the Supreme Court because it originated in Business Court; because it raises as a principal issue a question of first impression in Nevada state courts under the Supremacy Clause of the United States Constitution in the application of 12 U.S.C. § 4617(f); and because it raises as a principal issue a question of statewide public importance. See NRAP 17(a)(9), (11), (12).

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

Was it a bench or jury trial? N/A

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

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Sep 22, 2021

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

17. Date written notice of entry of judgment or order was served Sep 22, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing ____________________

☐ NRCP 52(b) Date of filing ____________________

☐ NRCP 59 Date of filing ____________________

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Oct 21, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- ☐ NRAP 3A(b)(1)
- ☐ NRAP 3A(b)(2)
- ☒ NRAP 3A(b)(3)
- ☐ Other (specify)
- ☐ NRS 38.205
- ☐ NRS 233B.150
- ☐ NRS 703.376

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(3) allows an appeal from an order refusing to dissolve an injunction.

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

(a) Parties:

Please see attached page.

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

Please see attached page.

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

Please see attached page. No claims, counterclaims, cross claims or third party claims have been disposed of.

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

All claims remain pending - this is an interlocutory appeal from an order refusing to dissolve an injunction issued against Fannie Mae and FHFA in violation of 12 U.S.C. § 4617(f).

(b) Specify the parties remaining below:

All parties remain below.

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

The order denies Federal Housing Finance Agency and Fannie Mae's motion to dissolve the injunction in Westland's favor. NRAP 3A(b)(3) provides an independent basis to appeal, as it allows an appeal from an order refusing to dissolve an injunction.

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

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

VERIFICATION

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

Federal Housing Finance Agency
Name of appellant

Leslie Bryan Hart
Name of counsel of record

Nov 24, 2021
Date

/s/ Leslie Bryan Hart
Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 24nd day of November , 2021 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

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

John W. Hofsaess
Westland Real Estate Group
520 W. Willow Street
Long Beach, CA 90806

Brian W. Barnes
Cooper & Kirk, PLLC
1523 New Hampshire, N.W.
Washington, DC 20036

John P. Desmond, Esq.
Brian Irvine, Esq.
DICKINSON WRIGHT PLLC
100 West Liberty Street, Suite 940
Reno, NV 89501-1991

Dated this 24th day of November , 2021

Signature

CERTIFICATE OF SERVICE

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

Brian W. Barnes
Cooper & Kirk, PLLC
1523 New Hampshire, N.W.
Washington, DC 20036
bbarnes@cooperkirk.com

John W. Hofsaess
Westland Real Estate Group
520 W. Willow Street
Long Beach, CA 90806
john.h@westlandreg.com

John P. Desmond, Esq.
Brian Irvine, Esq.
DICKINSON WRIGHT PLLC
100 West Liberty Street, Suite 940
Reno, NV 89501-1991
JDesmond@dickinsonwright.com
BIrvine@dickinsonwright.com

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

Kelly H. Dove, Esq.
Robert L. Olson, Esq.,
Nathan G. Kanute, Esq.
Jeffrey Willis, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite
1100 Las Vegas, Nevada 89169
kdove@swlaw.com
rolson@swlaw.com
nkanute@swlaw.com
dedelblute@swlaw.com

Attorneys for Plaintiff Federal National Mortgage Association

Joseph G. Went, Esq.
Lars K. Evensen, Esq.
Sydney R. Gambee, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
jgwent@hollandhart.com
lkevensen@hollandhart.com
srgambee@hollandandhart.com

Kathryn M. Barber, Esq.
Matthew D. Fender, Esq.
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
KBarber@mcguirewoods.com
mfender@mcguirewoods.com

Cheryl L. Haas, Esq.
McGuireWoods LLP
1230 Peachtree Street, N.E., Suite 2100
Atlanta, GA 30309
chaas@mcguirewoods.com

Attorneys for Third Party Defendants Grandbridge Real Estate Capital, LLC

Question 2 - Attorneys filing this Amended docketing statement continued

Kelly H. Dove, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite
1100 Las Vegas, Nevada 89169
kdove@swlaw.com

Attorneys for Plaintiff Federal National Mortgage Association

I, Leslie Bryan Hart, certify that this Amended Docketing Statement is being filed with the consent of Kelly H. Dove, attorney for Plaintiff Federal National Mortgage Association.

Question 3 - Attorneys representing Respondents continued

John W. Hofsaess
Westland Real Estate Group
520 W. Willow Street
Long Beach, CA 90806
john.h@westlandreg.com

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

ANSWER TO QUESTION 22a

Type	**Party**
Counter Claimant	1097 North State, LLC
Counter Claimant	A&D Dynasty Trust
Counter Claimant	AFT Industry NV, LLC
Counter Claimant	Amusement Industry Inc.
Counter Claimant	The Alevy Family Protection Trust
Counter Claimant	Vellagio Apts of Westland, LLC
Counter Claimant	Westland Amber Ridge, LLC
Counter Claimant	Westland AMT, LLC
Counter Claimant	Westland Corona, LLC
Counter Claimant / Defendant / Third Party Plaintiff	Westland Liberty Village, LLC
Counter Claimant	Westland Tropicana Royalle, LLC
Counter Claimant / Defendant / Third Party Plaintiff	Westland Village Square, LLC
Counter Defendant	Davidson, Hilary
Plaintiff / Counter Defendant	Federal National Mortgage Association
Counter Defendant / Third Party Defendant	Grandbridge Real Estate Capital, LLC
Counter Defendant	MMM Investments, LLC

19068393.1/038236.0001

ANSWER TO QUESTION 22a

Type	**Party**
Counter Defendant	ND Manager, LLC
Counter Defendant	Shamrock Communities Management, LLC
Counter Defendant	Shamrock Communities, LLC
Counter Defendant	Shamrock Properties VI LLC
Counter Defendant	Shamrock Properties VII LLC
Counter Defendant	Shamrock Property Management, LLC
Counter Defendant	Weinstein, Ellen
Counter Defendant	Wilde, Jennifer
Cross Claimant	Westland Hacienda Hills, LLC
Intervenor	Federal Housing Finance Agency

ANSWER TO QUESTION 22b

The following parties are not involved in this appeal because at issue is an order denying a motion to dissolve a preliminary injunction, and only five parties were involved in litigating that motion and the underlying injunction: Westland Liberty Village LLC, Westland Village Square, LLC, FHFA, FNMA and Grandbridge Real Estate Capital, LLC.

Type	Party
Counter Claimant	1097 North State, LLC
Counter Claimant	A&D Dynasty Trust
Counter Claimant	AFT Industry NV, LLC
Counter Claimant	Amusement Industry Inc.
Counter Claimant	The Alevy Family Protection Trust
Counter Claimant	Vellagio Apts of Westland, LLC
Counter Claimant	Westland Amber Ridge, LLC
Counter Claimant	Westland AMT, LLC
Counter Claimant	Westland Corona, LLC

ANSWER TO QUESTION 22b

The following parties are not involved in this appeal because at issue is an order denying a motion to dissolve a preliminary injunction, and only five parties were involved in litigating that motion and the underlying injunction: Westland Liberty Village LLC, Westland Village Square, LLC, FHFA, FNMA and Grandbridge Real Estate Capital, LLC.

Type	Party
Counter Claimant	Westland Tropicana Royalle, LLC
Counter Defendant	Davidson, Hilary
Counter Defendant	Grandbridge Real Estate Captial, LLC
Counter Defendant	MMM Investments, LLC
Counter Defendant	ND Manager, LLC
Counter Defendant	Shamrock Communities Management, LLC
Counter Defendant	Shamrock Communities, LLC
Counter Defendant	Shamrock Properties VI LLC
Counter Defendant	Shamrock Properties VII LLC
Counter Defendant	Shamrock Property Management, LLC

ANSWER TO QUESTION 22b

The following parties are not involved in this appeal because at issue is an order denying a motion to dissolve a preliminary injunction, and only five parties were involved in litigating that motion and the underlying injunction: Westland Liberty Village LLC, Westland Village Square, LLC, FHFA, FNMA and Grandbridge Real Estate Capital, LLC.

Type	Party
Counter Defendant	Weinstein, Ellen
Counter Defendant	Wilde, Jennifer
Cross Claimant	Westland Hacienda Hills, LLC

ANSWER TO QUESTION 23

Pleading	Party	Against	Type of Claim	Substance of Claim
Complaint	FNMA	Westland Liberty Village, LLC and Westland Village Square, LLC	Claim	Specific performance (receiver); appt of receiver
Amended Answer and Counterclaim	Westland Liberty Village, LLC	FNMA	Counterclaim	Breach of contract (Liberty loan)
Amended Answer and Counterclaim	Westland Village Square, LLC	FNMA	Counterclaim	Breach of contract (Square loan)
Amended Answer and Counterclaim	Westland Credit Facility Entities	FNMA	Counterclaim	Breach of contract (MCFA)
Amended Answer and Counterclaim	Westland Liberty Village, LLC, Westland Village Square, LLC, Westland Securities Entities and Westland Credit Facility Entities	FNMA	Counterclaim	Breach of Covenant
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	FNMA	Counterclaim	Declaratory relief
Amended Answer and Counterclaim	Westland Liberty Village, LLC, Westland Village Square, LLC and Amusement Industry, Inc.	FNMA	Counterclaim	Fraud and concealment

ANSWER TO QUESTION 23

Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	FNMA	Counterclaim	Negligent misrepresentation
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	FNMA	Counterclaim	Conversion
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	FNMA	Counterclaim	Injunctive relief
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	FNMA	Counterclaim	Equitable relief/rescission/reformation
Third Party Complaint	Westland Liberty Village, LLC	Grandbridge	Third Party Claim	Breach of contract (Liberty loan)
Third Party Complaint	Westland Village Square, LLC	Grandbridge	Third Party Claim	Breach of contract (Square loan)
Third Party Complaint	Westland Liberty Village, LLC, Westland Village Square, LLC, Westland Securities Entities and Westland Credit Facility Entities	Grandbridge	Third Party Claim	Breach of Covenant

ANSWER TO QUESTION 23

Third Party Complaint	Westland Liberty Village, LLC and Westland Village Square, LLC	Grandbridge	Third Party Claim	Declaratory relief
Third Party Complaint	Westland Liberty Village, LLC, Westland Village Square, LLC and Amusement Industry, Inc.	Grandbridge	Third Party Claim	Fraud and concealment
Third Party Complaint	Westland Liberty Village, LLC and Westland Village Square, LLC	Grandbridge	Third Party Claim	Negligent misrepresentation and concealment
Third Party Complaint	Westland Liberty Village, LLC and Westland Village Square, LLC	Grandbridge	Third Party Claim	Intentional interference with contract
Third Party Complaint	Westland Liberty Village, LLC and Westland Village Square, LLC	Grandbridge	Third Party Claim	Conversion
Third Party Complaint	Westland Liberty Village, LLC and Westland Village Square, LLC	Grandbridge	Third Party Claim	Injunctive relief

ANSWER TO QUESTION 23

Third Party Complaint	Westland Liberty Village, LLC and Westland Village Square, LLC	Grandbridge	Third Party Claim	Equitable relief/rescission/reformation
Amended Answer and Counterclaim	Westland Liberty Village, LLC	SHAM VI	Counterclaim	Breach of contract (Liberty loan)
Amended Answer and Counterclaim	Westland Village Square, LLC	SHAM VII	Counterclaim	Breach of contract (Square loan)
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	SHAM VI and SHAM VII	Counterclaim	Breach of Covenant
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	SHAM VI and SHAM VII	Counterclaim	Breach of Express and Implied Warranty
Amended Answer and Counterclaim	Westland Liberty Village, LLC, Westland Village Square, LLC and Amusement Industry, Inc.	All SHAM Defendants	Counterclaim	Fraud and concealment
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	All SHAM Defendants	Counterclaim	Negligent misrepresentation and concealment

ANSWER TO QUESTION 23

Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	All SHAM Defendants	Counterclaim	Negligent hiring and negligent supervision
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	All SHAM Defendants	Counterclaim	Intentional interference with contract
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	All SHAM Defendants/ Grandbridge	Counterclaim	Civil Conspiracy
Amended Answer and Counterclaim	Westland Liberty Village, LLC and Westland Village Square, LLC	All SHAM Defendants	Counterclaim	Unjust enrichment

Nathan G. Kanute, Esq.
Nevada Bar No. 12413
David L. Edelblute, Esq.
Nevada Bar No. 14049
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
Email: nkanute@swlaw.com
dedelblute@swlaw.com

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

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. Dept No. **VERIFIED COMPLAINT** **ARBITRATION EXEMPTION REQUESTED: EQUITABLE RELIEF SOUGHT**

VERIFIED COMPLAINT

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

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a federally chartered corporation that lawfully conducts business in Nevada.

2. Defendant Liberty Village LLC is a Nevada limited-liability company authorized to conduct business in the State of Nevada.

3. Defendant Village Square LLC is a Nevada limited-liability company authorized to conduct business in the State of Nevada.

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

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

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

II. GENERAL ALLEGATIONS

A. The Loan Documents and Related Agreements

i. Village Square Loan

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

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

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

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

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

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

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

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

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

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

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

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

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

B. Plaintiff's Rights Under the Loan Documents

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

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

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

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

C. Defendants' Defaults Under the Loan Documents

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

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

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

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

24. On October 18, 2019, SunTrust, on behalf of Plaintiff, provided Defendants with a Notice of Demand referencing the PCAs and demanding that Defendants cure the deficiencies provided in the PCAs and in accordance with Defendants' obligations under the Agreements by: (i) immediately implementing corrective actions to undertake repairs to the Liberty Village Property and Village Square Property; (ii) depositing $1,753,145.00 into the Repair Escrow Account pursuant to Section 13.02(a)(4) of the Liberty Village Loan Agreement and Village Square Loan Agreement; and (iii) to provide an additional $8,160.00 per month under the Monthly Replacement Reserve Deposit, totaling a new obligation of $26,760.00 per month, to cover the

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

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

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

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

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

> "(a) **Automatic Events of Default**. Any of the following shall constitute an automatic Event of Default: (1) any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document . . .."
>
> -and-
>
> "(b) **Events of Default Subject to a Specified Cure Period**. Any of the following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents: . . . (4) any failure by Borrower to perform any obligations under this Loan Agreement or any Loan Document that is subject to a specified written notice and cure period, which failure continues beyond such specified written notice and cure period as set forth herein or in the applicable Loan Document."

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

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

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

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

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

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

Snell & Wilmer L.L.P. LAW OFFICES 50 West Liberty Street, Suite 510 Reno, Nevada 89501 775.785.5440

III. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
(Specific Performance – Appointment of Receiver and Assignment of Rents)

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

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

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

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

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

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

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

SECOND CAUSE OF ACTION
(Petition for Appointment of Receiver)

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

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

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

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

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

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

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

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

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

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

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

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

WHEREFORE, Plaintiff prays for relief as follows:

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

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

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

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

AFFIRMATION

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

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

Dated: August 12, 2020

SNELL & WILMER L.L.P.

By: ______________________________

Nathan G. Kanute, Esq. (NV Bar No. 12413)
50 West Liberty Street, Suite 510
Reno, NV 89501
Telephone: (775) 785-5440

David L. Edelblute, Esq. (NV Bar No. 14049)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200

Attorneys for Plaintiff Federal National Mortgage Association

VERIFICATION

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

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

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

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

[signature]

James Noakes, Authorized Agent

Snell & Wilmer
L.L.P.
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
775.785.5440

Electronically Filed
8/26/2021 3:45 PM
Steven D. Grierson
CLERK OF THE COURT

AACC
JOHN BENEDICT, ESQ. (Nevada Bar No. 5581)
LAW OFFICES OF JOHN BENEDICT
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
Telephone: (702) 333-3770
Facsimile: (702) 361-3685
E-Mail: John@BenedictLaw.com

JOHN W. HOFSAESS, ESQ. (Admitted Pro Hac Vice)
WESTLAND REAL ESTATE GROUP
520 W. Willow Street
Long Beach, CA 90806
Telephone: (310) 438-5147
E-Mail: John.H@WestlandREG.com

JOHN P. DESMOND, ESQ. (Nevada Bar No.: 5618)
BRIAN IRVINE, ESQ. (Nevada Bar No.: 7758)
DICKINSON WRIGHT PLLC
100 West Liberty Street, Suite 940
Reno, NV 89501-1991
Tel: 775-343-7500
Fax: 844-670-6009
Email: JDesmond@dickinsonwright.com
Email: BIrvine@dickinsonwright.com
Attorneys for Defendants/Counterclaimants Westland Liberty Village, LLC & Westland Village Square LLC, and Counterclaimants Amusement Industry, Inc., Westland Corona LLC, Westland Amber Ridge LLC, Westland Hacienda Hills LLC, 1097 North State, LLC, Westland Tropicana Royale LLC, Vellagio Apts of Westland LLC, The Alevy Family Protection Trust, Westland AMT, LLC, AFT Industry NV, LLC, A&D Dynasty Trust

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 **FIRST AMENDED ANSWER AND FIRST AMENDED COUNTERCLAIM** **EXEMPTION FROM ARBITRATION: Title to Real Property and Declaratory Relief requested via Counterclaim**

WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company; AMUSEMENT INDUSTRY, INC., a California Corporation; WESTLAND CORONA LLC, a Nevada Limited Liability Company; WESTLAND AMBER RIDGE LLC, a Nevada Limited Liability Company; WESTLAND HACIENDA HILLS LLC, a Nevada Limited Liability Company; 1097 NORTH STATE, LLC, a Delaware Limited Liability Company; WESTLAND TROPICANA ROYALE LLC, a Nevada Limited Liability Company; VELLAGIO APTS OF WESTLAND LLC, a Nevada Limited Liability Company; THE ALEVY FAMILY PROTECTION TRUST, a Nevada Irrevocable Trust; WESTLAND AMT, LLC, a Nevada Limited Liability Company; AFT INDUSTRY NV, LLC, a Nevada Limited Liability Company; and A&D DYNASTY TRUST, a Nevada Irrevocable Trust,

Counterclaimants,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation, GRANDBRIDGE REAL ESTATE CAPITAL, LLC, a North Carolina Limited Liability Company, SHAMROCK PROPERTIES VI LLC, a Delaware limited liability company; SHAMROCK PROPERTIES VII LLC, a Delaware limited liability company; ND MANAGER LLC, a Delaware (Connecticut) limited liability company; SHAMROCK COMMUNITIES, LLC, a Delaware limited liability corporation; SHAMROCK COMMUNITIES MANAGEMENT LLC, a Connecticut limited liability company; SHAMROCK PROPERTY MANAGEMENT LLC, a Delaware limited liability company; MMM INVESTMENTS LLC, a Delaware limited liability company; ELLEN WEINSTEIN, an individual; HILARY DAVIDSON, an individual; JENNIFER WILDE, an individual; and DOES 1 through 100; and ROE CORPORATIONS 101 through 200, inclusive,

Counter-Defendants.

FIRST AMENDED ANSWER

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

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

I. PARTIES, JURISDICTION AND VENUE

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

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

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

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

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

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

//

//

II. GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of Trust speaks for itself, and Defendants deny the remaining allegations contained in paragraph 21 of the Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Specific Performance)

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Petition for Appointment of Receiver)

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

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

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

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

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

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

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

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

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

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

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

///

///

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

Omitted [but numbering kept to maintain consistency]

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

//

//

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

Omitted [but numbering remains for consistency]

TWENTIETH AFFIRMATIVE DEFENSE

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

//

//

WHEREFORE, Westland prays for judgment as follows:

1. That the Court make a judicial determination that Plaintiff is not entitled to the specific performance requested.

2. That Plaintiff takes nothing by its Complaint and that this action be dismissed in its entirety with prejudice;

3. For costs incurred in defense of this action;

4. For reasonable attorneys' fees incurred in defense of this action; and

5. For such other relief as the Court may deem just and proper.

Dated: August 26, 2021.

