IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator for the Federal National Mortgage Association, and FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Appellants,

vs.

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

Respondents.

Supreme Court Case No. 83695

Dist. Court Case No. A-20-819412-B

RESPONDENTS' SUPPLEMENTAL APPENDIX IN SUPPORT OF ANSWERING BRIEF

VOLUME I

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[2] For brevity, Westland did not include the voluminous filings to which the identified exhibits were attached in its Supplemental Appendix, *see* NRAP 30(b), but will do so should the Court request it.

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1	1	Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers	July 27, 2020	SA001-SA024
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Respectfully submitted,

Dated: December 27, 2021 CAMPBELL & WILLIAMS

By /s/ ***J. Colby Williams***

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 27th day of December 2021, I caused true and correct copies of the foregoing **RESPONDENTS' SUPPLEMENTAL APPENDIX IN SUPPORT OF ANSWERING BRIEF (VOLUME I)** to be delivered to the following counsel and parties:

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1

Federal Housing Finance Agency
Office of Inspector General

Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers

Special Report • OIG-2020-004 • July 27, 2020

SA001

OIG-2020-004

July 27, 2020

Executive Summary

Fannie Mae and Freddie Mac (collectively, the Enterprises) perform an important role in the nation's housing finance system by providing liquidity, stability, and affordability to the mortgage market. The Enterprises purchase single-family mortgages from lenders and either hold these mortgages in their portfolios or package them into mortgage-backed securities that can be sold.

Mortgage servicers perform a variety of tasks on behalf of the Enterprises. These tasks include: collecting payments from homeowners; remitting principal and interest to investors for securitized loans; paying property tax and insurance premiums from escrow funds; and performing collection, loss mitigation, and foreclosure activities with respect to delinquent homeowners under the terms of the Enterprises' selling and servicing guides.

The Federal Housing Finance Agency (FHFA or Agency), as conservator, has delegated to the Enterprises responsibility for managing their relationships with their servicers. Typically, FHFA has the ability to examine the Enterprises' execution of delegated responsibilities through supervisory activities. FHFA, however, lacks statutory authority to supervise activities by mortgage servicers. To meet the critical need for oversight of these counterparties, FHFA issued three advisory bulletins which set forth its supervisory expectations for the Enterprises' oversight of their servicers.

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020, to address some of the economic effects of the COVID-19 pandemic. Section 4022 of the CARES Act provides single-family homeowners, who are experiencing financial hardship due to the COVID-19 pandemic, the right to forbearance for up to 180 days (which can be extended for another 180 days) from making mortgage payments on loans owned or securitized by the Enterprises. An affected homeowner need only attest to the hardship; mortgage servicers are prohibited from seeking documentation to support that attestation.

Forbearance under the CARES Act does not erase what is owed by the homeowner. The homeowner will be required to repay any missed or reduced payments at some point in the future. While the CARES Act does not set forth options to repay the missed payments, FHFA publicly announced that homeowners will not be required to repay the missed payments in a lump sum at the end of the forbearance period. The Enterprises issued similar announcements on their websites.

The Enterprises' mortgage servicers are contractually obligated to advance to the Enterprises regular monthly payments of principal and interest, or only the

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interest, depending on the contract. The Enterprises then advance those payments to security holders. Those obligations continue, even for mortgages in forbearance under the CARES Act. The Enterprises have capped servicer liability for advances at four months, even though forbearances could last up to nearly a year under the CARES Act. After that four-month period, the Enterprises take over the servicers' obligations with respect to advancements of interest and principal.

Servicing a mortgage in forbearance is more labor-intensive, and thus more costly, than servicing a performing mortgage. The potential financial burden associated with servicing mortgages in forbearance is significant and creates a risk that some servicers may not follow the mandates in the CARES Act and implementing guidance. For example, a servicer might seek to secure a lump sum repayment from a homeowner who obtained forbearance of monthly payments under the CARES Act.

We undertook this review to provide information about oversight by the Enterprises over mortgage servicers' compliance with Section 4022 of the CARES Act and implementing guidance. We learned from the Enterprises that neither views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with mortgage servicers, the servicers' familiarity with the Enterprises' servicing requirements, and their continual contact with servicers give them confidence that servicers are well-informed of their legal and contractual obligations under the CARES Act and implementing guidance. The Enterprises rely on representations and warranties made by each servicer that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with applicable law and regulations. FHFA advised us that it considered this oversight acceptable.

National surveys conducted by one Enterprise suggest a significant number of homeowners are not aware of the option of mortgage forbearance, and media reports state that some servicers may have provided inaccurate advice to homeowners about repayment options. Because mortgage servicers are the primary point of contact for homeowners experiencing COVID-19 related financial hardship, we reviewed the information provided by a sample of 20 large servicers, 20 medium servicers, and 20 small servicers on their websites. We found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the large servicers and generally limited to no information on forbearance and repayment on the remaining 40

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websites. In a few cases, information on some servicers' websites appeared to contradict the CARES Act requirements or FHFA and Enterprise guidance. For example, two of the small servicer websites instruct homeowners that they must provide proof of unemployment and other documentation to obtain mortgage forbearance; another servicer website maintains that all missed payments must be repaid in a lump sum at the end of the forbearance period.

Congress granted homeowners with Fannie Mae and Freddie Mac mortgages a legal right to forbearance upon an attestation of financial hardship from COVID-19, and FHFA has announced that lump sum repayment is not required once forbearance ends. We observe, from the information provided to us by the Enterprises, that neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and implementing guidance. The Enterprises reported to us that they have not asked any servicer to demonstrate compliance with the CARES Act and implementing guidance. Based on our survey of 60 websites hosted by servicers, we could not determine whether homeowners were provided with accurate and complete information about forbearance.

We provided FHFA an opportunity to respond to a draft of this report. In its management response, which is included as an appendix to this report, FHFA shared our concern that servicers may not be adequately informing homeowners that forbearance is available to them.

This report was prepared by Jon Anders, Program Analyst, and Angela Choy, Assistant Inspector General for Evaluations. We appreciate the cooperation of FHFA and Enterprise staff, as well as the assistance of all those who contributed to the preparation of this report.

This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on our website, www.fhfaoig.gov, and www.oversight.gov.

Kyle D. Roberts
Deputy Inspector General for Evaluations

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ABBREVIATIONS ....

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CFPB	Consumer Financial Protection Bureau
Enterprises	Fannie Mae and Freddie Mac
FHFA or Agency	Federal Housing Financial Agency
HUD	U.S. Department of Housing and Urban Development

BACKGROUND

The Role of the Enterprises and Their Mortgage Servicers in Single-Family Housing Finance

The Enterprises perform an important role in the nation's housing finance system by providing liquidity, stability, and affordability to the mortgage market. The Enterprises purchase single-family mortgages from lenders and either hold these mortgages in their portfolios or package them into mortgage-backed securities.

Servicers collect payments from homeowners, remit principal and interest to investors for securitized loans, remit property tax and insurance premiums from escrow funds, and perform collection, loss mitigation, and foreclosure activities with respect to delinquent homeowners under the terms of the Enterprises' respective selling and servicing guides. Even where a homeowner is late in his/her mortgage payments, the servicer is not excused from making scheduled principal and/or interest payments to investors and its other obligations. According to FHFA, "the business relationships between the Enterprises and [mortgage servicers] are a fundamental component of the Enterprises' delegated business models."[1]

As Conservator, FHFA Has Delegated Authority to the Enterprises to Manage Their Relationships with Mortgage Servicers

After it placed the Enterprises into conservatorship and reconstituted their boards of directors, FHFA, as conservator, established a delegated approach to managing the Enterprises' operations, which it believes is the most efficient way to manage their conservatorships. FHFA has delegated to the board of each Enterprise a significant portion of day-to-day management and risk controls, and its regulations authorize the boards to delegate execution of day-to-day operations to Enterprise employees. Management of the relationship with mortgage servicers is a responsibility delegated by FHFA to the Enterprises.[2]

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[1] *See* FHFA, Advisory Bulletin 2014-07, *Oversight of Single-Family Seller/Servicer Relationships*, at 1 (Dec. 1, 2014).

[2] This delegation is subject to certain exceptions, such as changes to requirements, policies, frameworks, standards, or policies aligned across both Enterprises pursuant to FHFA's direction.

FHFA Lacks Statutory Authority to Examine the Enterprises' Servicers; It Has Communicated to the Enterprises Its Expectations of Their Oversight of Their Servicers

FHFA recognizes that, for its delegated governance model to succeed, the Enterprises must fulfill their delegated responsibilities. Typically, FHFA has the ability to examine the Enterprises' execution of delegated responsibilities through supervisory activities.