LAW OFFICES OF JOHN BENEDICT

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

WESTLAND REAL ESTATE GROUP

/s/ John W. Hofsaess
John W. Hofsaess (Admitted Pro Hac Vice)
520 W. Willow Street
Long Beach, CA 90806
Telephone: (310) 438-5147

DICKINSON WRIGHT PLLC

/s/ John P. Desmond
John P. Desmond, Esq. (Nevada Bar No.: 5618)
Brian Irvine (Nevada Bar No.: 7758)
100 West Liberty Street, Suite 940
Reno, NV 89501-1991
Tel: 775-343-7500

Attorneys for Defendants/Counterclaimants Westland Liberty Village, LLC & Westland Village Square LLC, and Counterclaimants Amusement Industry, Inc., Westland Corona LLC, Westland Amber Ridge LLC, Westland Hacienda Hills LLC, 1097 North State, LLC, Westland Tropicana Royale LLC, Vellagio Apts of Westland LLC, The Alevy Family Protection Trust, Westland AMT, LLC, AFT Industry NV, LLC, A&D Dynasty Trust

FIRST AMENDED COUNTERCLAIM

Defendants/Counterclaimants, Westland Liberty Village, LLC ("Liberty LLC"), Westland Village Square, LLC ("Square LLC" and in combination with Liberty LLC, "Westland"), Amusement Industry, Inc. ("Amusement"), Westland Corona LLC ("Corona"), Westland Amber Ridge LLC ("Amber"), Westland Hacienda Hills LLC ("Hacienda"), 1097 North State, LLC ("1097 North"), Westland Tropicana Royale LLC ("Tropicana"), and Vellagio Apts of Westland LLC ("Vellagio" and in combination with Amusement, Corona, Amber, Hacienda, 1097 North, and Tropicana, the "Westland Credit Facility Entities"), The Alevy Family Protection Trust ("AFP Trust"), Westland AMT, LLC ("Westland AMT"), AFT Industry NV, LLC ("AFT NV"), A&D Dynasty Trust ("Dynasty Trust" and in combination with AFP Trust, Westland AMT, AFT NV, and Amusement, the "Westland Securities Entities", and collectively Westland, Westland Credit Facility Entities and Westland Securities Entities, are referred to herein as the "Counterclaimants"), through their attorneys of record, the Law Offices of John Benedict, John W. Hofsaess, and Dickinson Wright PLLC, for their Counterclaim against Plaintiff/Counter-Defendant Federal National Mortgage Association ("Fannie Mae"), Grandbridge Real Estate Capital, LLC (formerly Cohen Financial, Suntrust Bank, and Truist Bank, but for ease of reference, regardless of the time period, it shall be referred to solely as "Grandbridge" or "Servicer," and together with "Fannie Mae" as the "Lenders")[1], Shamrock Properties VI LLC ("Sham VI"), Shamrock Properties VII LLC ("Sham VII"), ND Manager LLC ("NDM"), Shamrock Communities LLC ("Sham C"); Shamrock Communities Management LLC ("Sham CM"), Shamrock Property Management LLC ("Sham PM"), MMM Investment LLC ("MMM LLC"), Ellen Weinstein ("Weinstein"), Hilary Davidson aka Hilary Burt ("Davidson"), Jennifer Wilde ("Wilde," and together with Sham VI, Sham VII, NDM, Sham C, Sham CM, Sham PM, MMM LLC, Weinstein, and Davidson, collectively referred to herein as the "Sham Defendants"), and //

//

//

---

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

Does 1 through 100, and Roe Corporations 101 through 200, allege as follows:

I. STATEMENT OF THE CASE

1. This Counterclaim arises because Fannie Mae and its agents, including Grandbridge have filed an improper Notice of Default and Intent to Sell ("NOD"), and have thus caused improper non-judicial foreclosure proceedings to be commenced. This illegal conduct *threatens to foreclose on Westland's two multifamily housing communities (the "Properties") based on insupportable non-financial defaults,* which, despite multiple requests by Westland, have never been substantiated, *and to be put simply, were manufactured, by Fannie Mae's Servicer*. To be clear, all monthly debt service payments have been timely made on this loan. In fact, between February 2020, when Servicer abruptly ceased sending loan statements, and December 2020, Counterclaimants overpaid their monthly debt service obligation payments by over $500,000. Moreover, Counterclaimants have over $20 million of equity in the Properties, and therefore, there is absolutely no good faith basis for the noticed foreclosure sales or for any assertion that Fannie Mae or Grandbridge has a risk of loss of assets or the need for an appointment of a receiver.

2. Instead, in reality, the Properties were only in a distressed condition, *prior* to Westland's acquisition of the two properties in August 2018.[2] Immediately before Westland bought the Properties, the Properties were in disrepair, had management that misrepresented the true occupancy rates at the properties, and had such a high rate of serious crimes that the Las Vegas Metropolitan Police Department even sent a Notice and Declaration of Chronic Nuisance (the "Nuisance Notice") to address the criminal activity *at that time*.[3] Still, in late 2017, despite the poor condition of the Properties, Delegated Underwriting and Servicing ("DUS") lender/loan

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

[3] The Nuisance Notice (Exhibit A) provides it was sent because the two properties had generated over 1,000 calls for service to the police department in the six-month period between September 28, 2017 and April 4, 2018. As of the date of the April 4, 2018 notice, unless crime was abated, the matter would be referred to the District Attorney, and a Complaint would be filed seeking "to secure and close the property until the nuisance is abated." Under current ownership, the calls decreased to 5% of that amount by July 2019, and now rarely include violent offenses.

servicer Grandbridge[4] made an initial loan on the properties. Upon information and belief that loan never should have been made under Fannie Mae's lending guidelines.

3. Compounding matters, when the initial loan documents were signed, Grandbridge used a local office of CBRE to conduct a property condition assessment ("PCA") and based thereon, only required a combined total deposit of $560,187.00 for the replacement reserve and repair reserve accounts at both Properties, plus a small addition to the monthly debt service. In August 2018, those reserve accounts were reduced to approximately $143,000[5] when the loan was assumed by Westland, and the same monthly debt service additions were maintained. At that point Grandbridge also made an explicit representation in its loan assumption letter that "after a thorough review and analysis of the Proposed Borrower's financial and managerial capacity, the Assumption has been approved on the following terms: . . . No change to the Replacement Reserve" and "No Change to the Required Repair Reserve." The statement was either a negligent misrepresentation based on absence of any adequate review or made fraudulently to induce Westland to sign the assumption, *because only one year later*, Grandbridge sent its Notice of Demand seeking to have Westland deposit another $2.85 million into the reserves.

4. As such, in July 2019, Westland was taken completely by surprise, when after it had: invested over $20 million of its own cash to purchase the Properties, cleaned up the crime problem, spent approximately $1.8 million in capital improvements,[6] installed competent management, and acquired an adjacent parcel to further stabilize the Properties with local community services,[7] Grandbridge then improperly and without justification sought a PCA

---

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

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

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

[7] In July 2019, a Westland associated entity, AF Properties 2015 LLC, signed a purchase and sale agreement for the adjacent retail properties at 3435-3455 N. Ellis Blvd. The parcels are largely undeveloped, with only a bar and liquor store onsite, and based on our management team's assessment were a magnet that drew the criminal element to the neighborhood. To neutralize the negative influence of that site, Westland purchased the parcel, and is working with the Office of the County Commissioner to build local community-based resources at the site, which would serve the

conducted by the Texas-based f3, Inc. which employed a heightened standard. Grandbridge, and Fannie Mae acting through Servicer, then bootstrapped that assessment into a demand to place an additional \$2.85 million into the reserve accounts Servicer maintained. To be blunt, the PCAs should not have even been performed, because after Westland's purchase of the Properties the condition of the Properties improved, not deteriorated, which meant that the Servicer had no right to demand a property assessment, let alone any subsequent demand for additional reserves based on that PCA. Essentially, Westland's efforts to work with Fannie Mae and its Servicer in good faith on this loan, have led to the first NOD that any Westland-related entity has ever received, even though: Westland Real Estate Group has been in operation for over 50 years, has a loan portfolio with Fannie Mae amounting to approximately \$300 million, Westland's efforts have improved the lives of the diverse working class families who reside in the over 10,000 multifamily housing units that Westland Real Estate Group serves in the Las Vegas market alone, and *Westland has timely made every monthly debt service payment related to this loan*.

5. Moreover, after declaring a default in December 2019, Lenders began not only to improperly service the two loans related to the Liberty Village and Village Square properties, but Lenders also began to discriminate against other Westland-related entities based solely on Westland's failure to accede to Lenders' unilateral modification of the Loan Agreements by demanding a \$2.85 million reserve increase, and then filing the NOD when Westland did not capitulate.

6. After the NOD, Fannie Mae improperly placed the Westland affiliates into a-check status, meaning they could not borrow from lenders whose loans were securitized by Fannie Mae, and that loans already sold to Fannie Mae with borrow-up provisions were locked out, which meant that in this case Westland's safety net – a nearly \$30M credit facility was suspended. Specifically, those Westland-related entities whose borrow up loan was locked out included the Credit Facility Entities, who had applied for a credit facility that would be funded by Fannie Mae, had already been charged fees related to the issuance of that credit facility, had been approved to receive funds

---

Properties and be attractive to working class families. Proposals being investigated include building a police substation and/or day care center.

via the credit facility, and had their real property subject to liens in connection with that credit facility. However, in February 2020, when it was time for Fannie Mae to disburse funds to the Credit Facility Entities, Fannie Mae refused to do so. Upon information and belief, the reason for refusing to adhere to the credit facilities terms as had been promised was the purported default related to the Liberty Village and Village Square loans. Additionally, Fannie Mae improperly retaliated against other Westland-related entities by adding them to its “a-check” list of borrowers to whom Fannie Mae’s servicing agents and DUS lenders were unable to write new or refinance loans on behalf of Fannie Mae. As a result of Fannie Mae’s conduct, in March 2020, Counterclaimants incurred large direct losses when the financial markets were adversely affected by the threat of COVID-19, and contrary to the terms of the credit facility Fannie Mae refused to make the promised funds available to the Credit Facility Entities, despite that Counterclaimants had relied on the availability of the funds promised in the credit facility to provide a safety net in the event of an economic downturn.

7. As such, Counterclaimants were required to bring this Counterclaim to prevent Fannie Mae’s pending foreclosure, to preserve the Properties along with the vibrant communities Westland has established, to prevent Fannie Mae from being unjustly enriched, and further to prevent it from taking any adverse action against any Westland-related entity on other loans due to the purported default that arose from failing to deposit an additional $2.49 million into the reserve escrow accounts, including for example by improperly discriminating against the Counterclaimants on new loans or failing to honor loan-related disbursement requests.

8. In addition to the claims against Lenders, this Counterclaim raises claims against the Sham Defendants, which are the entities and principals who sold Westland the Properties.

9. The claims against the Sham Defendants concern the omissions and material misrepresentations on the financial statements and accounting records of Sham VI and Sham VII that resulted in the overpayment of more than $10 million from Liberty LLC, Village LLC and Amusement for the purchase of the Liberty Property and the Square Property, from Weinstein, her affiliated entities, and the shareholders of Sham VI and Sham VII.

10. On August 28, 2018, Counterclaimants paid the Sham Defendants $60.3 million for the purchase of the two residential communities with a total of 1129 apartments based on the documents from the Sham Defendants representing those communities had a combined occupancy rate of 84%. However, after Closing Westland discovered that the true occupancy rate of the Properties was much lower, because the reported occupancy had been inflated by nefarious practices, such as failing to evict non-rent paying tenants while misreporting that income continued to be generated from those same apartments, providing financial reporting in due diligence that was materially misleading by failing to list any "noncurrent" tenants within delinquency reports and aging summaries, failing to make repairs in excess of ordinary wear and tear or habitability-related conditions in apartments where tenants resided, and engaging in wholesale shredding of business records immediately prior to the Closing of the sale of the Properties in an attempt to prevent Westland from discovering the Properties true financial state.

11. The harmful effects of such practices not only resulted in a misrepresentation of the value of the Properties based on a reduced stream of income being generated, but also meant that Westland was forced to incur the costs associated with performing a substantially greater number of evictions of those non-rent paying tenants, increased costs to restore the units to rent-ready condition, and costs associated with a purported default Lenders asserted based on a purported deterioration of the condition of the Mortgaged Property related to a decline in occupancy.

12. The Sham Defendants had a clear financial incentive to not evict tenants, because the Purchase and Sale Agreements provided that the Sham Defendants' were obligated to restore any vacant units to "rent ready" condition and to maintain conditions in rented apartments that were in excess of ordinary wear and tear, and thus the Sham Defendants would have incurred a substantial additional cost if the Sham Defendants had properly removed those occupants and performed the repairs needed to restore those apartments to rent ready condition.

13. Moreover, the effects of fraud have been magnified by the Sham Defendants' requirement that Westland agree to assume their loans with Lenders, because when Westland advised Lenders of the true state of the Properties' occupancy, it resulted in a purported default

being declared on the Loan Agreements, despite that after the purchase Counterclaimants spent millions of dollars to rehabilitate the conditions at the Properties.

II. PARTIES

14. Counterclaimant Westland Liberty Village, LLC dba Liberty Village Apartment Homes ("Liberty LLC") is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

15. Counterclaimant Westland Village Square, LLC dba Village Square Apartment Homes ("Square LLC") is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

16. Counterclaimant Amusement Industry, Inc. dba Westland Real Estate Group ("Amusement") is and at all times herein mentioned was a California Corporation.

17. Counterclaimant Westland Corona, LLC dba Corona Del Sol Apartments ("Corona") is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

18. Counterclaimant Westland Amber Ridge, LLC dba Amber Ridge Apartments ("Amber") is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

19. Counterclaimant 1097 North State, LLC ("1097 North"), is and at all times herein mentioned was a Delaware Limited Liability Company.

20. Counterclaimant Westland Hacienda Hills, LLC dba Hacienda Hills Apartments ("Hacienda") is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

21. Counterclaimant Westland Tropicana Royale, LLC dba Tropicana Royale Apartments ("Tropicana") is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

22. Counterclaimant Vellagio Apts of Westland LLC dba Vellagio Apartments ("Vellagio) is and at all times herein mentioned was a Nevada Limited Liability Company, which conducted business in and was the owner of real property located in Clark County, Nevada.

23. Counterclaimant The Alevy Family Protection Trust ("AFP Trust"), is and at all times herein mentioned was a Nevada Irrevocable Trust, which conducted business in and through its entity membership interests was the holder of a beneficial interest in real property located in Clark County, Nevada. AFP Trust is a guarantor of a real estate loan underwritten and secured by real property located in Clark County, Nevada.

24. Counterclaimant Westland AMT, LLC ("Westland AMT"), is and at all times mentioned herein was a Nevada Limited Liability Company.

25. Counterclaimant AFT Industry NV, LLC ("AFT NV"), is and at all times mentioned herein was a Nevada Limited Liability Company. AFT NV is a guarantor of a real estate loan underwritten and secured by real property located in Clark County, Nevada.

26. Counterclaimant A&D Dynasty Trust ("Dynasty Trust") is and at all times mentioned herein was a Nevada Irrevocable Trust, which conducted business in and through its entity membership interests was the owner of real property located in Clark County, Nevada. Dynasty Trust is a guarantor of a real estate loan underwritten and secured by real property located in Clark County, Nevada.

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

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

//

//

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

30. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Shamrock Properties VI LLC dba Liberty Village Apartments (hereinafter "Sham VI") is a Delaware limited liability company doing business in Clark County, State of Nevada. At the time of the events in question, Sham VI was the owner of an interest in real property located in Clark County, Nevada.

31. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Shamrock Properties VIII dba Village Square Apartments (hereinafter "Sham VII") is a limited liability company doing business in Clark County, State of Nevada. At the time of the events in question, Sham VII was the owner of an interest in real property located in Clark County, Nevada.

32. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Sham VI owned and/or operated and/or managed certain property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115, in Clark County, Nevada, and commonly referred to as Liberty Village, Liberty Village Apartments, and Shamrock Properties.

33. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Sham VII owned and/or operated and/or managed certain property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115, in Clark County, Nevada, and commonly referred to as Village Square, Village Square Apartments, and Shamrock Properties.

//

//

34. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant ND Manger LLC (hereinafter "NDM") is a Delaware limited liability company, with a principal place of business in Greenwich, CT, also doing business in Clark County, State of Nevada. At the time of the events in question, NDM through its entity membership interests was the holder of a beneficial interest in real property located in Clark County, Nevada.

35. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Shamrock Property Management LLC (hereinafter "SHAM PM") is a Delaware limited liability company, with a principal place of business in Greenwich, CT, also doing business in Clark County, State of Nevada.

36. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Shamrock Communities LLC (hereinafter "SHAM C") is a Delaware limited liability company, with a principal place of business in Greenwich, CT, was also doing business in Clark County, State of Nevada.

37. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Shamrock Communities Management LLC (hereinafter "SHAM CM") is a Delaware limited liability company, with a principal place of business in Greenwich, CT, was also doing business in Clark County, State of Nevada.

38. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant MMM INVESTMENTS LLC (hereinafter "MMM INV") is a Delaware limited liability company, also doing business in Clark County, State of Nevada. At the time of the events in question, MMM INV through its entity membership interests was the holder of a beneficial interest in real property located in Clark County, Nevada.

39. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Weinstein is a resident of Utah. At all times relevant herein, Weinstein conducted business in Clark County, Nevada, was the Chief Executive Officer of Shamrock Communities LLC, and manager of NDM, which was in turn the managing manager of SHAM VI and SHAM VII, and through which Weinstein exercised control over SHAM VI and

SHAM VII; individually was a member and key principal of SHAM VI and VII; and was a guarantor of a real estate loan underwritten in and secured by real property located in Clark County, Nevada.

40. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Davidson, currently known as Hilary Burt, is a resident of New York. At all times relevant herein, Davidson conducted business in Clark County, Nevada; was the Managing Director and Chief Operations Officer of Shamrock Property Management LLC, which was property management company for SHAM VI and SHAM VII, including the Properties which were located in Clark County, Nevada, and through which Davidson exercised control over SHAM VI and SHAM VII as a key principal of SHAM VI and VII.

41. Counterclaimants are informed and believe and thereupon allege that, at all times material herein, Counterdefendant Wilde is a resident of Indiana. At all times relevant herein, Wilde conducted business in Clark County, Nevada; was the Director of Operations of Shamrock Property Management LLC, which was property management company for SHAM VI and SHAM VII, including the Properties which were located in Clark County, Nevada, and through which Wilde exercised control over SHAM VI and SHAM VII as a key principal of SHAM VI and VII.

42. Counterclaimants allege that the true names and capacities, whether individual, corporate, associate or otherwise of Counterdefendants named herein as Doe Individuals and Roe Entities 1 through 200, inclusive, are unknown to Counterclaimants, who therefore sue said Counterdefendants by such fictitious names. Counterclaimants will ask leave to amend this Complaint to show the true names and capacities Does Individuals and Roe Entities 1 through 200, inclusive, when the same have been ascertained. Counterclaimants believe and therefore allege that each Counterdefendant named as a Doe Individual and Roe Entity is responsible in some manner for the events herein referred to and caused damages proximately thereby to Counterclaimants as alleged herein.

43. Counterclaimants allege Counterdefendants named herein as Doe Individuals and Roe Entities 1 through 200, were legal entities/residents of Clark County, Nevada, and/or authorized to do business by the State of Nevada. Furthermore, said Doe and Roe Counter-

defendants were employees, agents, or servants of Counterdefendants in its control and functioned and assisted in the operation, control, maintenance and/or management of the premises, in which Counterclaimants were injured by Counterdefendants' conduct, which caused Counterclaimants' damages.

44. Counterclaimants allege Counterdefendants named herein as Doe Individuals and Roe Entities 1 through 200, were acting on behalf of either the Sham Defendants or Grandbridge according to proof.

45. Counterclaimants allege Counterdefendants, including those named herein as Doe Individuals and Roe Entities 1 through 200, are persons, corporations, partnerships, or other entities whose acts, activities, misconduct or omissions, at all times material hereto, make them jointly and severally liable under the claims for relief set forth hereinafter.

46. Doe 1/Roe 1 is the unknown prior legal owner of the premises located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

47. Doe 2/Roe 2 is the unknown prior legal owner of the premises located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

48. Doe 3/Roe 3 is the unknown prior owner of the business located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

49. Doe 4/Roe 4 is the unknown prior owner of the business located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

50. Doe 5/Roe 5 is the unknown prior manager(s) and/or owner(s) and/or operator(s) of the apartment complex located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

51. Doe 6/Roe 6 is the unknown prior manager(s) and/or owner(s) and/or operator(s) of the apartment complex located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

52. Doe 7/Roe 7 is the prior true legal owner(s) and/or corporate owner(s) of the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

//

//

53. Doe 8/Roe 8 is the prior true legal owner(s) and/or corporate owner(s) of the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

54. Doe 9/Roe 9 is the prior true legal owner(s) and/or subsidiaries of Sham VI operated the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

55. Doe 10/Roe 10 is the prior true legal owner(s) and/or subsidiaries of Sham VII operated the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

56. Doe 11/Roe 11 is the prior unknown subsidiary of Sham VI that operated and/or owned and/or managed the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

57. Doe 12/Roe 12 is the prior unknown subsidiary of Sham VII that operated and/or owned and/or managed the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

58. Doe 13/Roe 13 is the prior unknown property management company responsible for managing the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

59. Doe 14/Roe 14 is the prior unknown property management company responsible for managing the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

60. Does 15 through 24/Roes 15 through 24 are the current or prior unknown owners, members or shareholders of Counterdefendant MMM INVESTMENTS LLC, either directly or indirectly through an intermediary company, corporation, firm, partnership, trust, or any other form of business organization.

61. Does 25 through 34/Roes 25 through 34 are the current or prior unknown employees, contractors, or agents of the Sham Defendants, either directly or indirectly through an intermediary company, corporation, firm, partnership, trust, or any other form of business organization, who made misstatements or participated in the creation of documents to support the making of the misstatements on behalf of the Sham Defendants.

62. Does 35 through 44/Roes 35 through 44 are the current or prior unknown employees, contractors, or agents of Grandbridge, including during the periods of time that it was known or doing business as Cohen Financial, SunTrust Bank or Truist Bank, who either directly or indirectly through an intermediary company, corporation, firm, partnership, trust, or any other form of business organization conspired or colluded to enable the Sham Defendants to improperly

pass loan underwriting in 2017, to otherwise obtain a loan in 2017, or to assign those loans that did not meet Fannie Mae's underwriting criteria to Counterclaimants.

63. Does 45 through 54/Roes 45 through 54 are the current or prior unknown employees, contractors, or agents of Fannie Mae, who either directly or indirectly through an intermediary company, corporation, firm, partnership, trust, or any other form of business organization conspired or colluded to enable the Sham Defendants to improperly pass loan underwriting in 2017, to otherwise obtain a loan in 2017, or to assign those loans that did not meet Fannie Mae's underwriting criteria to Counterclaimants.

64. This Court has personal jurisdiction over Defendants because they are residents of or have conducted business at all times relevant herein in Clark County, Nevada and their obligations to Plaintiffs arise from contracts pertaining to real estate located in Clark County, Nevada and/or from actions undertaken in Clark County, Nevada.

65. Venue is proper in this district pursuant to Nevada Revised Statutes §§ 13.010 and 13.040.

III. FACTS COMMON TO ALL CAUSES OF ACTION RELATED TO FANNIE MAE AND GRANDBRIDGE

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

Westland's Real Estate Wherewithal

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

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

//

//

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

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

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

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

d. *Prior to the present matter*, over the course of the 50 years that Westland Real Estate Group has been in operation, its associated entities have had an unblemished lending reputation, in that no entity associated with Westland Real Estate Group has ever had a notice of default issued on even a single mortgage loan with any lender.

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

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

//

//

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

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

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

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

The Westland Liberty Property & Square Property Ownership

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

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

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

//

//

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

The Shamrock Purchase

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

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

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

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

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

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

The Properties' Condition During the Shamrock Years

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

//

//

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

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

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

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

86. Upon information and belief, the high levels of delinquencies at the properties were related to the utilization of questionable leasing practices, including a lax background check process that resulted in the Shamrock Entities accepting tenants with unacceptably high levels of credit risk and/or unacceptable criminal records. Those practices were implemented to further inflate occupancy rates but were counterproductive in that the Shamrock Entities' acts and omissions resulted in the lack of a safe, viable community for the qualified residents of the properties, which in turn resulted in high turnover rates among qualified residents.

//

//

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

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

89. Upon information and belief, prior to Fannie Mae's ownership of the Properties in 2014, they were crime ridden and gang infested.

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

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

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

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

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

95. Simply stated, the Shamrock Entities were never able to rehabilitate the Properties.

Shamrock's Exit Strategy & The Loan Agreements

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

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

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

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

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

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

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

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

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

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

106. Upon information and belief, at the time that the loans were underwritten by Grandbridge for the Shamrock Entities, the Liberty Property and Square Property did not meet Fannie Mae's credit and underwriting criteria, because, *inter alia*, the two properties had excessively high crime rates,[8] the Properties were subject to a prior Fannie Mae REO sale, the income for the Properties was overstated.

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

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

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

109. At the Liberty Property, CBRE did not inspect every unit, but rather only made "[r]epresentative observations" from 71 units at the 720 unit, 90 building property, and while several units were found to be in poor condition, the comment to that section of the report was only "[n]o further action required." (Exhibit D, CBRE Property Condition Assessment Report for Liberty Village, dated August 8, 2017, at 5, 29-32.) Similarly, at the Square Property, CBRE's "[r]epresentative observations" were made from 41 units at the 409 unit, 7 building property, and although several units were found to be in poor condition the report concluded there was "[n]o

[8] To be clear, as stated in Paragraphs 49-52, the LVMPD's letter was sent in response to conduct taking place from September 28, 2017 through April 4, 2018, which means that the loans were underwritten while the high levels of crime related to the Nuisance Notice were in process.

further action required." (Exhibit E, CBRE Property Condition Assessment Report for Village Square, dated August 8, 2017, at 5, 29-30.)

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

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

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

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

114. Based on the standard used during those inspections, it is clear that the PCA report from Grandbridge's inspector, recommended that no reserve deposit amounts were required for vacant units that needed to be "turned" for re-rental, including those that were in need of repair or "undergoing renovations." Thus, Fannie Mae and Grandbridge did not increase required repair

reserves for the Shamrock Entities to account for "turning" rental units, nor did it require the same large capital infusion for maintenance, repairs or replacements.

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

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

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

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

Westland's Purchase of the Properties & Loan Assumption

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

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

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

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

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

124. While no legitimate property condition assessment report appears to have been performed at the time of the assumption, based on Article 13.02(a)(3)(B) of the loan agreement, Fannie Mae and Grandbridge had the ability to require such an inspection to be performed at that time, and to require that any transfer be conditioned on an additional transfer into the repair or replacement reserves. (Plaintiff's Complaint, Ex. 1, pages 69-70, Section 13.02(a)(3)(B); Plaintiff's Complaint, Ex. 6, pages 69-70, Section 13.02(a)(3)(B).) Grandbridge and Fannie Mae simply failed to do so.

125. Instead, at the time the loans were assumed, Grandbridge and Fannie Mae did not require any change to the Replacement Reserve monthly payment, and they did not require any additional Repair Reserve deposit. As such, at that time, the total reserves for both Properties was $143,319.30. (Exhibit J, Assumption Approval Letter for Liberty Village, dated August 22, 2018, at 2, 5-7; Exhibit K, Assumption Approval Letter for Village Square, dated August 22, 2018, at 2, 5-7.)

126. At a minimum, if they had any concern with the condition of the Properties, Grandbridge and Fannie Mae should have made changes to the contracts' reserve and replacement amounts by amending the Required Repair Schedules to adjust for any deterioration that existed at the time of the loan assumption.

127. The Lenders' failure to specify such deterioration as Additional Required Repairs at that time, while simultaneously agreeing to new Required Repair schedules meant that Lenders specifically agreed not to require a reserve for such conditions, and if such deterioration existed at the time of loan assumption it was inconsistent with Fannie Mae's own loan underwriting criteria to permit the assumption without requiring an additional reserve deposit.

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

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

130. Stated differently, based on disclosures regarding the financial securities held by the Westland Securities Entities, such as the July 25 and July 28, 2018 email disclosures detailing the Westland Securities Entities' role as guarantors and as the source of funds, Grandbridge knew Westland was a much more financially secure borrower, more experienced owners than the

Shamrock Entities, and that substituting a better borrower for the Shamrock Entities would decrease the risk associated with the loan to the benefit of both itself and Fannie Mae.

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

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

133. In completing the loan assumption, Grandbridge was acting as an agent for the benefit of Fannie Mae, by substituting a borrower on the loan, which stated in the simplest terms, had a superior credit rating and financial wherewithal.

134. As such, before closing the assumption transaction between Westland and the Shamrock Entities, Grandbridge, with the knowledge and consent of Fannie Mae, continued to rely solely upon CBRE's August 2017 PCA, despite that Grandbridge and Fannie Mae knew doing so would result in minimal repair and replacement reserve requirements in the Loan Documents.

135. Westland relied on Grandbridge's and Fannie Mae's actions. For example, Westland did not require the Shamrock Entities to increase the reserves at the time of the loan assumption, because Westland believed, based on the express terms of the Loan Agreements' limited terms for adjustments to the reserves (i.e. to expenses of the same type that had been charged in the original loan document), that the same levels of reserve funding that had been required to that point would continue to be used in the future.

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

//

//

Westland's Rehabilitation of the Properties and Community Building

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

138. Further, the day before closing, the Shamrock Entities were required to supply complete electronic financial information for the Properties, but did not do so, and instead shortly after the closing, Westland was required to have a software vendor access the Shamrock Entities records to obtain a full copy of the Shamrock Entities complete electronic records, and once uploaded it was discovered the complete records contained additional embedded financial information related to historical data that show the Shamrock Entities had overstated occupancy numbers and presented misleading information on its delinquency balances.

139. Even after obtaining the additional post-closing data, based on the voluminous amount of financial information that had to be unraveled and compared to the information disclosed during due diligence related to the property sale, Westland did not immediately unravel the Shamrock Entities improper accounting practices.

140. However, based on the method that financial delinquencies and occupancies are reported to lenders, which upon information and belief included additional reports that were not available to Westland in due diligence, the Shamrock Entities misstated financials should have been detected by Grandbridge and Fannie Mae, and it was only through the Lender's lack of proper oversight and investigation that the Lender's failed to detect the occupancy irregularities, which would have been detected if they had used proper loan servicing and oversight protocols for these properties and the Shamrock Entities' loans.

141. Consequently, the Shamrock Entities' rent roll failed to show accurate levels of delinquencies by listing delinquent units as income producing. However, based on their loan agreements, Fannie Mae and Servicer were entitled to more detailed financial information that would account for those delinquencies. The Lender's lack of oversight and failure to enforce the Shamrock Entities' loan agreements permitted the Shamrock Entities' false reporting, which in

turn Westland relied upon in assuming those loans, believing that the Lenders had been following and enforcing the much more thorough reporting requirements from their borrower that the contracts required.

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

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

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

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

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

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

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

d) a higher occupancy rate would induce Westland to pay a higher purchase price.

146. Tellingly, when Westland purchased the Properties from the Shamrock Entities, Shamrock provided that Westland could retain any of its local staff, but due to widespread issues of incompetence and ethically questionable behavior, Westland was only able to retain 2 of Shamrock's 20 employees that worked at the Properties.

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

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

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

150. Specifically, to create a safer environment for the Properties' tenants, during the slightly less than two years from the date of purchase through August 31, 2020 (the time of the initial Counterclaim), Westland paid approximately $1,573,600 to security guard providers that have, depending on the relevant time period, continuously provided either three or four guards on a twenty-four hour basis consistent with the needs of the Properties.

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

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

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

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

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

156. However, those long-term improvements came with a short-term cost related to the financial profitability of the Properties resulting from a decrease in the occupancy rate during the first few months that Westland operated the Properties. Specifically, occupancy rates at the Properties bottomed out at 44% during July 2019.

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

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

159. However, by early 2020 Westland's efforts had begun to pay off, because not only had the occupancy rate at the Properties risen to 61% in February 2020, but Westland was able to obtain an increased rental rate for each renovated residential unit that Westland had "turned" and made rent ready – or stated differently, *by January 2020 the Properties were stabilized with a positive NOI, and by April 2020 they were meeting their monthly debt service payments without the need for funding from Counterclaimants*.

160. Under Westland's management, the occupancy rates have continued to increase by approximately 3% per month – the same percentage that Westland projected within its November 2019 Strategic Plan. (Exhibit N, Westland Strategic Improvement Plan for Liberty Village and Village Square, dated November 27, 2019.)

161. Coincidentally, the Properties' over 80% occupancy rate in August 2020 (at the time of Fannie Mae's Complaint) was nearly identical to, but slightly higher than, the 77.7% *real* occupancy rate that existed at the Properties at the time they were operated by the Shamrock Entities.

162. The Properties are currently more profitable than under the Shamrock Entities ownership or the ownership of any entity associated with Fannie Mae, because based on the higher quality renovations that Westland performs when turning units, as well as Westland's superior screening of tenants, Westland has been able to implement significantly higher unit rents.

163. By August 2020, the Properties were not only covering debt service but are now also generating income in excess of operating expenses and improvement costs.

164. In fact, the Properties' occupancy rates continued to improve, and as of August 1, 2021, the occupancy rate for each of the Properties was over 93%, which upon information and belief is much higher than at any point during the Shamrock Entities ownership and much higher than at any point when Fannie Mae operated the Properties, directly or indirectly, as an REO – stated differently occupancy rates are now approximately 10% higher than they had been during the 10 years prior to Westland's ownership.

165. As such, Westland's management has been able to restore the Properties, and is now operating them at a high level of efficiency, despite the fallout from the Pandemic and more than almost 18 months of eviction moratoria.

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

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

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

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

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

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

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

173. Since completing the purchase in February 2020, Westland has been working with the Office of the County Commissioner to develop community-based services at the Parcel. Proposals for such services include a police substation and/or community daycare center. Based on interactions with its tenants, Westland's management staff has determined that increasing such community-based services in the immediate vicinity of the Properties would be attractive to the working-class families that Westland serves.

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

Grandbridge's Servicing of the Loans since the Assumption

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

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

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

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

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

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

The Loan Agreements' Requirements for Adjustments to Deposits

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

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

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

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

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

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

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

//

//

The Loan Terms for Property Condition Assessments

187. Additionally, the Loan Agreements expressly limit when a Property Condition Assessment may be conducted, namely when "Lender determines that the condition of the Mortgaged Property has deteriorated (ordinary wear and tear excepted) since the Effective Date" of the loan. (Plaintiff's Complaint, Exhibit 1, page 39, Article 6.03(c).)

188. Neither Fannie Mae nor Grandbridge had any reasonable basis to determine that the condition of the Properties had deteriorated in excess of ordinary wear and tear from the time the loans were taken out in November 2017, and certainly not after August 2019 loan assumption, which is when they actually lowered the reserve amounts before Westland closed on its purchase and assumption of the loans.

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

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

191. Despite not having a valid basis in the loan documents to do so, in mid-2019, Grandbridge's representatives, individually and as an agent/servicer for Fannie Mae, demanded access for a property assessment by the Texas-based f3, Inc.

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

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

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

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

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

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

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

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

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

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

per annum, which amounted to $446 when accounting for inflation. (Plaintiff's Complaint, Ex. 11, pages 334.)

202. Likewise, in contrast to CBRE's depreciation schedule for the Square Property that required $210 per unit/per annum, which was increased to $248 per unit per annum when accounting for inflation (Exhibit E, at 6, 10), f3, Inc. recommended a monthly fee of $312 per unit per annum, which amounted to $342 when accounting for inflation. (Plaintiff's Complaint, Ex. 11, page 23.)

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

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

205. Based on the f3, Inc. assessment, a demand was made for Westland to deposit an additional $2,845,980.00 ($1,753,145.00 for the Liberty Property and $1,092,835.00 for the Square Property) into reserves.[9]

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

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

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

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

---

[9] While the demand was for $2.85 million, the amount of new funding requested was lower, because Grandbridge provided it would move $246,047 from the Liberty Replacement Reserve and $106,217 from the Village Replacement Reserve, or a total of $352,264, which would make the new money demand $2,493,716.

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

[11] For instance, at the time of acquisition of the Properties, two buildings at Liberty Village were damaged by fires, which rendered them complete losses. The insurance carrier issued joint checks for the nearly $1 million that it cost to restore those buildings. All of the funds from the carrier were held by Grandbridge from that time until May 2021, which was months after the Court entered a preliminary injunction requiring that the funds be disbursed in November 2020, and Westland funded the full cost to completely restore those buildings. Still, nothing was received in response to Westland's reserve disbursement request, despite those funds being specifically earmarked for restoring the buildings associated with the fires. As such, *Grandbridge improperly withheld $1 million of Westland's funds*, which Lenders only returned after Westland filed and OSC Re: contempt to get them to do so.

The Loan Terms for Additional Lender Reserves and Replacements

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

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

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

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

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

215. Notably, the only cost remaining in the repair reserve at the time of the assumption of the Loan Agreements, for sport court related repairs, remains fully funded – specifically, $9,375.00 remains in the Required Repair Escrow for that purpose, even though the repair has been completed.

216. Likewise, Schedule 1 of each Loan Agreement, which defines "Additional Lender Repairs" as "*repairs of the type listed on the Required Repair Schedule* but not otherwise identified thereon . . . to keep the Mortgaged Property in good order and repair (ordinary wear and tear

excepted)" effectively prohibits any request for additional reserves, because Grandbridge and Fannie Mae have admitted that no such repairs remained outstanding. (Plaintiff's Complaint, Ex. 1, Schedule 1, page 93; Plaintiff's Complaint, Ex. 6, Schedule 1, page 93. [emphasis added].)

217. Nonetheless, the PCA conducted by f3, Inc., demands a deposit of approximately $2.85 million dollars for "immediate repairs."

218. $1,908,760 of those "immediate repairs" were related to "turning" vacant apartments into rent ready units, which was an expense that was clearly not addressed in any prior schedule at the time of the initial loan or at Westland's assumption.

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

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

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

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

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

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

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

226. Notably, each definition of additional repairs, additional replacements, and conditions that justify performing a property condition assessment provides that "ordinary wear and tear [is] excepted," but the vast majority of the items Servicer seeks a deposit for are items related to "ordinary wear and tear" within vacant units, which is thereby precluded by the definitions contained in the Loan Agreements.