However, FHFA lacks statutory authority to examine mortgage servicers.[3] To meet the critical need for oversight of these counterparties, FHFA issued three advisory bulletins that communicate its supervisory expectations for Enterprise oversight of seller/servicers.

These bulletins are:

- Advisory Bulletin 2013-01, *Contingency Planning for High-Risk or High-Volume Counterparties*. FHFA articulated its expectations that the Enterprises manage their exposure to counterparty credit risk by establishing risk management practices that include monitoring and updating the condition and risk profile of their counterparties, tracking emerging events that may affect counterparty condition and risk profile, and reducing exposure when a counterparty's financial condition is deteriorating.
- Advisory Bulletin 2014-07, *Oversight of Single-Family Seller/Servicer Relationships*. FHFA announced its expectation that each Enterprise would establish a framework and policy for seller/servicer oversight. As part of that framework, the Agency instructed each Enterprise to evaluate financial, operational, legal, compliance, and reputation risks associated with single-family seller/servicers, to take appropriate action to mitigate those risks or reduce the Enterprises' exposure, and to conduct risk-based ongoing monitoring of seller/servicers.
- Advisory Bulletin 2018-08, *Oversight of Third-Party Provider Relationships*. FHFA set forth its supervisory expectation that the Enterprises monitor their relationships with third parties and, among other things, to "consider whether the third-party provider is . . . [c]omplying with applicable legal and regulatory requirements, including documenting such compliance when necessary."

Homeowners Experiencing COVID-19 Related Financial Hardships Have a Right to Receive Forbearance on Mortgage Payments Under the CARES Act

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law on March 27, 2020, in an effort to address some of the economic

[3] FHFA requested this authority in its annual report to Congress. FHFA, *2019 FHFA Report to Congress*, at 15 (June 15, 2020) (online at www.fhfa.gov/AboutUs/Reports/Pages/Annual-Report-to-Congress-2019.aspx).

effects from the COVID-19 pandemic.[4] Section 4022 of the CARES Act, among other things, gives single-family homeowners experiencing financial hardship due to the COVID-19 pandemic the right to forbearance from making mortgage payments on loans owned or securitized by Fannie Mae and Freddie Mac, regardless of delinquency status.[5] Section 4022(b)(1) sets forth the process to be used by a homeowner seeking forbearance for financial hardship due to COVID-19: (1) submission of a request to the homeowner's servicer, and (2) affirmation that the homeowner is experiencing a financial hardship during the COVID-19 emergency. Upon receipt of such a request by a homeowner and attestation of financial hardship, Section 4022(c)(1) directs that the servicer "shall" grant the request without obtaining any additional documentation. The statute explicitly provides that during the period of forbearance "no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract)" can be assessed on the borrower. Under Section 4022(b)(2) of the CARES Act, forbearance "shall be granted for up to 180 days, and shall be extended for an additional 180 days upon request by the borrower . . .."

FHFA and the Enterprises have provided the public with information about forbearance on their websites. FHFA's COVID-19 information page states that, "If your ability to pay your mortgage is impacted, and your loan is owned by Fannie Mae or Freddie Mac . . . you may be eligible to delay making your monthly mortgage payments for a temporary period . . .."[6] The website also provides information about end-of-forbearance repayment options. Fannie Mae's website, "Here to Help," contains fact sheets, videos, and other resources for homeowners.[7] Among other things, the website explains forbearance and repayment options after forbearance. Freddie Mac operates a consumer website, "MyHome by Freddie Mac,"

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[4] In response to the spread of COVID-19 in the United States, President Trump issued a declaration on March 13, 2020, that the outbreak constituted a national emergency. The COVID-19 emergency, and federal and state responses to the emergency to protect health and safety, have had wide-ranging effects on the national economy, the housing finance industry, and on homeowners.

[5] Section 4022(b)(1). Section 4022 is part of Title IV, Subtitle A of the CARES Act, the Coronavirus Economic Stabilization Act of 2020. The CARES Act provides forbearance for up to one year to qualifying residential mortgage borrowers with "federally backed mortgage loans." This term is defined in the Act to include residential mortgage loans purchased by Fannie Mae and Freddie Mac. For the purposes of this report, we refer to such borrowers as "homeowners."