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

228. However, even ignoring the language of the defined terms from the Loan Agreement, it is clear that the amount included in the original schedules for the Liberty Property and Square Property which totaled $560,187.00, or 1.5% of the loan balance are not of the same type or substantially equivalent to the additional reserve funding that Fannie Mae and Grandbridge seek in the amount of $2,845,980.00 or 7.42% of the loan balance, after only one year has passed, and both Properties, by any objective measure are much improved and the collateral is much more valuable than when Westland assumed the loans.

229. Perhaps even more alarming is that the figures for the calculation of monthly reserve allocations payments changed dramatically as well. Based upon Westland's substantial investment in and improvements made to both Properties, the monthly reserve allocations should actually have *gone down* if the same standard had been used.

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

The Abandoned Default

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

232. However, if it was based on the failure to make repairs that purported default was disingenuous because Fannie Mae and Grandbridge never provided Westland an opportunity to perform repairs, as contemplated by the Loan Agreements, prior to making their $2.85 million demand to place funds into escrow.

233. Upon information and belief, such an assertion of a default was in bad faith, because Article 6 is six pages in length, and after Westland's request for further information on the purported default, including the identification of the section breached, neither Grandbridge nor Fannie Mae ever provided any response.

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

The Purported Default

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

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

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

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

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

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

241. On November 1, 2019, Westland requested an extension of time to consider the request, so it could evaluate the PCA reports and formulate a response without interfering with Jewish holidays. However, minutes later, Grandbridge and/or Fannie Mae refused this request for a little bit more time.

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

243. In response to Westland's letter, prior to the November 18, 2019, deadline for a deposit, Grandbridge stated that Westland would have to place the full amount of the requested reserves into escrow or face a Default, refused to extend Westland's time for a response, and intimated that had Westland forwarded a plan to meet the demand additional time could have been provided, even though no request for a plan had previously been made in the demand letter or prior communications with Grandbridge.

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

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

246. On November 28, 2019, Westland forwarded a letter containing Westland's Strategic Plan for the Properties, which designated a budget for any outstanding repairs, and addressed that many of the requested repairs had already been performed.

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

Lenders' Improper Servicing and Discrimination

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

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

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

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

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

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

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

255. The loan servicer never responded further, nor did it provide any billing statement as promised, until after ordered by this Court to do so through the preliminary injunction order that was entered during November 2020.

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

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

258. Still, despite all initial payments, scheduled reserve payments and monthly debt service payments having been made, and without providing any evidence of deterioration in the condition of the Mortgaged Property, Lenders refused to recognize that no default had occurred.

259. Approximately eighteen months have passed, since Westland's December 2019 and January 2020 letters that requested further information on the purported default, or at "a minimum the specific subsection number and other identifying information" Lenders asserted was breached, but Lenders still have not provided any response with greater details on the basis for the purported breach in Article 6 of the Loan Agreements, which is a six (6) page densely worded section of the Loan Agreement, and as such should be deemed to have refused to set forth the precise basis for the alleged default.

260. Instead, Lenders engaged in coercive and overbearing tactics to assert improper pressure on Westland, including but not limited to placing all Westland-related entities, even those with no relationship to the two properties at issue on a "blacklist" status known as "a-check." By placing Westland and the Westland-related entities on "a-check" it meant that no Westland related entity was able to obtain any new financing through Fannie Mae, and Westland had to disclose to other lenders that Fannie Mae asserted it had a loan in default, even though the default was contested by Westland.

The Lender-Required SPE Structure

261. Generally, Fannie Mae and mortgage lenders require that the borrower on a mortgage loan have a single purpose entity ("SPE") structure, which is a legal entity created to hold title to real property and that is limited from engaging in any business not related to the rental of the mortgaged property identified in the loan agreement.

262. Here, Lenders required Liberty LLC and Square LLC to use an SPE structure, by requiring that they be entities that had no other assets or liabilities other than those associated with the one particular piece of real estate to which each loan was related.

263. Lenders required use of the SPE structure to meet the narrow, specific objective of isolating the real estate assets securing the Loan Agreement from liabilities that might adversely affect the other Westland-affiliated owners, shareholders, and/or parent companies as a whole.

264. Lenders also required those Westland-affiliated owners, shareholders, and/or parent companies to: act as guarantors, share the guarantor's financial information with Lenders, and share the borrower's sources of cash used to buy the Properties.

265. As such, prior to the August 29, 2018 closing, Westland was required to provide the document entitled Summary of Sources of Cash, and supporting documentation, which listed AFT NV as the primary contributor of funds for the borrowing entities, and showed the financial security holdings of the Westland Securities Entities.

266. As such, Lenders knew that Liberty LLC and Village LLC, as the borrowing SPEs, had each received funds for the initial down payment used to purchase the Properties from the commonly-owned Westland Securities Entities, including from AFT NV, Dynasty Trust, and the

Alevy Descendant's Trust, which were specifically required by the Lenders to be guarantors for the Westland borrower's two loans at issue in this case.

The COVID-19 Pandemic

267. In March 2020, the COVID-19 pandemic hit the United States, which caused substantial uncertainty for individuals, companies, governments, and the financial markets, including Westland, the Westland Credit Facility Entities and the Westland Securities Entities.

268. Upon information and belief, during four trading days in March 2020, the "Dow Jones Industrial Average (DJIA) plunged 6,400 points, an equivalent of roughly 26%. The crash was caused by the governmental/market reaction to a novel coronavirus (COVID-19), a disease which originated in the Chinese city of Wuhan in December 2019 and quickly spread around the world causing a pandemic."[12]

269. The Westland Securities Entities, including Amusement, AFP Trust, Westland AMT, AFT NV, and Dynasty Trust, were not immune to the dramatic market fluctuations, and overall financial securities market decline.

270. The Westland Securities Entities each owned a significant portfolio of financial securities, and a significant amount of those holdings were held on margin.

271. During March 2020, when the markets fluctuated so dramatically, the Westland Security Entities had more than $27,211,000 of margin calls.

272. In response, the Westland Securities Entities were required to put up sufficient additional cash to cover those margin calls, and to do so the Westland Securities Entities liquidated financial securities during March 2020.

273. When liquidating securities for margin calls, the total value of the securities held decreases, and based on market conditions during March 2020, the Westland Security Entities were required to liquidate securities valued at nearly twice the amount of the margin call.

---

[12] Mazur, Mieszko, et al., Finance Research Letters, Jan 2021; 38: 101690, US National Library of Medicine National Institutes of Health, Elsevier Public Health Emergency Collection, at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7343658/ (showing market volatility during March 2020 of the DJIA, which is a commonly used index that functions as a quick proxy for the large capitalization financial markets.

274. The financial securities that were required to be liquidated due to margin calls have increased in value by tens of millions of dollars, the exact amount of which increase will be determined at trial.

275. When making loans and contributions to other closely-held and commonly-owned Westland-related entities, the Westland Securities Entities depended on those entities being able to later borrow against the real property acquired to be able to quickly return such funds based on the appreciation of the real property owned.

276. Being able to utilize the appreciation of the real property that is owned by Westland and the Westland-related entities allows them to utilize their combined financial capital to fund further growth and to engage in effective risk balancing by diversifying assets in the real estate and financial markets, which reduces the effect of volatility in any one market.

277. The instability caused by the COVID-19 pandemic, which caused a financial market collapse, is the type of market risk that the Westland Security Entities had planned to have a reserve available through the use of borrow up loans and lines of credit by entities such as the Westland Credit Facility Entities.

278. Specifically, the Westland Securities Entities made inter-company loans and contributions, to the Westland Credit Facility Entities directly, and indirectly through loans and contributions made to the Westland Credit Facility Entities' owning entities.

279. However, the ability of those Westland-related entities to return funds was foreclosed in March 2020 by Lenders' actions related to the purported default in this matter, and specifically because they put the Westland Securities Entities on a-check and cut off their credit facility.

280. Upon information and belief, in December 2019, contemporaneously with the purported default Fannie Mae placed Westland, the Westland Securities Entities and Westland Credit Facility Entities on "a-check" and improperly discriminated against any Westland-related entity for new loans, draws on existing lines of credit, and re-financing applications.

//

//

Discriminatory Lending Practices & the Master Credit Facility Agreement

281. In fact, six Westland-related entities, namely Amusement, Corona, Amber, Hacienda, 1097 North, Tropicana, and Vellagio, described above as the Westland Credit Facility Entities, had already ensured that funds were available to meet Counterclaimants' need in the event of a financial market collapse.

282. Specifically, on March 15, 2019, the Westland credit Facility Entities entered into a Master Credit Facility Agreement (the "MCFA") with loan servicer Wells Fargo Bank, NA ("Wells"), as a lender, which could be used as an additional cash resource.

283. Before entering into the MCFA, the Westland Credit Facility Entities were required to submit an application, vetted according to Fannie Mae's underwriting criteria, were charged legal fees for underwriting, were charged costs for appraisals, and were required to pay additional loan issuance costs.

284. As part of that application and vetting, Fannie Mae reviewed the Westland Credit Facility Entities financial statements, and the financials of their affiliated owners, shareholders, and/or parent companies, who were required to act as guarantors and share their financial information, including but not limited to guarantors Amusement, the Alevy Descendant's Trust, and the AA 2015 Dynasty Trust B.

285. After being fully vetted, the Westland Credit Facility Entities were approved by Wells, and Fannie Mae confirmed that it would purchase the MCFA related notes, so that the Westland Credit Facility Entities could receive funds via the credit facility.

286. The initial advance under the MCFA was for $97,789,000.

287. The MCFA contractually obligated the lender to extend certain funds to the Westland Credit Facility Entities as Future Advances consistent with the MCFA and agreed upon schedule.

288. The same day the MCFA was executed by Westland, Wells entered into an assignment agreement, which assigned the lender's benefits and obligations in the MCFA to Fannie Mae.

289. The terms of the MCFA provided that "any Future Advance . . . and any Conversion of an Advance shall be subject to the precondition that Lender must confirm with Fannie Mae that Fannie Mae is generally offering to purchase in the marketplace advances of the execution type requested by Borrower at the time of the Request and at the timer the rate for such Advance is locked." In such an event, if Fannie Mae was no longer purchasing advances of the same type, Wells Fargo would seek an alternative advance consistent with the type then offered, which would be conditioned on Wells approval through Fannie Mae, "except for a Borrow Up provided in the proviso of Section 2.02(c)(2)(B)."

290. The terms for a borrow up made clear that Future Advances addressed by new offerings (discussed in the prior paragraph) that involved an "Addition of Additional Mortgaged Properties" ("Additional Mortgage Advance") were discretionary.

291. However, a "Borrow Up" based on appreciation in the value of the mortgaged property that was already part of the MCFA would be made so long as there was "compliance with the terms of the Future Advance Schedule and the Underwriting and Servicing Requirements subject to the terms of this Section 2.02(c)(2) and Section 2.02(b) where the Valuations of the Mortgaged Properties will be based on Appraisals ordered by Lender and paid for by Borrower" ("Borrow Up Advance"), which advances were non-discretionary.

292. Those terms provided in part that the Westland Credit Facility Entities were able to seek a Future Advance not more than one time per year during the first five years of the MCFA, and not more than a total of three times during those first five years.

293. Schedule 14 to the MCFA was the Future Advance Schedule, and Form 6001.MCFA was the Future Advance Request form, which together permitted Future Advances based on the following terms provided that:

a. The Future Advance would be for a minimum of $5 million, with a total of all advances not exceeding $125 million;

b. A Borrow Up Advance required that Coverage and LTV Tests be met, based on a desk appraisal, and that all Underwriting and Servicing Requirements be satisfied;

c. An Addition Advance required the underwriting of Mortgaged Property Addition Schedule be satisfied; and

d. "Lender's determination that the proposed borrower, key principal, and guarantor meet all of Lender's eligibility, credit, management and other standards customarily applied by Lender in connection with the origination or purchase of similar mortgage finance structures on similar Multifamily Residential Properties at the time of the Future Advance Request for the Future Advance";

e. Submission of an additional variable or fixed rate note;

f. Payment of an Additional Origination Fee for Addition Advance or a non-refundable Re-Underwriting Fee for a Borrow Up Advance, as well as legal fees, related costs, and that a "request opinion" was obtained; and

g. Receipt of "Property-Related Documents" if applicable.

294. Pursuant to the MCFA, the Westland Credit Facility Entities were able to seek a Borrow Up Advance on March 15, 2020, because the MCFA was originated on March 15, 2019.

295. The Westland Credit Facility Entities began preparation for such an advance during November 2019 and knew that the Mortgaged Property securing the MCFA had substantially appreciated so that it would allow a Future Advance equal to the full $125 million Future Advance amount, or an additional Future Advance of up to $27,211,000.

296. Nonetheless, in December 2019, the Westland Credit Facility Entities were advised that Fannie Mae refused to extend funds for a Borrow Up Advance, even though contractually obligated to do so, and the sole stated reason for Fannie Mae's refusal to extend funds was the disputed default in this matter that resulted in all Westland-related entities being wrongfully placed on a-check.

297. Being wrongfully placed on "a-check" meant that when any lender, servicing agent, or DUS lender attempted to underwrite, refinance, or borrow up on loans for Westland, the Westland Credit Facility Entities, other Westland affiliated entities, their key principals, and their guarantors, they were automatically deemed to no longer met Fannie Mae's "eligibility, credit,

management and other standards customarily applied by Lender in connection with the origination or purchase of a similar mortgage finance structure[]."

298. Moreover, between early 2020 and July 2021, additional Westland affiliated entities, made new loan and/or refinance inquiries with mortgage brokers related to obtaining a loan through Fannie Mae, but were told they were on "a-check," so they were not eligible to get a loan through Fannie Mae.

299. As such, Fannie Mae continued to enjoy full performance by the Westland Credit Facility Entities, including the timely receipt of all MCFA loan payments, maintenance of the same liens on their Mortgaged Property, and security from the same guaranty, despite Fannie Mae's breach of the Future Advance provisions of the MCFA.

300. Fannie Mae's had no independent basis related to the Westland Credit Facility Entities to breach the Future Advance provisions, and instead solely justified its breach on the "a-check," because the Westland Credit Facility Entities were affiliated entities of Westland.

301. As such, the purported breach was a baseless assertion arising from Westland's valid objection to Lenders' own unilateral modification of the Loan Agreement that required Westland to place an additional $2.85 million into reserves.

302. Counterclaimants had relied on the availability of the Future Advance funds promised in the credit facility to provide a safety net in the event of an economic downturn, and if Counterclaimants had access to the additional $27,211,000, the Westland Securities Entities would not have been required to liquidate their holdings in order to cover the March 2020 margin calls.

Lenders' Continuing Improper Servicing and Discrimination

303. On several occasions, after the October 2019 Notice of Demand, Westland has attempted to discuss the proper amount of reserve funding related to the loans, but through counsel, Grandbridge and/or Fannie Mae have refused to do so without attaching conditions that have in effect operated as a poison pill, including that Westland pay for all costs associated with Grandbridge's attempts to increase Westland's reserve deposits despite having no such rights in the Loan documents.

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

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

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

307. Based on the foregoing, Westland has had to defend itself to prevent an improper foreclosure and appointment of a receiver.

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

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

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

311. Without Court intervention, $20,000,000 in initial purchase funds, plus any appreciation in the value of the Properties will be lost via foreclosure.

312. Additionally, Counterclaimants were required to bring this Counterclaim to prevent Fannie Mae and Grandbridge from taking any adverse action against any Westland-related entity on other loans due to the purported default that arose from failing to deposit an additional $2.85 million into the reserve escrow accounts, including for example by improperly discriminating against the Counterclaimants on new loans, failing to honor loan-related reserve disbursement requests, and failing to adhere to non-discretionary Future Advance provisions for which Counterclaimants have already provided consideration.

IV. SUPPLEMENTAL FACTUAL BACKGROUND & GENERAL ALLEGATIONS AS TO THE SHAM DEFENDANTS

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

a. Shamrock's Purchase of the Properties

314. Upon information and belief, during August 2014 "Shamrock Communities LLC [ ] a Greenwich, Conn. based multifamily real estate investment firm that was founded in 2011" purchased 4870 Nellis Oasis Lane, Las Vegas, NV 89115 and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 from Blue Valley Apartments, Inc. ("Blue Valley").

315. Upon information and belief, ownership of the Properties was transferred from Fannie Mae to Blue Valley on or about February 13, 2012.

316. Upon information and belief, Blue Valley was an entity affiliated with Fannie Mae and/or Fannie Mae's officers and directors until its dissolution in September 2018.

317. Upon information and belief, Blue Valley owned and/or operated financially distressed properties, including real estate owned ("REO") properties, and was responsible for the

management, operation, marketing, and sale of such properties after Fannie Mae has foreclosed upon a loan.

318. REOs are properties owned by a lender after a borrower default and unsuccessful foreclosure sale auction.

319. At the time Blue Valley sold 4870 Nellis Oasis Lane, Las Vegas, NV 89115 and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 to the Sham Defendants, the Properties were still in distress, had high rates of crime, and were not capable of receiving financing through Fannie Mae.

320. Upon information and belief, Fannie Mae has a policy that it will not extend financing for Properties that were previously a Fannie Mae REO, unless the Property meets exhaustive criteria.

321. In December 2014, Shamrock Communities LLC circulated a press release that represented it had substantial real estate wherewithal, by stating it had "completed seven [multifamily property] acquisitions in the mid-West and West since the beginning of" 2014.

322. In that press release, Weinstein represented that Shamrock Communities three purchases in 2014 "were distressed, bank-owned assets" that would "be repositioned and turned into viable communities, in which residents will benefit from substantial upgrades and be able to take pride in their surroundings."

323. The press release provides that Liberty and Square would "undergo an estimated $4 million capital improvement plan" and that "[t]he properties['] transformation will take approximately 12 to 18 months to complete."

324. Weinstein stated the plan was that "[a]fter extensive renovations, management changes and enhanced services for tenants, we hope to attract military employees looking for housing close to Nellis Air Force Base."

325. Upon information and belief, shortly after or contemporaneously with the acquisition of the Properties, Shamrock Communities LLC conveyed title to the Properties to SHAM VI and SHAM VII.

326. Although the information disseminated by the Sham Defendants in press releases remained publicly accessible by internet searches, the information regarding the extensive capital improvement plan, the 12-18 month transition period, the plan to attract military employees and transform the Properties never came to fruition and/or was false.

b. The Properties' Financing

327. Based on the foregoing, the Properties were ineligible for a Fannie Mae backed loan when the Sham Defendants purchased them in 2014 and remained ineligible under Fannie Mae's underwriting criteria so a Fannie Mae backed loan never should have been issued in 2017.

328. In fact, at the time of the Sham Defendants' acquisition of the Properties in 2014, those defendants obtained private financing through Pillar Multifamily LLC ("Pillar").

329. In lending to the Sham Defendants, Pillar was aware of the poor state of the Properties, as it obtained an appraisal by Butler Burger Group, LLC, which recognized that as of August 2014, "the property is 70.5% occupied having been poorly managed since it was foreclosed on in 2012," which was the entire period during which it was managed by Fannie Mae and its affiliate Blue Valley.

330. Upon information and belief, during October 2016, SunTrust Bank acquired Pillar and its associated loan administration, investor services and mortgage brokerage business, named Cohen Financial ("Cohen").

331. Upon information and belief, a primary driver in the purchase transaction was that Pillar Financial had expertise in government sponsored enterprise loans, which gave SunTrust access to full loan underwriting through Pillar's Fannie Mae, Freddie Mac and Federal Housing Administration license transfer approval.

332. Based on that expertise, SunTrust/Pillar were well aware of Fannie Mae underwriting criteria.

333. Upon information and belief, in mid to late 2017, SunTrust/Pillar evaluated the Sham Defendant's loan for a potential refinance and found it to be high risk.

334. Upon information and belief, SunTrust/Pillar still underwrote and issued the DUS loan for the Sham Defendants in 2017.

335. Upon information and belief, issuing a DUS loan generated additional loan issuance fees and reduced SunTrust's/Pillar's lending risk, because it would be converting a direct loan, where it was 100% at risk, to a DUS loan, which Fannie Mae would securitize and spread the vast majority of the lending risk either to Fannie Mae or its CMBS investors.

336. As SunTrust/Pillar and/or Cohen had serviced the loans since 2014, they knew when underwriting the loans during 2017 that the Properties were not eligible for a Fannie Mae loan and/or did not meet Fannie Mae's underwriting criteria.

337. When underwriting the new loans, SunTrust/Pillar utilized the services of CBRE to perform a PCA and appraisal of the two Properties, because it was known that CBRE utilized a property condition assessment standard that was more lenient to the borrower, would minimize the reserve funds required, and increase the chance a DUS loan could be issued.

338. Ultimately, SunTrust/Pillar underwrote the transaction through the DUS lending program that did not require Fannie Mae's prior approval, integrated the PCA criteria from the CBRE PCA into its reserve schedules, failed to address that the Properties did not meet Fannie Mae's criteria related to crime, and failed to adequately review or overlooked the financial information that the Sham Defendants had submitted with its re-finance application and available in its own servicing files.

c. The Failed 2017 Shamrock-Westland Purchase Transaction

339. By email dated November 2, 2016, a real estate broker, Art Carll of NAI contacted Counterclaimants; provided information on the Properties, including a mini offering statement, rent rolls, and a listing of capital improvements; stated the properties were "nice" but "simply mismanaged", and inquired whether Counterclaimants had any interest in the Properties.

340. Within the mini offering memorandum, which the Sham Defendants intended to be shared with potential purchasers, it was represented that:

a. The physical occupancy rate for the Liberty Village property was 82%;

b. The physical occupancy rate for the Village Square property was 81%;

c. The Liberty Village property was generating $5,135,162 of Net Rentable Income and $3,232,170 of net operating income a year;

d. The Village Square property was generating $2,287,464 of Net Rentable Income and $1,120,353 of net operating income a year;

341. In a further communication made on November 30, 2016, the same broker showed a "surrounding properties" map, which listed 83% occupancy rates for both Properties, and showed the higher occupancy rates for surrounding properties, leading the broker to state the map "depict[s] how badly the asset is underperforming and where the opportunity is for you to lift the asset to market conditions."

342. In early 2017, Counterclaimants forwarded a Letter of Intent related to the purchase of the Properties.

343. In response, by email dated January 10, 2017, Weinstein represented through broker Art Carll that the LOI was acceptable, except that Counterclaimants would need to pick up most of the closing costs and knowing that the Properties were in unacceptable physical condition that "[t]he sale is As-Is with limited reps," and that the Sham Defendants "do not need to make the units rent ready."

344. Buyer accepted the terms other than the closing date and a portion of the cost shifting, and on January 18, 2017 an initial PSA was forwarded, and at the time Seller's broker, Art Carll represented that "seller is not overly sophisticated" and will "blow up" the deal if there are a "bunch of changes."

345. After exchanging drafts and minor changes by both parties, on February 8, 2017, the Sham Defendants and Westland both signed the 2017 PSA, with the following key terms:

a. Liberty Village's purchase price would be $44,500,000;

b. Village Square's purchase price would be $16,000,000;

c. Counterclaimants would forward a $667,500 initial deposit for Liberty Village and $240,000 initial deposit for Village Square;

d. Sham VI & Sham VII would deliver or make available due diligence items within five (5) business days by February 15, 2017;

e. Counterclaimants would approve or disapprove title, inspection and due diligence contingencies by March 10, 2017, and a $907,500 additional deposit would be made that day;

f. The due diligence deadline would be March 10, 2017; and

g. The closing date would occur on April 27, 2017.

346. On February 12, 2017, Weinstein wrote an email stating the tenant lease files were available onsite, inquiring whether the tenant ledgers should be pulled, and requesting confirmation that the brokers could access the online portion of the due diligence folders.

347. On February 16, 2017, Counterclaimants forwarded a schedule for site inspections planned for February 22 & 23, 2017, both for Counterclaimants and an outside vendor, Partner Engineering and Science, Inc. ("Partner").

348. On February 28, 2017, Davidson sent an email stating: "The questionnaires for the PRCs are already in the dropbox for both properties," Davidson requested that the broker address any further questions, and later that same day broker Art Carll confirmed that Westland had the questionnaires but was requesting a copy of the delinquency report for Village Square.

349. The next day, on March 1, 2017, the deal began to break apart when Weinstein forwarded a copy of the delinquency report to broker Art Carll and Davidson, with the intent that the information be forwarded to Westland.

350. On March 6, 2017, Counterclaimants received inspection findings from Partner Engineering and Science, Inc., which raised several concerns with the condition of the Properties, including pest control issues, roof leaks and need for replacement, water leaks, water damage to floors and ceilings, potential microbial growth, the need for asphalt pavement replacement, and damaged carports.

351. As such, on March 8, 2017, prior to the close of due diligence, Yanki Greenspan, on behalf of Westland, emailed Art Carll stating: "Thank you for working diligently with us through this long process. As you are aware the physical condition of this property is unacceptable to us. The issues that are holding us back are criminal activity, mold in more than 15% of the units, buildings sinking, insanely poor collections, etc. We are anticipating a 2+ year clean up period and

expenditures exceeding $6mil. If I had to throw out a number we could pay for this property it would be closer to $45mil. If you think that the seller is at all interested in selling the building at that price please let me know. Otherwise we will be canceling escrow by tomorrow."

352. On March 10, 2017, Westland's in-house counsel, Michael Libraty advised the Sham Defendants that Westland was providing a written disapproval of contingencies for both Properties.

353. Counterclaimants' email from Yanki Greenspan and written disapproval of contingencies provided the Sham Defendants a roadmap for the attributes at the Properties that Counterclaimants found material, and how the Sham Defendants could document that the condition of the Properties had improved.

d. **Manufacturing the "Rent" and "Occupancy" Numbers Before and After the Failed 2017 Transaction**

354. Upon information and belief, there was no source of information regarding the Properties' financial performance other than directly from the Sham Defendants at the time of the 2018 purchase and sale transaction.

355. Upon information and belief, until July 2015 the Properties were managed by outside property management, but thereafter the Sham Defendants controlled the Properties financial records and maintained such books, financial records and rent rolls with limited assistance from Westcorp.

356. Upon information and belief, leading up to and at the time it was trying to sell the Properties to Westland, SHAM VI and SHAM VII were processing an extraordinarily high number of five (5) day notices to pay rent or quit each month, which amounted to "hundreds" of notices, but the SHAM Defendants were not actually evicting the occupants in the units.

357. Upon information and belief, even after an apartment was vacant the SHAM Defendants would not permit its accounting employees/contractors to simply process tenant move-outs in the Yardi computerized database property management and accounting records for SHAM VI and SHAM VII as those vacancies occurred.

358. Instead of accurately reflecting the true occupancy status of the apartments, upon information and belief, Weinstein and Wilde would decide on the number of tenants that they would permit to be "processed" each month, in order to control the number of tenants that were shown as having moved out each month in the computerized database the Sham Defendants maintained.

359. Upon information and belief, Weinstein and Wilde would only typically permit 5 or 6 tenants to be shown as having moved out each month in the computerized database.

360. Upon information and belief, a primary factor in deciding how many past tenants that Weinstein & Wilde would permit to be shown as having moved out of the Properties was based on the amount of "rent" they wanted to show as having been paid each month at the Properties.

361. Upon information and belief, after determining that amount of "rent" they wished to show for that month, Weinstein and Wilde would work backwards to determine the number of tenants who needed to occupy the Properties to create rent account receivables that would support those calculations and would only process "move outs" for a corresponding number of apartments and delay processing the remaining "move-outs."

362. The process resulted in Weinstein and Wilde listing rental income that they knew would never be collected in order to create the appearance that the Properties were generating an elevated level of income in both the electronic tenant records and the financial records generated with those records by Sham VI and Sham VII.

363. However, upon information and belief, the Sham Defendants knew the true rent roll information, because they maintained a separate set of hard copy books and records within vacant unit(s), which initially was a vacant two bedroom unit near the Village Square rental office and that was later moved to a unit at Liberty Village.

364. Upon information and belief, each tenant had a hardcopy file in the vacant unit(s) that was contained in a large envelope, and the large envelopes were in turn stored in bankers' boxes in the vacant unit(s).

365. Upon information and belief, Weinstein and Wilde knowingly and intentionally failed to accurately document the true number of vacant units at the Properties in order to "keep the numbers up" in electronic records produced to outside parties, but the files stored in the bankers boxes in the vacant unit(s) contained annotations identifying the true occupancy status and/or rental payment history of each tenant.

366. Upon information and belief, the Sham Defendants required daily "rent roll correction" and delinquency reports to be submitted electronically via email and/or Dropbox to accounting personnel at the Shamrock Communities LLC corporate office, which records were reviewed by Weinstein, Davidson, Wilde and accounting personnel at the corporate office in Connecticut.

367. Upon information and belief, Weinstein had a primary, active role in establishing the improper, inaccurate accounting practices, but Weinstein shared those duties with Davidson.

368. Upon information and belief, both Weinstein and Davidson operated remotely, but Davidson provided daily directives regarding the handling of the improper accounting.

369. Upon information and belief, Weinstein would periodically travel to the Properties to review the onsite hardcopy records contained in the bankers' boxes in the vacant unit, and access to the unit was limited to Weinstein and a small number of individuals assisting her.

370. Upon information and belief, Wilde ensured the improper accounting practices were being followed onsite, and trained the accounting, collections and/or leasing staff to follow the procedures that were established by Weinstein and Davidson related to documenting the improper accounting information.

371. A former employee/contractor estimated that over 70% of the tenant ledgers contained significant incorrect and inaccurate rent balance information and/or tenancy status.

372. When that employee/contractor first started working onsite, the individual estimated that it took approximately a month, on a fulltime basis, just to compare the rent roll and find out the units that were actually vacant due to the extremely inaccurate recordkeeping, and that the inaccuracies involved between 200-300 apartments.

373. Further, when the employee/contractor asked why the Sham Defendants were not processing “move-outs,” the individual was not given any substantive reason, but instead was initially told that the employee/contractor should not be concerned and just could not process the “move-outs just yet.”

374. Later, when the Sham Defendants had listed the Properties for sale in 2017 and preparing for another sale in 2018, the Sham Defendants told the employee/contractor that they were “trying to sell” the Properties and the move-outs could not be processed while the sale was pending.

375. Upon information and belief, over the next several months during 2017 and early 2018, the Sham Defendants used the information Counterclaimants provided at the time of the termination of the 2017 purchase transaction in order to improperly adjust Sham VI’s and Sham VII’s financial records, so that those records would appear to conform to Counterclaimants’ standards, even though the actual rent collection and vacancies at the Properties did not support that information.

c. **The Consummated Purchase Transaction**

376. During early 2018, the Sham Defendants relisted the Properties for sale.

377. Counterclaimants became aware of the new listing and began to investigate whether the condition of the Properties had improved.

378. The Sham Defendants made representations, including within financial records, which appeared to show that the Properties rental receivables and delinquency rates had improved.

379. Specifically, on April 11, 2018, the Sham Defendants provided, *inter alia*, the following through their broker, with the intent that it be provided to Counterclaimants:

a. An Aging Summary Report for each Property, as of March 31, 2018, which metadata shows was authored by Davidson, and last saved by Weinstein, both on April 3, 2018, which show a “Total Unpaid Charges” balance of $8,714.15 for the Village Square Property, and $61,957.20 for the Liberty Village Property;

b. A Delinquency Report for each Property, as of April 12, 2018, which metadata shows was authored by Weinstein on April 12, 2018, and last saved by Weinstein, on April 13, 2018, which show a “Total Owed” balance of $26,571.08 for Liberty Village and a “Total Owed” balance of $10,744.68 for Village Square.

c. Twelve Month Income Statements for each Property, for both 2016 and 2017, which metadata shows was authored by Weinstein, and last saved by Weinstein on February 11, 2018;

d. A 12 Month Occupancy Report for Village Square, showing the first three months of information for 2018, and listed occupancy rates of 85.75% for January 2018, 87.63% for February 2018, and 88.78% for March 2018, which metadata does not show an author, but was last saved by Weinstein on April 11, 2018.

380. Each of the documents purported to show improvement in the financial condition of the Properties between March 2017, when the initial 2017 agreement was cancelled, and April 2018, when this financial information was provided.

381. Each of the documents referenced in the foregoing paragraph either contained false information or concealed material facts, which overstated income, minimized delinquency balances or failed to convey the true occupancy rates at the Properties.

382. Based on the continuing interest of both parties in relation to completing a sale of the Properties in light of the improvements at the Properties that the Sham Defendants represented they made, on April 25, 2018, the Sham Defendants’ counsel provided a draft purchase and sale agreement with factual revisions that modified the terms of the parties last proposed agreement that was terminated in March 2017. Those factual modifications included:

a. The disclosure of fire renovation work for the April 2018 fire;

b. The disclosure of a new loan that was entered into with Lenders in November 2017, and a requirement that Counterclaimants assume that loan;

c. The disclosure of the Las Vegas Metropolitan Police Department’s Notice and Declaration of Chronic Nuisance, and recognition that Counterclaimants were not permitted to independently seek information or to address the outstanding nuisance notice prior to the closing date;

d. A demand for increased initial and additional deposits;

e. A limitation on inspections of the real property to being, a one day inspection by two to four individuals "who are its own personnel" and a limitation that Counterclaimants' lease review would be conducted onsite, only on that same day;

f. Terms related to Required Repairs, including that the Sham Defendants would "use diligent efforts to complete" the required repairs prior to closing, or give a credit for all remaining Required Repairs.

g. Disclosure "that the pool near the gym of the Property has a material crack and that the pool likely needs to be replaced."

383. On June 22, 2018, Amusement entered into two purchase and sale agreements, one with Sham VI for the purchase of the real property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 for $44,300,000, and the second with Sham VII for the purchase of the real property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115 for $16,000,000 (singularly the "Purchase Agreement" or together "Purchase Agreements").

384. Section 3.7.1 of the Purchase Agreements provided that "All representations and warranties of Buyer or Seller, as appropriate, contained in this Agreement shall be true and correct as of the date made and as of the Close of Escrow with the same effect as though such representations and warranties were made at and as of the Close of Escrow."

385. In those agreements, the Sham Defendants mandated extremely strict terms and a tight timeframe for due diligence, as well as a quick closing date approximately 60 days after the purchase and sale agreement.

386. Section 3.3.1 of the Purchase Agreement was drafted to require all due diligence to go through the Sham Defendant's broker or Weinstein, as the agreement stated that "In no event shall Buyer contact any employees of Seller or its property manager at the Property without the consent of Seller."

387. One term of the Purchase Agreements was the Sham Defendants mandated that Counterclaimants were required to assume the Sham Defendants' current loans so that the Sham Defendants would not be required to pay an early termination fee.

388. During due diligence on June 26, 2018, the Sham Defendants produced, *inter alia*, the following through their broker Jannie Mongkolsakulkit, with the intent that it be provided to Counterclaimants:

a. Income Statements for Liberty Village, for the years ending December 31, 2016 and December 31, 2017, and the period of July 1, 2017 to June 30, 2018, all of which metadata shows were authored and last saved by Weinstein;

b. Income Statements for Village Square, for the years ending December 31, 2016 and December 31, 2017, and the period of July 1, 2017 to June 30, 2018, all of which metadata shows were authored and last saved by Weinstein;

c. Rent Roll with Lease Charges for Liberty Village, showing an occupancy rate of 85.13% and vacancy rate of 11.94%, as of June 26, 2018, which metadata shows was authored by Davidson, and last saved by Davidson on June 26, 2018;

d. Rent Roll with Lease Charges for Village Square, showing an occupancy rate of 83.86% and vacancy rate of 14.91%, as of June 26, 2018, which metadata shows was authored by Davidson, and last saved by Davidson on June 26, 2018;

e. Delinquency Report for Liberty Village, showing -$26,718.13 under the "Total Owed" column for the "Grand Total" of all delinquencies as of June 26, 2018, for which metadata listing the author and last individual saving the file appeared to be removed, but which contained a footer stating "UserId: ellenw Date : 6/26/2018 Time : 9:44 PM"; and

f. Delinquency Report for Village Square, showing -$45,240.59 under the "Total Owed" column for the "Grand Total" of all delinquencies as of June 26, 2018 for which metadata listing the author and last individual saving the file appeared to be removed, but which contained a footer stating ""UserId: ellenw Date : 6/26/2018 Time : 9:46 PM".

389. Each of the documents referenced in the foregoing paragraph either contained false information or concealed material facts, which overstated income, minimized delinquency balances or failed to convey the true occupancy rates at the Properties.

390. During due diligence on July 4, 2018, the Sham Defendants produced, *inter alia*, the following via an email from Ellen Weinstein to brokers Spence Ballif and Jannie Mongkolsakulkit, with the intent that it be provided to Counterclaimants, and on July 5, 2018, the documents were both emailed to Counterclaimants directly by Mongkolsakulkit and passed through Bailiff to Counterclaimants' own broker Devin Lee:

a. Rent Roll with Lease Charges for Village Square, showing an occupancy rate of 85.57% and vacancy rate of 13.20%, as of June 30, 2018, which metadata shows was authored and last saved by Weinstein on July 4, 2018;

b. Rent Roll with Lease Charges for Liberty Village, showing an occupancy rate of 86.52% and vacancy rate of 11.25%, as of June 30, 2018, which metadata shows was authored and last saved by Weinstein on July 4, 2018;

c. Village Square TTM, as of June 2018, which metadata shows was authored and last saved by Weinstein on July 4, 2018; and

d. Liberty Village TTM, as of June 2018, which metadata shows was authored and last saved by Weinstein on July 4, 2018;

391. Each of the documents referenced in the foregoing paragraph either contained false information or concealed material facts, which overstated income, minimized delinquency balances or failed to convey the true occupancy rates at the Properties.

392. Based on the foregoing materials provided during due diligence, the total delinquencies the Sham Defendants listed in the delinquency reports provided to Counterclaimants was only $36,615.53.

393. On July 13, 2018, a First Amendment to the Purchase Agreement for 4870 Nellis Oasis Lane, Las Vegas, NV 89115 was executed to remove all conditions other than the lender approval contingency.

394. On August 23, 2018, the Purchase Agreement for 4870 Nellis Oasis Lane, Las Vegas, NV 89115, was assigned by Amusement to Liberty LLC, and the Purchase Agreement for 5025 Nellis Oasis Lane, Las Vegas, NV 89115, was assigned by Amusement to Village LLC.

d. **The Shredding Coverup and Key Charade**

395. On August 28, 2018, in the late afternoon, Counterclaimants received a telephone call from an outside vendor who had visited the Property's onsite property management offices that day, and who reported that the onsite staff was "busy shredding a bunch of stuff in the office."

396. Counterclaimants' residential asset manager, Ruth Garcia, immediately contacted Weinstein on August 28, 2018, at 4:57 PM, told her that Counterclaimants had received a phone call regarding the shredding and asked her "Do you know what that is about?"