[6] FHFA, COVID-19 Information and Resources (June 17, 2020) (online at www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Assistance-Information.aspx). FHFA also launched a joint housing assistance website with the Consumer Financial Protection Bureau (CFPB) and the U.S. Department of Housing and Urban Development (HUD). *See* CFPB, FHFA, and HUD, Mortgage and housing assistance during the coronavirus national emergency (updated July 1, 2020) (online at http://cfpb.gov/housing). This website provides information on CARES Act mortgage relief, look-up tools to help homeowners determine if their mortgage is federally backed, and resources for additional help.

[7] Fannie Mae, Here to Help (accessed June 26, 2020) (online at www.fanniemae.com/heretohelp/kyo/index.html).

that provides information for consumers affected by the pandemic,[8] including a blog post that explains that a homeowner with a mortgage owned by Freddie Mac or covered by the CARES Act is not required to provide documentation to prove financial hardship when applying for forbearance.

More than a Million Homeowners Whose Mortgages Are Owned or Securitized by the Enterprises Have Obtained Forbearance Under the CARES Act, but Many Others Are Unaware of Their Right to Forbearance

Millions of homeowners have obtained forbearance under the CARES Act. According to a July 12, 2020, estimate by the Mortgage Bankers Association, almost 3.9 million homeowners, representing 7.8% of servicers' portfolio volume, are in forbearance.[9] The Mortgage Bankers Association reported that the share of Fannie Mae and Freddie Mac loans in forbearance was 5.64% of servicers' Enterprise portfolio volume. The mortgage software and analytics firm Black Knight estimated that 1,643,000 Enterprise loans were in forbearance as of July 14, 2020, representing $346 billion in unpaid principal balance.[10]

Notwithstanding the millions of homeowners who have sought and obtained forbearance, many others appear to be unaware of this option. FHFA and the Enterprises explain, on their public websites, that single-family homeowners with financial hardship due to the COVID-19 pandemic may be eligible for forbearance, and media have reported the availability of COVID-19 forbearance.[11] However, responses to two recent Fannie Mae surveys reflect that many homeowners are not aware of their forbearance options. In April 2020, Fannie Mae began a weekly survey of consumers' financial and housing experiences during the COVID-19 pandemic. It also added related questions to its existing monthly National Housing Survey. In its May 2020 monthly National Housing Survey, Fannie Mae asked homeowners whether they were familiar with any programs that allow homeowners facing financial

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[8] Freddie Mac, Extending help to homeowners impacted by COVID-19 (accessed June 26, 2020) (online at https://myhome.freddiemac.com/getting-help/relief-for-homeowners.html).

[9] Press Release, Mortgage Bankers Association: Share of Mortgage Loans in Forbearance Decreases for Fifth Straight Week to 7.8% (July 20, 2020) (online at www.mba.org/2020-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-for-fifth-straight-week-to-780).

[10] Black Knight, Loans in forbearance decline for third consecutive week to lowest rate since May at 4.12M (July 17, 2020) (online at www.blackknightinc.com/blog-posts/loans-in-forbearance-decline-for-third-consecutive-week-to-lowest-rate-since-may-at-4-12m/).

[11] *See, e.g.*, Chris Arnold, *U.S. Orders Up To A Yearlong Break On Mortgage Payments*, National Public Radio (Mar. 19, 2020) (online at www.npr.org/2020/03/19/818343720/homeowners-hurt-financially-by-the-coronavirus-may-get-a-mortgage-break-) and Alex Gailey, *Know Your Rights When It Comes to Mortgage Forbearance*, NextAdvisor (June 19, 2020) (online at https://time.com/nextadvisor/mortgages/mortgage-forbearance-options/).

hardship due to the coronavirus to lower or delay their mortgage payments.[12] Approximately 50% of homeowners responding to the monthly survey were not familiar with such programs. A May 15, 2020, weekly survey seeking to gauge borrower knowledge of forbearance options produced the same result.

FHFA and the Enterprises Have Announced that Lump Sum Payments Will Not Be Required When the Forbearance Period Ends

Forbearance under the CARES Act does not erase what is owed by the homeowner. The homeowner will be required to repay any missed or reduced payments at some point in the future. However, the CARES Act does not set forth options to repay the missed payments.