397. Weinstein responded minutes later at 5:11 PM, "I don't. We didn't give them that directive. Which office is it, liberty or village?"

398. On August 29, 2018, at 1:15 PM, the date of closing, Westland's counsel contacted Weinstein by email, stating that "There was virtually no one at the management office when Westland's management team arrived to handle the transition. I'm told that the office was locked and completely empty save for a pile of unlabeled keys. That's it. Westland was also told that Shamrock's management company spent the day yesterday shredding documents and files. I don't know at this point what the status of the files is and what impact all of this shredding activity will have on Westland's management of these properties on a go forward basis. I'm hard pressed to understand why this happened. . . . As I mentioned above, there's a pile of unlabeled keys and Westland's team has absolutely no clue which key goes to which door."

399. On August 29, 2018, at 1:51 PM, Weinstein responded: "To the best of my knowledge most of our staff stayed with Westland and we were directed to come to work today at the normal times. . . . The prior property manager had left: a) all of the keys on her desk in marked envelopes and, b) in the safe checks being held for Westland's arrival. The combination to the safe was given to Westland upon confirmation that funds had been received. I have no knowledge of shredding that would impact operations." Weinstein then noted that the prior onsite manager would return to the office "to go through the items left for Westland's takeover."

//

//

400. When Counterclaimants took over the management of the Properties on August 29, 2018, none of the information discussed above, including various reports, such as the rent roll correction reports, full delinquency reports, and aged receivable reports, which had been prepared onsite were present in the records at the onsite offices.

401. Upon information and belief, the Sham Defendants knew that rent roll correction reports, full delinquency reports, and aged receivable reports, would disclose the information on the true occupancy rates at the Properties that they had concealed from Counterclaimants.

402. Upon information and belief, the Sham Defendants shredded the rent roll correction reports, full delinquency reports, and other information capable of showing the true occupancy rates at the Properties with the intent to conceal their misrepresentations regarding the true occupancy rates.

403. Upon information and belief, the Sham Defendants knew that to recreate that information, Westland would need to need to physically visit each unit to determine whether the unit was in fact occupied, and that providing a stack of over 1100 unlabeled, unsorted keys, especially when Westland would need to provide a twenty-four our notice for access to each unit prior to conducting a physical check, would substantially impair Westland's ability to determine the true occupancy rates at the properties.

404. Upon information and belief, the Sham Defendants provided a stack of 1100 unlabeled, unsorted keys in order to impair Westland's ability to physically examine the units.

405. Westland relied on financial information that the Sham Defendants had provided at the time of the failed 2017 transaction, the information disclosed by brokers in offering the Properties for sale, the information provided during due diligence, and the other communications that the Sham Defendants made through the date of the August 2018 closing, which contained false and inaccurate information.

//

//

e. The Sham Defendants' Failure to Repair

406. The Purchase Agreements provided that the properties would generally be transferred in "as is" condition, but there were several exceptions, including the fire insurance repairs, the Nuisance Notice Work repairs, and making "vacated residential unit(s) rent ready at or prior to Close of Escrow."

407. Specifically, two of the buildings onsite had been damaged by fire, and based on amendments to the Loan Agreements, the Sham Defendants were required to repair and restore those properties within one year of each fire.

408. The first fire occurred on April 15, 2018.

409. The second fire occurred on May 9, 2018.

410. The Purchase Agreement for the Liberty Property provided that repairs of the two buildings would be commenced but not completed by the closing date.

411. Despite the passage of four and a half months for one of the buildings, and the passage of four months for the second building, nearly no action had been taken to commence restoring those structures. Instead, the damaged structures had only been boarded up and demolition was performed on one of the buildings.

412. Likewise, Section 3.6.1 the Purchase Agreements stated "from the Effective Date through the Close of Escrow, Seller shall maintain the Property in its present condition, subject to normal wear and tear (from the last required repair) . . . provided that, to the extent a residential unit is vacated after the Effective Date and prior to the date that is five (5) business days prior to the Close of Escrow, Seller shall make such vacated residential unit(s) rent ready at or prior to Close of Escrow . . ."

413. However, in practice, the Sham Defendants made representations to tenants that repairs would be made, but the Sham Defendants simply failed to maintain currently occupied units in need of any substantial repair, and improperly failed to evict or remove non-compliant and non-rent paying tenants in order to avoid "turning" residential unit(s) by making them in rent ready condition before the Close of Escrow.

414. Upon information and belief, the Sham Defendants made a conscious decision not to fix items in disrepair in the apartments and the common areas at the Properties.

415. Many of the items in disrepair that the Sham Defendants failed to repair or maintain, included items that the Sham Defendants were required to repair as a matter of law, which resulted in tenant claims seeking rent reductions and damages for the failure to provide habitable premises and essential services, including but not limited to failures to adequate fix or maintain hot water heaters, refrigerators, pest control, roofs, flooring, ceilings, plumbing, window glass, and water intrusion issues.

416. As a result of the Sham Defendants' failures in this regard, Counterclaimants were required to either pay damages to such tenants, or to discount their rental balance during future rental periods due to the repairs that the Sham Defendants failed to perform.

417. Additionally, the failure to properly manage the properties by neglecting to evict non-compliant and non-rent paying tenants improperly shifted that burden to Counterclaimants, resulted in Counterclaimants being required to cover the cost of repairs that the Purchase Agreements required the Sham Defendants to perform, and were responsible, at least in part, for Fannie Mae declaring a default in December 2019, which has resulted in substantial damage to Counterclaimants.

f. False and Misleading Information Discovered Post-Closing

418. Counterclaimants utilize the same tenant property management and accounting database that the Sham Defendants used to track rental balances, delinquencies, occupancy rates, and past due receivables.

419. Based on Section 3.15 of the Purchase Agreements, the Sham Defendants were required to "cutoff [their] books of Property tenant related transactions" two business days prior to the closing date for the purchase of the Properties, and one day prior to closing provide Counterclaimants digital copies of its full files and reports, including in the file format of the property management software the Sham Defendants used to manage tenant records.

//

//

420. Section 3.15 specified that at least seventeen types of information were required to be provided, which were:

a. Residential Unit Types;
b. Residential Unit Type Details;
c. Residential Tenants;
d. Residential Roommates;
e. Residential Lease Charges;
f. Residential Property Amenities;
g. Residential Unit Amenities;
h. Residential Rentable Item Types;
i. Residential Rentable Items;
j. a Rent Roll with Lease Charges report;
k. a Security Deposit Activity report;
l. a Financial Aged Receivables - Tenant by Charge Code report;
m. a Resident Directory report;
n. a Roommate Directory report;
o. a Unit Directory report;
p. a Rentable Items Directory report; and
q. an Amenities Listing report.

421. The information provided by the Sham Defendants the day prior to closing was incomplete.

422. The Sham Defendants claimed the information provided was complete, and that if it were not, then they were unable to extract the information from their tenant record database.

423. As such, after closing, Counterclaimants were required to contract with a third party to obtain a complete copy of the Sham Defendants' records.

424. Shortly after the August 29, 2018 closing, through that vendor the Sham Defendants produced additional information to Counterclaimants, including additional financial information exported from the Sham Defendants' Yardi database for the Properties.

425. Based on the additional information provided shortly after closing for the purchase of the Properties, Counterclaimants' Chief Financial Officer began to discover many tenants with delinquent accounts and substantial unpaid rents.

426. Based on Counterclaimants' Chief Financial Officer's review, several of the records that were unavailable to Counterclaimants prior to the August 29, 2018 sale of the Properties provided evidence that the Sham Defendants had provided misleading or inaccurate information to Counterclaimants.

427. Based on the above, Counterclaimants contacted a forensic accountant and spoke with internal accounting personnel and determined the following:

a. The additional information provided post-closing permitted an Aged Receivables Analysis, which as of August 31, 2018 showed past due delinquencies of $1,669,403.30, which is an amount much greater than the $36,615.53 shown in the Delinquency Reports that the Sham Defendants provided prior to closing or the Aging Summaries provided in April 2018, which showed a combined $70,671.35 of "Total Unpaid Charges";

b. The Sham Defendants had run reports to only provide information on "current" tenants and omitted information on tenants that it placed in a "noncurrent" status;

c. The Sham Defendants did not provide Balance Sheet information to Counterclaimants, which would have disclosed the elevated accounts receivable;

d. The Sham Defendants failed to provide information to Counterclaimants overstated income by failing to provide information related to bad debts, and failing to show and/or utilize an allowance for bad debts or a charge to income for the bad debts consistent with generally accepted accounting principles.

428. The Sham Defendants intentionally ran reports and only provided information on "current" tenants in an attempt to mislead Counterclaimants.

429. Upon information and belief, the Sham Defendants intentionally failed to produce full financial information both prior to closing the transaction and thereafter in order to hide their misrepresentations.

430. The financial information that the Sham Defendants provided was false and/or concealed material information on the true state of delinquencies and total unpaid charges at the Properties.

431. The Aging Summaries, Income Statements, Rent Rolls, Delinquency Reports, and Occupancy Reports, provided prior to closing were relied upon by Counterclaimants and materially overstated income and failed to reveal the true financial condition of the Properties.

V. COUNTERCLAIMS

a. FIRST CAUSE OF ACTION (BREACH OF CONTRACT – LIBERTY LOAN)

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

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

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

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

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

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

438. Unless legally excused from doing so by the Lenders' illegal actions, Liberty LLC has performed all of the duties and obligations required of it under the terms of the Loan

Agreement with Fannie Mae, including timely making monthly periodic loan payments and paying the 1% loan assumption fee.

439. Unless legally excused from doing so by the Lenders' illegal actions, Liberty LLC has performed all of the duties and obligations required of it under the terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly periodic loan payment and paying the 1% loan assumption fee.

440. To the extent that any duties or obligations required of Westland have not been performed, such duties or obligations have been excused because of Grandbridge's and Fannie Mae's breach of the Loan Agreements.

441. Fannie Mae and Grandbridge have materially breached their Loan Agreements with Liberty LLC by failing to require adequate reserves at the time of the initial loan, requesting and performing an improper property condition assessment, utilizing that improper PCA to demand an adjustment to reserve deposits, failing to disburse funds in response to reserve disbursement requests, sending/filing improper notices, improperly listing Liberty and the affiliated Westland entities on a-check, discriminating against Liberty LLC and the affiliated Westland entities on borrow ups, new loans and refinance loans, and generally violating the terms of the Multifamily Loan and Security Agreement to the point that the administration has become so one-sided that Liberty LLC had no option but to commence these proceedings.

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

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

b. SECOND CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE LOAN)

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

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

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

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

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

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

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

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

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

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

improper notices, improperly listing Square and the affiliated Westland entities on a-check, discriminating against Square LLC and the affiliated Westland entities on borrow ups, new loans and refinance loans, and generally violating the terms of the Multifamily Loan and Security Agreement to the point that the administration has become so one-sided that Square LLC had no option but to commence these proceedings.

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

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

c. THIRD CAUSE OF ACTION (BREACH OF CONTRACT – MCFA)

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

457. A valid agreement was entered into between the Westland Credit Facility Entities, on the one hand, and Fannie Mae, on the other hand, on March 15, 2019, specifically the MCFA.

458. The MCFA specified the terms that would govern the parties' practices for administration of the loan.

459. Upon information and belief, Wells assigned its interests in the MCFA to Fannie Mae, but continued as Servicer on the agreement related to the processing of Future Advances and the servicing of the credit facility agreement.

460. Upon information and belief, after assigning the MCFA to Fannie Mae, Wells had no further discretion under the MCFA.

461. The Westland Credit Facility Entities have performed all of the duties and obligations required of them under the terms of the MCFA with Fannie Mae, including timely making monthly periodic loan payment and paying all required loan fees.

462. To the extent that any duties or obligations required of the Westland Credit Facility Entities have not been performed, such duties or obligations have been excused because of Fannie Mae's non-performance of the MCFA.

463. Fannie Mae has materially breached its agreement with the Westland Credit Facility Entities by improperly placing the Westland Credit Facility Entities on "a-check," discriminating against the Westland Credit Facility Entities, failing to permit Borrow Up Advances despite all conditions for such advances having been made, failing to allow the submission of any other Future Advance request, and generally violating the terms of the MCFA.

464. That as a direct and proximate result of Fannie Mae's breach of contract, the Westland Credit Facility Entities have been damaged in an amount in excess of $15,000.00, the exact amount of which will be determined at trial.

465. That it has been necessary for the Westland Credit Facility Entities to retain counsel to prosecute this action by reason of which it is entitled to reasonable attorney's fees.

d. FOURTH CAUSE OF ACTION (BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)

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

467. A valid and binding agreement was formed between Westland and Fannie Mae/Grandbridge on each of the two separate sets of loan agreements, related to the Properties.

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

469. In addition, the Westland Credit Facility Entities entered into the MCFA with Fannie Mae to specify the terms that would govern the parties' practices for administration of the loan and credit line established by the MCFA.

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

471. Both prior to the loan assumption and after, Westland acted in good faith by paying Fannie Mae/Grandbridge a 1% loan assumption fee under each agreement related to the Properties, providing Fannie Mae/Grandbridge access to both the Liberty Property and the Square Property,

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

472. Prior to and after the closing for the MCFA, the Westland Credit Facility Entities acted in good faith by submitting an application; being vetted according to Fannie Mae's underwriting criteria; paying Fannie Mae/Wells all required legal fees for underwriting, all costs for appraisals, and all additional loan issuance costs; and providing supporting documentation related to the Westland Credit Facility Entities financial statements, and the financials of their affiliated owners, shareholders, and/or parent companies, who were required to act as guarantors and share their financial information.

473. Fannie Mae and Grandbridge wrongfully and deliberately took advantage of Westland's good faith actions, by, *inter alia*, failing to perform all conditions, covenants and promises required by them in accordance with the loans, including without limitation, altering the standard that they would apply to a property condition assessment undertaken in July 2019 from the standard used at the time the loan was assumed, telling Westland that they would cover the cost of the July 2019 property condition assessments but then refusing to discuss the purported default unless Westland paid those costs, making a demand that Westland deposit an additional $2,845,980.00 into escrow despite that the condition of its Properties had improved not deteriorated since the assumption agreement was signed, placing Westland and its affiliated entities on a-check, discriminating against Liberty, Square and the Westland-affiliated entities on borrow ups, new loans and refinance loans based on Lenders' own unilateral modification of the Loan Agreement, and by each of these actions Fannie Mae thereby breached the implied covenant of good faith and fair dealing inherent in the subject agreement.

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

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

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

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

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

e. FIFTH CAUSE OF ACTION (DECLARATORY RELIEF)

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

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

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

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

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

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

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

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

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

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

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

f. SIXTH CAUSE OF ACTION (FRAUD & CONCEALMENT)

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

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

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

would be provided the loan assumption, loan agreements, and reserve schedules, and that Westland would rely on those documents.

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

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

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

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

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

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

499. Additionally, in July 2019, despite that the Loan Agreements permitted Fannie Mae to charge for a Property Condition Assessment based on deterioration, a PCA of the Properties was requested by Lenders, and Joseph Greenhaw represented on behalf of Grandbridge and Fannie Mae that Westland would not be required to pay the cost of the PCA if it provided access to the Properties, and that if any deficiencies were found that Grandbridge and Fannie Mae would work with Westland by only requiring a small addition to the reserve accounts consistent with deferred maintenance schedules.

500. Westland knew that there had not been any deterioration in the condition of the Properties, and relied upon Mr. Greenhaw's statement when providing access to the Properties in September 2019, which as represented would only require nominal action by Westland in order to preserve its broader relationship with Fannie Mae.

501. That had Westland known that Fannie Mae and Grandbridge would require an additional deposit of over $2.85 million of additional reserve funding based on a loan balance of approximately $38.6 million, which amounts to approximately 7% of the loan amount, for a loan with a seven year term, Counterclaimants would not have entered into the assumption agreement and would have obtained alternative financing.

502. That had Westland known that Fannie Mae and Grandbridge would require an additional deposit of over $2.85 million of additional reserve funding based on a loan balance of approximately $38.6 million, which amounts to approximately 7% of the loan amount, for a loan with a seven year term, as well as later having Lenders seek repayment for the improper PCA costs

and related legal fees, Counterclaimants would not have permitted access to the Properties for a PCA that was in excess of what was required by the Loan Agreements.

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

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

505. However, Fannie Mae and Grandbridge knew that they were improperly seeking a Property Condition Assessment report, because prior to conducting the property condition assessment, during a phone call in July 2019, Grandbridge's Senior Vice President of Loan Servicing and Asset Management Joe Greenhaw represented that Westland would not be required to pay the cost of the assessment if Westland agreed to provide f3, Inc. PCA access to the Properties.

506. As a result of Grandbridge's misrepresentations and concealments, on behalf of itself and Fannie Mae, Westland was induced to enter into the assumption agreement with Fannie Mae as lender and Grandbridge as servicer, and to permit Fannie Mae and Grandbridge to access its Properties to conduct a PCA when in excess of what was required by the Loan Agreements, which has damaged Westland.

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

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

g. SEVENTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION)

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

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

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

512. Upon information and belief, Grandbridge, on behalf of itself and Fannie Mae, negligently misrepresented that it conducted an adequate review when setting the reserve amounts in August 2018, prior to Westland signing the loan assumption, because a short one (1) year later, it requested an additional $2.85 million be placed into escrow with no deterioration of the Properties.

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

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

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

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

//

//

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

h. EIGHTH CAUSE OF ACTION (CONVERSION)

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

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

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

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

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

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

524. Grandbridge has asserted that it transferred Westland's funds to Fannie Mae after the December 2019 default was asserted.

525. As such, Fannie Mae has wrongfully exerted dominion over Westland's personal property, including, without limitation, the funds that Grandbridge and/or Fannie Mae continued to hold in reserve accounts, and the funds that they were improperly holding in reserve accounts that were earmarked for reconstruction of two fire damaged buildings at the Liberty Property from

the date of the requests for disbursement until the fire damage funds were released in May 2021, several months after the Court entered an order for those funds to be released in November 2020, and Fannie Mae has thereby wrongly converted the funds to their own use and benefit.

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

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

528. Fannie Mae's acts constitute conversion.

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

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

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

i. NINTH CAUSE OF ACTION (INJUNCTIVE RELIEF)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

545. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed Borrower's

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

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

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

548. The statements made by Grandbridge, on behalf of itself and on behalf of Fannie Mae, were either false or amounted to a mutual mistake by both parties, because Grandbridge and Fannie Mae later attempted to obtain additional reserve payments in excess of the schedules that were provided to Westland, and those requests for additional reserve deposits included requests to deposit $2.85 million of funds related to physical conditions that were not of the same type or category as the expenses included in the schedules.

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

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

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

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

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

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

//

//

k. ELEVENTH CAUSE OF ACTION (FOR BREACH OF CONTRACT – LIBERTY LOAN – AGAINST GRANDBRIDGE)

555. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

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

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

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

561. Unless legally excused from doing so by the Lenders' illegal actions, Liberty LLC has performed all of the duties and obligations required of it under the terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan payment and paying the 1% loan assumption fee.

562. Unless legally excused from doing so by the Lenders' illegal actions, Liberty LLC has performed all of the duties and obligations required of it under the terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly periodic loan payment and paying the 1% loan assumption fee.

563. To the extent that any duties or obligations required of Westland have not been performed, such duties or obligations have been excused because of Grandbridge's and Fannie Mae's breach of the Liberty Loan Agreement.

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

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

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

l. TWELFTH CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE LOAN – AGAINST GRANDBRIDGE)

567. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

//

//

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

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

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

573. Unless legally excused from doing so by the Lenders' illegal actions, Square LLC has performed all of the duties and obligations required of it under the terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan payment and paying the 1% loan assumption fee.

574. Unless legally excused from doing so by the Lenders' illegal actions, Square LLC has performed all of the duties and obligations required of it under the terms of the terms of the Loan Agreement with Grandbridge, including timely making monthly periodic loan payment and paying the 1% loan assumption fee.

575. To the extent that any duties or obligations required of Westland have not been performed, such duties or obligations have been excused because of Grandbridge's and Fannie Mae's breach of the Square Loan Agreement.

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

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

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

m. THIRTEENTH CAUSE OF ACTION (BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING – AGAINST GRANDBRIDGE)

579. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

580. A valid and binding agreement was formed between Westland and Fannie Mae/Grandbridge on each of the two separate sets of loan agreements, related to the Properties.

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

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

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

584. Grandbridge wrongfully and deliberately took advantage of Westland's good faith actions, by, *inter alia*, failing to perform all conditions, covenants and promises required under the Loan Agreements, including without limitation, altering the standard that they would apply to a

property condition assessment undertaken in July 2019 from the standard used at the time the loan was assumed, telling Westland that they would cover the cost of the July 2019 property condition assessments but then refusing to discuss the purported default unless Westland paid those costs, making a demand that Westland deposit an additional $2,845,980.00 into escrow despite that the condition of its Properties had improved not deteriorated since the assumption agreement was signed, and by each of these actions Grandbridge and Fannie Mae thereby breached the implied covenant of good faith and fair dealing inherent in the subject agreement.

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

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

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

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

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

//

//

n. FOURTEENTH CAUSE OF ACTION (DECLARATORY RELIEF AGAINST GRANDBRIDGE)

590. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

592. The interests of Counterclaimants, on the one hand, and Grandbridge on the other are adverse.

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

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

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

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

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

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

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

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

o. FIFTEENTH CAUSE OF ACTION (FRAUD & CONCEALMENT AGAINST GRANDBRIDGE)

601. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

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

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

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

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

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

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

610. Additionally, in July 2019, despite that the Loan Agreements permitted Fannie Mae to charge for a Property Condition Assessment based on deterioration, a PCA of the Properties was requested by Lenders, and Joseph Greenhaw represented on behalf of Grandbridge and Fannie Mae that Westland would not be required to pay the cost of the PCA if it provided access to the Properties, and that if any deficiencies were found that Grandbridge and Fannie Mae would work

with Westland by only requiring a small addition to the reserve accounts consistent with deferred maintenance schedules.

611. Westland knew that there had not been any deterioration in the condition of the Properties and relied upon Mr. Greenhaw's statement when providing access to the Properties in September 2019, which as represented would only require nominal action by Westland in order to preserve its broader relationship with Fannie Mae.

612. That had Westland known that Fannie Mae and Grandbridge would require an additional deposit of over $2.85 million of additional reserve funding based on a loan balance of approximately $38.6 million, which amounts to approximately 7% of the loan amount, for a loan with a seven year term, Counterclaimants would not have entered into the assumption agreement and would have obtained alternative financing.

613. That had Westland known that Fannie Mae and Grandbridge would require an additional deposit of over $2.85 million of additional reserve funding based on a loan balance of approximately $38.6 million, which amounts to approximately 7% of the loan amount, for a loan with a seven year term, as well as later having Lenders seek repayment for the improper PCA costs and related legal fees, Counterclaimants would not have permitted access to the Properties for a PCA that was in excess of what was required by the Loan Agreements.

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

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

616. However, Fannie Mae and Grandbridge knew that they were improperly seeking a Property Condition Assessment report, because prior to conducting the property condition assessment, during a phone call in July 2019, Grandbridge's Senior Vice President of Loan

Servicing and Asset Management Joe Greenhaw represented that Westland would not be required to pay the cost of the assessment if Westland agreed to provide f3, Inc. PCA access to the Properties.

617. As a result of Grandbridge's misrepresentations, Westland was induced to enter into the assumption agreement with Fannie Mae as lender and Grandbridge as servicer, and to permit Fannie Mae and Grandbridge to access its Properties to conduct a PCA when in excess of what was required by the Loan Agreements, which has damaged Westland.

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

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

p. SIXTEENTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION AND CONCEALMENT AGAINST GRANDBRIDGE)

620. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

//

//

623. Upon information and belief, Grandbridge negligently misrepresented that it conducted an adequate review when setting the reserve amounts in August 2018, prior to Westland signing the loan assumption, because a short one (1) year later, it requested an additional $2.85 million be placed into escrow with no deterioration of the Properties.

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

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

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

627. Westland justifiably relied upon the information Grandbridge provided.

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

q. SEVENTEENTH CAUSE OF ACTION (INTENTIONAL INTERFERENCE WITH CONTRACT AGAINST GRANDBRIDGE)

629. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

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

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

634. Grandbridge committed intentional acts intended or designed to disrupt the contractual loan agreements that Westland, including Counterclaimants, have with Fannie Mae, and Counterclaimants' ability to refinance those loan agreements with Fannie Mae.

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

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

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

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

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

r. EIGHTEENTH CAUSE OF ACTION (CONVERSION AGAINST GRANDBRIDGE)

640. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

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

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

645. Grandbridge has asserted that it transferred Westland's funds to Fannie Mae after the December 2019 default was asserted.

646. As such, Grandbridge has wrongfully exerted dominion over Westland's personal property, including, without limitation, the funds that Grandbridge and/or Fannie Mae continued to hold in reserve accounts, and the funds they were improperly is holding in reserve accounts, that were earmarked for reconstruction of two fire damaged buildings at the Liberty Property from the date of disbursement until the fire damaged funds were released in May 2021, several months after the Court entered an order for those funds to be released in November 2020, and Grandbridge has thereby wrongly converted the funds to their own use and benefit.

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

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

649. Grandbridge's acts constitute conversion.

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

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

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

s. NINETEENTH CAUSE OF ACTION (INJUNCTIVE RELIEF AGAINST GRANDBRIDGE)

653. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

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

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

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

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

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

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

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

t. TWENTIETH CAUSE OF ACTION (EQUITABLE RELIEF/RESCISSION/ REFORMATION AGAINST GRANDBRIDGE)

663. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

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

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

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

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

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

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

669. The statements made by Grandbridge, on behalf of itself and on behalf of Fannie Mae, were either false or amounted to a mutual mistake by both parties, because Grandbridge and Fannie Mae later attempted to obtain additional reserve payments in excess of the schedules that were provided to Westland, and those requests for additional reserve deposits included requests to deposit $2.85 million of funds related to physical conditions that were not of the same type or category as the expenses included in the schedules.

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

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

672. If Grandbridge or Fannie Mae would have had f3 or another inspection company perform a PCA as thorough and with the same criteria before the assumption as it did a year later, and told Westland that an additional reserve deposit would be required, then Westland would have demanded that the Shamrock Entities met the additional reserve funding requirement prior to

agreeing to assume the loan, that the terms of the purchase and/or loan assumption be amended, and/or other relief from the Shamrock Entities, Fannie Mae and/or Grandbridge, and without such relief, would not have entered into the two assumption agreements.

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

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

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

u. TWENTY-FIRST CAUSE OF ACTION (FOR BREACH OF CONTRACT – LIBERTY PSA – AGAINST SHAM VI)

676. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

677. A valid Purchase Agreement was entered into between Liberty LLC and/or Amusement, on the one hand, and Sham VI on the other hand, on June 22, 2018, for the purchase of the Property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

678. The Purchase Agreement required that Liberty LLC assume Sham VI's loan with Fannie Mae and Grandbridge, dated November 2, 2017.

679. By funding its initial deposit, providing the additional required funds at closing on August 29, 2018, and assuming the borrower's further obligations on the Sham VI's loan with

Fannie Mae and Grandbridge, Liberty LLC performed all of its remaining obligations as a buyer pursuant to the purchase and sale agreement.

680. To the extent that any duties or obligations required of Liberty LLC have not been performed, such duties or obligations have been excused because of Sham VI's non-performance of the purchase and sale agreement.

681. Sham VI materially breached its agreement with Liberty LLC by failing to perform its obligations consistent with the terms of the Purchase Agreement, the Loan Agreement, and Nevada law, including by providing inaccurate/misleading financial disclosures, failing to bring all vacant units to rent ready condition, failing to remove tenants who did not pay rent, failing to return vacant units and units remaining in default for months to rent ready condition, failing to timely commence repairs to fire damaged buildings, and generally violating the terms of the purchase and sale agreement.

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

683. That as a direct and proximate result of Sham VI's breach of contract and requirement that Liberty LLC assume the Loan Agreement and that Counterclaimants assume the guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

684. That it has been necessary for Liberty LLC to retain counsel to prosecute this action by reason of which it is entitled to reasonable attorney's fees, pursuant to the Purchase Agreement.

//

//

v. TWENTY-SECOND CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE PSA – AGAINST SHAM VII)

685. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

686. A valid Purchase Agreement was entered into between Amusement and Square LLC, on the one hand, and Sham VII on the other hand, on June 22, 2018, for the purchase of the Property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

687. The Purchase Agreement required that Square LLC assume Sham VII's loan with Fannie Mae and Grandbridge, dated November 2, 2017.

688. By funding its initial deposit, providing the additional required funds at closing on August 29, 2018, and assuming the borrower's further obligations on the Sham VII's loan with Fannie Mae and Grandbridge, Square LLC performed all of its remaining obligations as a buyer pursuant to the purchase and sale agreement.

689. To the extent that any duties or obligations required of Square LLC have not been performed, such duties or obligations have been excused because of Sham VII's non-performance of the purchase and sale agreement.

690. Sham VII materially breached its agreement with Square LLC by failing to perform its obligations consistent with the terms of the Purchase Agreement, the Loan Agreement, and Nevada law, including by providing inaccurate/misleading financial disclosures, failing to bring all vacant units to rent ready condition, failing to remove tenants who did not pay rent, failing to return vacant units and units remaining in default for months to rent ready condition, and generally violating the terms of the purchase and sale agreement.

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

692. That as a direct and proximate result of Sham VII's breach of contract and requirement that Square LLC assume the Loan Agreement and that Counterclaimants assume the guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been

damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

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

w. TWENTY-THIRD CAUSE OF ACTION (BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING – AGAINST SHAM VI & SHAM VII)

694. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

695. A valid and binding agreement was formed between Westland and the Sham Defendants on each of the two separate Purchase Agreements.

696. As a matter of public policy, the implied covenant of good faith and fair dealing is a covenant incorporated into every Nevada contract, and as such the Purchase Agreements between Westland and the Sham VI and Sham VII include an implied covenant of good faith and fair dealing regardless of any oppressive terms drafted by the Sham Defendants in an attempt to shield the Sham Defendants from any future claims.

697. Sham Defendants breached the duty of good faith and fair dealing by acting in a manner unfaithful to the purpose of the purchase and sale agreement, including those actions outlined in this Counterclaim.

698. Specifically, Sham Defendants wrongfully and deliberately took advantage of Westland's good faith actions, by, *inter alia*, failing to perform all conditions, covenants and promises required under the purchase and sale agreement, including without limitation, failing to provide complete and accurate financial information, failing to bring all vacant units to rent ready condition, failing to remove tenants who did not pay rent, failing to return vacant units and units remaining in default for months to rent ready condition, and by each of these actions the Sham Defendants thereby breached the implied covenant of good faith and fair dealing inherent in the subject agreement.

699. Sham Defendants' actions were taken both on their own behalf, and as owning members of the corporate entities.

700. Wherefore, Sham Defendants did not act in good faith, that is, did not perform its contract with each Liberty LLC and Village LLC in the manner reasonably contemplated by the parties, so that both Liberty LLC and Village LLC have a remedy that goes beyond that of breach of the express terms of their contract.

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

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

703. That as a direct and proximate result of the Sham Defendant's breach of covenant of good faith and fair dealing and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

704. As a further direct and proximate result of Sham Defendants' breach, each Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled to reasonable attorney's fees pursuant to the Purchase Agreement.

x. TWENTY-FOURTH CAUSE OF ACTION (BREACH OF EXPRESS AND IMPLIED WARRANTY AGAINST SHAM VI & SHAM VII)

705. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

706. A valid and binding agreement was formed between Westland and SHAM VI & SHAM VII on each of the two separate Purchase Agreements.

707. The Purchase Agreement contained express warranty provisions in Section 6.3 of the Purchase Agreement, warrantying that SHAM VI and SHAM VII were qualified to do business in Nevada; the Sham Defendants had the full power and authority to execute, deliver and perform their obligations under the Purchase Agreements; the Purchase Agreements were valid and binding; none of SHAM VI's and SHAM VII's interests were impaired by bankruptcy, trustee oversight, a creditor assignment; an attachment; "the taking of, failure to take, or submission to any action indicating an inability to meet its financial obligations as they accrue;" or dissolution, liquation or death; the sale was not in furtherance of a fraudulent conveyance or transfer; and the representations regarding the balances and contents of the loan documents were accurate.

708. In addition, Nevada law provides that above-referenced statements regarding the repairs that Sham Defendants agreed to perform, and the receivables and income the Properties were generating, constitute express warranties.

709. Counterclaimants reasonably relied upon the Sham Defendant's representations regarding repairs to be performed and the condition of the Properties.

710. The Sham Defendants breach that warranty, by failing to perform the repairs that were promised and by providing financial statements that incorporated misrepresentations or concealed material information about those financial statements.

711. By letter dated February 28, 2019, Counterclaimants provided notice that it was preserving its right to make such a claim based on such a breach.

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

713. That as a direct and proximate result of the Sham Defendant's breach of express and implied warranties and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

714. As a further direct and proximate result of Sham Defendants' breach, each Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled to reasonable attorney's fees pursuant to the Purchase Agreement.

y. TWENTY-FIFTH CAUSE OF ACTION (FRAUD & CONCEALMENT AGAINST SHAM DEFENDANTS)

715. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

716. As addressed above, the Sham Defendants misrepresented the value of the Property to Counterclaimants, by providing false information and/or concealing material information regarding the income generated, occupancy rates, aged receivables, and rent delinquency balances at the Properties.

717. Specifically, the Sham Defendants repeatedly made several misrepresentations, including but not limited to:

a. Within the December 2014 press releases that remaining accessible at least through the closing date of the transaction;

b. By providing false financial information to the Sham Defendant's brokers related to the financial information provided on April 11, 2018, with the intent that it be repeated to Counterclaimants, and which information was provided to Counterclaimants electronically on April 11, 2018;

c. By providing false financial information to broker Mongkolsakulkit on June 26, 2018, with the intent that it be repeated to Counterclaimants, which information was provided to Counterclaimants electronically on June 26, 2018; and

d. By providing false financial information to brokers Carll & Mongkolsakulkit on July 4, 2018, with the intent that it be repeated to Counterclaimants, which information was provided to Counterclaimants electronically on July 5, 2018.

718. Each of the documents referenced in the foregoing paragraph either contained false information or concealed material facts, which overstated income, minimized delinquency balances or failed to convey the true occupancy rates at the Properties.

719. From the Sham Defendants prior experiences with Westland and Amusement during the failed transaction in 2017, the Sham Defendants knew and intended that Westland and Amusement would find the information material and would rely on that information.

720. Weinstein's reassurances, on behalf of herself and the other Sham Defendants, to Counterclaimants' residential asset manager on August 28 and to Counterclaimants' counsel on August 29, 2018, regarding shredding and the status of keys were knowingly false.

721. Based on that false financial information, Westland and Amusement entered into the Purchase Agreements.

722. Westland and Amusement relied on the Sham Defendants misrepresentations regarding the income generated, occupancy rates, and rent deficiency balances when entering into the Purchase Agreements in June 2018, assuming the Loan Agreements in August 2018, and closing the purchase transaction in August 2018.

723. Westland and Amusement reasonably relied upon the false information provided, because the Sham Defendants limited Counterclaimants from obtaining such information from other sources via the Purchase Agreement, the Sham Defendants provided that Counterclaimants were not permitted to contact their employees, there was no outside source of obtaining that information after the Sham Defendants began self-managing the properties over two years prior to Counterclaimants' purchase of the Properties, and the Sham Defendants failed to produce full electronic records until after the purchase was completed. Further, Westland reasonably relied upon the financial information provided, because Westland has entered into numerous purchase agreements previously, and for those purchase agreements the seller's financials were accurate.

724. Had Westland and Amusement known that the Sham Defendants had misrepresented the financial information, or that they had no intention of making the repairs agreed to in the Purchase Agreements, or that they had concealed material adverse information, Westland would have required a multimillion discount on the Purchase Agreements.

725. As a result of the Sham Defendants' misrepresentations, Westland and Amusement were induced to enter into the Purchase Agreement and to assume the Loan Agreements with Fannie Mae/Grandbridge, which has damaged Counterclaimants.

726. As a direct and proximate result of the Sham Defendants' misstatements and omissions, Counterclaimants have suffered damages in excess of $15,000.00, the exact amount of which will be proven at trial.

727. That as a direct and proximate result of the Sham Defendant's fraud and concealment and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

728. By reason of the foregoing, the Sham Defendants acted with oppression, fraud and malice, and therefore, Westland and Amusement are entitled to exemplary and punitive damages;

729. By reason of the foregoing, the Sham Defendants knew that their actions would cause Counterclaimants to be sued by Lenders due to the requirement that the loan be assumed and as a result of their false financial statements, misrepresentations, and concealments, and therefore each Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled to reasonable attorney's fees as special damages.

z. TWENTY-SIXTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION AGAINST SHAM DEFENDANTS)

730. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

731. The Sham Defendants supplied information and made material misrepresentations to Westland and Amusement, including without limitation, as detailed above that overstated income generated, overstated occupancy rates, understated aged receivables, and understated rent delinquency balances at the Properties.

732. Specifically, the Sham Defendants repeatedly made several misrepresentations, including but not limited to:

a. Within the December 2014 press releases that remained accessible at least through the closing date of the transaction;

b. By providing false financial information to the Sham Defendant's brokers related to the financial information provided on April 11, 2018, with the intent that it be repeated to Counterclaimants, and which information was provided to Counterclaimants electronically on April 11, 2018;

c. By providing false financial information to broker Mongkolsakulkit on June 26, 2018, with the intent that it be repeated to Counterclaimants, which information was provided to Counterclaimants electronically on June 26, 2018; and

d. By providing false financial information to brokers Carll & Mongkolsakulkit on July 4, 2018, with the intent that it be repeated to Counterclaimants, which information was provided to Counterclaimants electronically on July 5, 2018.

733. Each of the documents referenced in the foregoing paragraph either contained false information or concealed material facts, which overstated income, minimized delinquency balances or failed to convey the true occupancy rates at the Properties.

734. Weinstein's reassurances, on behalf of herself and the other Sham Defendants, to Counterclaimants' residential asset manager on August 28 and to Counterclaimants' counsel on August 29, 2018, regarding shredding were false, and to the extent that Weinstein did not know that the representation was false, she negligently made reassurances regarding shredding and the status of keys at the Properties.

735. Upon information and belief, the Sham Defendants negligently misrepresented the financial information, because when the electronic information was provided days after closing, the inaccurate and false financial information regarding the Properties was discovered.

736. The information and representations made by the Sham Defendants was false, in that unbeknownst to Westland and Amusement the Sham Defendants knew the Properties had a lower rate of occupancy and that numerous tenants had not been evicted.

737. The Sham Defendants supplied the information and made the representations to induce Westland and Amusement to rely upon it, to act or refrain from acting in reliance upon it, and to have Westland and Amusement enter into the Purchase Agreement and assume the Loan Agreements.

738. The Sham Defendants owed Westland and Amusement a duty not to make material misrepresentations.

739. Westland and Amusement justifiably relied upon the information the Sham Defendants provided.

740. As a direct and proximate result of the Sham Defendants' misstatements and omissions, Westland and Amusement have suffered damages in excess of $15,000.00, the exact amount of which will be proven at trial.

741. That as a direct and proximate result of the Sham Defendant's negligent misrepresentations and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

742. By reason of the foregoing, the Sham Defendants knew that their actions would cause Counterclaimants to be sued by Lenders due to the requirement that the loan be assumed and as a result of their false financial statements and negligent misrepresentations, and therefore each Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled to reasonable attorney's fees as special damages.

aa. TWENTY-SEVENTH CAUSE OF ACTION (NEGLIGENT HIRING AND NEGLIGENT SUPERVISION AGAINST SHAM DEFENDANTS)

743. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

744. In addition to their direct liability, Sham Defendants, and each of them, known and unknown, were and are vicariously liable for the acts and omissions of any staff, agents, apparent agents, servants, contractors, employees or such other persons or entities, consultants, independent contractors whether in house or outside, entities, individuals, agencies or pools which in any manner caused or contributed to Counterclaimants' irreparable harm and damage.

745. At all times relevant herein, Sham Defendants, through their agents, servants and/or employees thereof, were acting within the scope of employment with the knowledge, permission and consent of their employer(s) and/or manager(s). Therefore, employer(s) are responsible and liable for all of its employee's negligent conduct set forth herein under the theory of respondeat superior.

746. Upon information and belief, Sham Defendants employed onsite personnel and corporate staff in remote offices, management and other supervisory personnel for the purpose of supervising employees, and managing said properties, consistent with industry standards for onsite property management of all books and records.

747. At all times material, the Sham Defendants were in control of, and responsible for training, hiring, and/or screening employees working on the premises and in its corporate offices, in a way designed to protect potential buyers, such as Counterclaimants from harm.

748. Sham Defendants, and each of them, known and unknown, breached their duty to Counterclaimants in one or more of the following respects, but not limited to:

a. Failing to adequately supervise employees, agents, contractors and/or subsidiaries.

b. Failing to adequately train employees, agents, contractors and/or subsidiaries.

c. Failing to adequately screen potential employees, agents, contractors and/or subsidiaries before their hiring/contracting.

d. Failing to follow industry accepted standards for recordkeeping and reporting financial information.

749. Sham Defendants breach of these duties directly and proximately caused Counterclaimants' injuries.

750. At all times relevant herein, DOE Defendants, though their agents, servants and/or employees thereof, were acting within the scope of employment with the knowledge, permission and consent of their employer(s) and/or contractors. Therefore, employer(s) are responsible and liable for all of their agent's negligent conduct set forth herein under the theory of respondeat superior.

751. Counterclaimants have suffered injury and damages in an amount in excess of $15,000.00 subject to proof at trial.

752. That as a direct and proximate result of the Sham Defendant's negligent hiring and negligent supervision and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

bb. TWENTY-EIGHTH CAUSE OF ACTION (INTENTIONAL INTERFERENCE WITH CONTRACT AGAINST SHAM DEFENDANTS)

753. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

754. Based on Counterclaimants' disclosures prior to closing of the Purchase Agreements, the Sham Defendants knew Westland Real Estate Group is a privately held real estate company with a sizable portfolio of properties, and approximately $800 million in loans outstanding.

755. Each of the loans that are part of that $800 million loan portfolio is a written contractual agreement. Upon information and belief, the Sham Defendants knew those contracts and lending arrangements existed.

756. Further, the Sham Defendants knew that $300 million of Counterclaimants' loans are outstanding with Fannie Mae, and that it is economically advantageous for Counterclaimants to have access to lender funds in order to refinance its properties.

757. The Sham Defendants committed intentional acts that it knew would actually or that were intended or designed to result in a default on the loan assumed, which in turn would disrupt the contractual loan agreements that Counterclaimants have with Fannie Mae, and Counterclaimants' ability to refinance those loan agreements with Fannie Mae.

758. The Sham Defendants knew that by taking actions that were likely to lead to Lenders claiming a purported default had occurred, Fannie Mae would blacklist Counterclaimants

by placing a "lending hold" on any future loan or borrow up, which would have the effect of limiting, delaying, and/or disrupting Counterclaimants' ability to refinance or obtain any new loan with Fannie Mae.

759. The Sham Defendants made the misrepresentations to Counterclaimants knowing it would likely lead Lenders to declare a default, despite that it knew it would cause disruption to Westland's business and preclude it from obtaining favorable rates from one of only two primary lenders in the multifamily housing loan market, and upon information and belief, the Sham Defendants intended to cause harm to the contractual relationship between Counterclaimants and Fannie Mae.

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

761. As a direct and proximate result of the Sham Defendants' actions, Westland has suffered damages in excess of $15,000.00, the exact amount of which will be proven at trial.

762. By reason of the foregoing, the Sham Defendants acted with oppression, fraud and malice, and therefore, Counterclaimants are entitled to exemplary and punitive damages in excess of $15,000.

763. That as a direct and proximate result of the Sham Defendant's intentional interference with contracts and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

764. By reason of the foregoing, the Sham Defendants knew that their actions would cause Counterclaimants to be sued by Lenders due to the requirement that the loan be assumed and as a result of their false financial statements, misrepresentations, and concealments, and therefore each Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled to reasonable attorney's fees as special damages.

cc. TWENTY-NINTH CAUSE OF ACTION (CIVIL CONSPIRACY AGAINST GRANDBRIDGE & SHAM DEFENDANTS)

765. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

766. The Sham Defendants, by acting in concert, intended to accomplish the unlawful objectives as set forth herein including, but not limited to breaching Westland's duty of good faith and fair dealing, misrepresenting or concealing the true financial information related to the Properties to Counterclaimants and/or Lenders, and improperly using relationships with DOE Defendant and/or ROE Defendants at Pillar/SunTrust/Grandbridge to improperly obtain, pass though credit underwriting, and obtain a release via the Assumption Agreement from the Loan Agreements in an attempt to strip Westland of their substantive legal rights and remedies under these documents including, but not limited to, those claims asserted herein against the Sham Defendants, for breach of the Purchase Agreements.

767. Grandbridge, by acting in concert, intended to accomplish the unlawful objectives as set forth herein including, but not limited to breaching Westland's duty of good faith and fair dealing, misrepresenting or concealing the true terms of the Repair Reserve and Replacement Reserve portions of the Loan Agreements, and improperly using relationships with the Sham Defendants, DOE Defendants and/or ROE Defendants, as well as at Fannie Mae, to improperly document and underwrite the Loan Agreements, reduce their own credit risk, and attempt to strip Westland of their substantive legal rights and remedies under the Loan Agreements including, but not limited to, those claims asserted herein against Grandbridge, for breach of the Loan Agreements.

768. As a direct and proximate result of the Sham Defendant's actions, Counterclaimants have sustained damages in excess of $15,000.00, the exact amount of which will be proven at trial.

769. By reason of the foregoing, the Sham Defendants and Grandbridge knew that their actions would cause Counterclaimants to be sued by Fannie Mae due to the Sham Defendant's requirement that the loan be assumed and as a result of their false statements, misrepresentations,

and concealments, and therefore each Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled to reasonable attorney's fees as special damages.

dd. THIRTIETH CAUSE OF ACTION (UNJUST ENRICHMENT AGAINST THE SHAM DEFENDANTS)

770. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

771. On or about August 29, 2018, Westland entered into two Purchase Agreements applicable to the Liberty Property and the Square Property.

772. The Sham Defendants received the benefits of Counterclaimants' full performance of the Purchase Agreements, including but not limited to the payment of $60,300,000 for the two Properties through the payment of cash and the assumption of loans the Sham Defendants were obligated to satisfy.

773. The Sham Defendants accepted and retained the funds paid by Counterclaimants pursuant to the Purchase Agreements.

774. The Sham Defendants failed to provide Properties in the condition represented at the time of closing, because the Properties had a higher delinquency rate, lower occupancy rate, and generated lower income than represented.

775. The Sham Defendants failed to provide Properties in the condition represented at the time of closing, because the Sham Defendants failed to maintain the Properties consistent with the exceptions to the "as-is" disclaimer for the Properties in that the Sham Defendants improperly failed to maintain vacant units in rent ready condition or preform repairs that were other than ordinary wear and tear.

776. The statements made by the Sham Defendants, regarding the quality of its tenants, income that was being generated by the Properties, and the number of repairs they would perform prior to closing were either false or amounted to a mutual mistake by both parties.

//

//

777. Counterclaimants were later required to make those repairs, engage in a larger number of evictions, and correct the deficiencies at the Properties at the expense of Counterclaimants, when the Purchase Agreements contemplated that the Sham Defendants would bear such costs.

778. In making those statements, especially after the terminated transaction in 2017, the Sham Defendants knew that Westland would rely upon the quality of the tenant base and condition of the Properties when entering into the Purchase Agreements, and intended for Westland to do so, to ensure that the Property purchases would be completed with a higher than justified purchase price, which unjustly enriched the Sham Defendants.

779. Westland did rely on the quality of the tenant base and condition of the Properties when entering into the Purchase Agreements to their detriment and Westland justifiably relied upon the information the Sham Defendants provided.

780. If the Sham Defendants would have disclosed the true financial condition of the Properties, the true quality of the tenant base, and accurately represented the repairs it would perform then Westland would have demanded that the Sham Defendants further reduce the purchase price of the Properties, and/or other relief from the Sham Defendants, and without such relief, would not have entered into the two Purchase Agreements.

781. Based on the foregoing, Westland is entitled to reimbursement in the amount of the overstated purchase price that was paid.

782. That as a direct and proximate result of the Sham Defendant's actions underlying their unjust enrichment and requirement that Counterclaimants assume the Loan Agreements and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been damaged in an amount in a further amount to be determined at the time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any damages arising from Fannie Mae's related foreclosure proceedings.

//

//

783. As a further direct and proximate result of the Sham Defendant's improper conduct, Westland has had to hire counsel to prosecute this action and Counterclaimants are entitled to reasonable attorney's fees and costs incurred herein.

WHEREFORE, Counterclaimants pray for judgment against Counterdefendants, as follows:

1. For declaratory relief acknowledging that no default has occurred and that Counterdefendants Fannie Mae and Grandbridge improperly sought a property condition assessment (as to Counterdefendants Fannie Mae and Grandbridge only);2. For injunctive relief, including without limitation, precluding any non-judicial foreclosure against either the Liberty Property or the Square Property(as to Counterdefendants Fannie Mae and Grandbridge only);

3. For equitable relief as demanded herein;

4. For compensatory damages and/or general damages in excess of $15,000;

5. For punitive damages;

6. For prejudgment interest at the statutory rate;

7. For attorney's fees and costs of suit herein including as special damages for conversion with those special damages as to Fannie Mae and Grandbridge, and as to the Sham Defendants based on their knowledge that their actions would cause Counterclaimants to be sued by Lenders; and

//

//

8. For such other relief as the Court deems appropriate.

Dated: August 26, 2021.

LAW OFFICES OF JOHN BENEDICT

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

DICKINSON WRIGHT PLLC

/s/ *John P. Desmond*
John Desmond (NV Bar No. 5618)
Brian Irvine (NV Bar No. 7758)
100 West Liberty Street, Suite 940
Reno, NV 89501-1991
Telephone: (775) 343-7500

WESTLAND REAL ESTATE GROUP

/s/ *John W. Hofsaess*
John W. Hofsaess (Pro Hac Vice)
520 W. Willow Street
Long Beach, CA 90806
Telephone: (310) 438-5147

Attorneys for Defendants/Counterclaimants Westland Liberty Village, LLC & Westland Village Square LLC, and Counterclaimants Amusement Industry, Inc., Westland Corona LLC, Westland Amber Ridge LLC, Westland Hacienda Hills LLC, 1097 North State, LLC, Westland Tropicana Royale LLC, Vellagio Apts of Westland LLC, The Alevy Family Protection Trust, Westland AMT, LLC, AFT Industry NV, LLC, A&D Dynasty Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August 2021, I served a true and correct copy of the foregoing **FIRST AMENDED ANSWER, AND FIRST AMENDED COUNTERCLAIM,** via electronic service through Odyssey to the following:

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

Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
E-mail: JGWent@hollandhart.com
Attorneys for Third Party Defendant Grandbridge Real Estate Capital, LLC

Leslie Bryan Hart, Esq., and/or John D. Tennert, Esq.
FENNEMORE CRAIG, P.C.
7800 Rancharrah Parkway
Reno, Nevada 89511
E-mail: lhart@fennemorelaw.com; jtennert@fennemorelaw.com
Attorneys for Federal Housing Finance Agency

Michael A.F. Johnson, Esq. (*Pro Hac Vice)*
Arnold & Porter Kay Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
E-mail: Michael.johnson@arnoldporter.com
Attorneys for Federal Housing Finance Agency

/s/ Angelyn Cayton
An Employee of the Law Offices of John Benedict

Electronically Filed
09/17/2021 4:22 PM
CLERK OF THE COURT

ORDR

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

BRIAN W. BARNES, ESQ.
Pro Hac Vice
COOPER & KIRK, PLLC
1523 New Hampshire, N.W.
Washington, DC 20036
Telephone: (202) 220-9623
Facsimile: (202) 220-9601
E-Mail: bbarnes@coperkirk.com

JOHN W. HOFSAESS, ESQ.
Pro Hac Vice
WESTLAND REAL ESTATE GROUP
520 W. Willow Street
Long Beach, CA 908806
Telephone: (310) 438-5147
E-Mail: John.H@WestlandREG.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; and WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company, Defendants.	CASE NO. A-20-819412-B DEPT NO. XIII
AND ALL RELATED ACTIONS	

ORDER DENYING INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION AND JOINDER THERETO BY PLAINTIFF FEDERAL NATIONAL MORTGAGE ASSOCIATION

On August 2, 2021, Intervenor Federal Housing Finance Agency's Motion to Dissolve the Preliminary Injunction (the "Motion") and Plaintiff Federal National Mortgage Association's Joinder thereto (the "Joinder") came before the Court for hearing via Bluejeans. Intervenor Federal Housing Finance Agency ("Intervenor") was represented by Leslie Bryan Hart, Esq. and Michael A.F. Johnson, Esq., Plaintiff Federal National Mortgage Association ("Plaintiff") was represented by Nathan G. Kanute, Esq., and Defendants Westland Liberty Village, LLC, and Westland Village Square, LLC ("Defendants") were represented by Brian Barnes, Esq. and John Benedict, Esq. After considering the Motion, the Joinder, the Opposition, and the Reply, the exhibits and declarations attached thereto, the other pleadings and papers on file with the Court, and the oral argument of counsel, the Court denies the Motion and Joinder for the reasons set forth herein.

1. After substantial briefing and oral argument, on November 24, 2020, this Court entered the Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver. The preliminary injunction is the subject of an appeal by Plaintiff pending before the Nevada Supreme Court

2. Intervenor generally premises its Motion and requested relief therein on the premise that the injunction should be dissolved as *void ab initio* because this Court lacked jurisdiction to grant it under 12 U.S.C. § 4617(f), which provides that "no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator." Intervenor and Plaintiff argue that the Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver restrains or affects the exercise of the Intervenor's powers and functions as conservator of Plaintiff.

3. In their Opposition, Defendants generally argue that the Motion should be procedurally denied as the appeal divests this Court of jurisdiction over the preliminary injunction. Defendants further argue that should this Court decide that it does possess jurisdiction to decide the Motion on its merits, that Intervenor's and Plaintiff's arguments in the Motion and Joinder, respectively, fail in that 12 U.S.C. § 4617(f) does not apply to the issues present in this case between the Parties, and that such statute only

applies when Intervenor takes action that is necessary to put Fannie Mae in a sound and solvent condition, which is not applicable in this action.

4. While the Court is "unpersuaded by Defendants' contention that the pending appeal" before the Nevada Supreme Court "divests this Court of jurisdiction to entertain the Motion," the Court is "also unpersuaded that the dissolution of the subject preliminary injunction is warranted in that the injunction was issued after extensive development of the issues in this Court and is now the subject of extensive litigation on the pending appeal."

BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, DECREED AND ORDERED that Intervenor Federal Housing Finance Agency's Motion to Dissolve the Preliminary Injunction and Plaintiff Federal National Mortgage Association's Joinder thereto are DENIED.

IT IS SO ORDERED.

Dated this 17th day of September, 2021

ABG

089 AFD A034 5B67
Mark R. Denton
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF JOHN BENEDICT

By: ***/s/ John Benedict***

John Benedict, Esq. (SBN 5581)
2190 East Pebble Road, Suite 260
Las Vegas, Nevada 89123
Email: John@Benedictlaw.com
Attorneys for Defendants/Counterclaimants/
Third Party Plaintiffs

//

//

Approved as to Form and Content:

SNELL & WILMER L.L.P.

By: ***MAY SUBMIT COMPETING ORDER***

Nathan G. Kanute, Esq. (SBN 12413)
3883 Howard Hughes Parkway, Suite 110
Las Vegas, Nevada 89169
E-mail: nkanute@swlaw.com
Attorneys for Plaintiff

Approved as to Form and Content:

FENNEMORE CRAIG, P.C.

By: ***MAY SUBMIT COMPETING ORDER***

Leslie Bryan Hart, Esq. (SBN 4932)
7800 Rancharrah Parkway
Reno, Nevada 89511
E-mail: lhart@fennemorelaw.com
Attorneys for Federal Housing Finance Agency

Michael A.F. Johnson, Esq. (*Pro Hac Vice)*
Arnold & Porter Kay Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
E-mail: Michael.johnson@arnoldporter.com
Attorneys for Federal Housing Finance Agency

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Federal National Mortgage, Plaintiff(s) vs. Westland Liberty Village, LLC, Defendant(s)	CASE NO: A-20-819412-B DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 9/17/2021

Valerie Larsen	vllarsen@hollandhart.com
Philip Erwin	pre@cwlawlv.com
John Chong	jyc@cwlawlv.com
Joseph Went	jgwent@hollandhart.com
Sydney Gambee	srgambee@hollandhart.com
Brian Dziminski	brian@dziminskilaw.com
Angelyn Cayton	Angelyn@benedictlaw.com
John Benedict	john@benedictlaw.com
Leslie Hart	lhart@fclaw.com
Lara Taylor	ljtaylor@swlaw.com

Nathan Kanute	nkanute@swlaw.com
Mary Full	mfull@swlaw.com
Docket Docket	docket_las@swlaw.com
Bob Olson	bolson@swlaw.com
Joyce Heilich	jeheilich@hollandhart.com
Shawna Braselton	sbraselton@fennemorelaw.com
Patricia Matney	pmatney@swlaw.com
D'Andrea Dunn	ddunn@swlaw.com
John Hofsaess	john.h@westlandreg.com
Sara D'Amico	sara.damico@arnoldporter.com
Michael Johnson	michael.johnson@arnoldporter.com
Elliott Mogul	elliott.mogul@arnoldporter.com
Court Filings	courtfilings@fennemorelaw.com
Brian Barnes	bbarnes@cooperkirk.com
Office Admin	office.admin@benedictlaw.com
David Edelblute	dedelblute@swlaw.com
Miranda Gerolaga	mgerolaga@swlaw.com
Claudio Lerma	clerma@fennemorelaw.com