On April 27, 2020, FHFA announced that homeowners who obtain CARES Act forbearance would not be required to make a lump sum repayment of their total missed payments at the end of the forbearance period. The Agency reported to us that it did so after learning from media reports of confusion and "misinformation" regarding whether homeowners would be required to make such lump sum repayments.

That same day, each Enterprise issued similar announcements on its website (accessible from FHFA's digital announcement through a link).[13] Fannie Mae's announcement states: "…the homeowner will be provided several options from their mortgage servicer for making up the missed payments, and **<u>will not be required</u>** to pay everything back all at once."; and "We **<u>do not</u>** require a homeowner to repay missed payments all at once at the end of a forbearance plan, unless they choose to do so." (emphasis in original) Freddie Mac's announcement is comparable: "Simply put, if you are a homeowner seeking forbearance and Freddie Mac owns your loan, you are never required to make up missed payments in a lump sum."[14]

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[12] The National Housing Survey is a monthly telephone survey that polls a nationally representative sample of 1,000 consumers about owning and renting a home, purchase and rental prices, household finances, and overall confidence in the economy.

[13] Subsequently, on May 26, 2020, both Enterprises issued press releases announcing online resources for homeowners should they experience a financial hardship due to COVID-19. *See*, *supra*, notes 7 and 8. Fannie Mae's website includes a fact sheet titled, "You don't have to repay the forbearance amount all at once upon completion of your forbearance plan: Get the facts." A blog post on Freddie Mac's website, "Understanding Forbearance During COVID-19," states "You are never required to pay back your forbearance in a lump sum."

[14] The Enterprises also provided sample scripts for mortgage servicers to follow with respect to forbearance plans and lump sum payments. The scripts explain to homeowners that "[f]orbearance is when we allow you to temporarily reduce your mortgage payment or suspend or pause making your mortgage payment for a period of time." The scripts add: "**Forbearance does not mean your payments are forgiven.** You will still be required to pay back the missed payments eventually, but **you won't have to repay it all at once—after your forbearance ends unless you are able to do so.**" (emphasis in original) *See* Fannie Mae, COVID-19 Forbearance Script for Servicer Use with Homeowners (online at https://singlefamily.fanniemae.com/servicing/covid-19-forbearance-script-servicer-use-homeowners) (updated May 29, 2020) and Freddie Mac, COVID-19 Script for Servicer Use with Homeowners (updated May 28,

Homeowners with Fannie Mae or Freddie Mac mortgages have multiple options for making up missed payments from the forbearance period.[15] Homeowners may repay the forbearance amount all at once in full or establish a short-term repayment plan of up to a year, or longer if approved by the Enterprises. Other options may include, for example, a payment deferral, whereby the amount of their missed payments is moved to the end of the loan term, or a loan modification. Under a loan modification, the original terms of the loan may be changed to reduce monthly payments through a reduction in the interest rate, extension of the loan up to 40 years, and/or principal forbearance.

The Enterprises Have Limited Servicers' Financial Liability for Mortgages in Forbearance

As discussed earlier, a homeowner who obtains mortgage forbearance under the CARES Act is treated as if he/she made all contractual payments on time and in full under the terms of the mortgage contract, even though mortgage payments are suspended or reduced during forbearance. The CARES Act, however, does not provide parallel forbearance for servicers.

For mortgages bought or guaranteed by the Enterprises, mortgage servicers are required under their contractual servicing agreements to advance to the Enterprises the originally scheduled, regular monthly payments of principal and interest, or only the interest depending on the servicer's contract with the Enterprise.[16] The Enterprises then advance those payments to security holders. Those monthly payments are required, notwithstanding any forbearance provided to homeowners under the CARES Act,[17] and such forbearance can remain in place

2020) (online at https://sf.freddiemac.com/content/_assets/resources/pdf/covid-19_forbearance-servicer-script.pdf).

[15] The Enterprises have issued updated guidance to their servicers on the repayment options that are available to homeowners under the Enterprises' respective servicing guides. *See* Fannie Mae, Lender Letter (LL-2020-02), *Impact of COVID-19 on Servicing* (July 15, 2020) (online at https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-02-impact-covid-19-servicing); Fannie Mae, Lender Letter (LL-2020-07), *COVID-19 Payment Deferral* (July 15, 2020) (online at https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-07-covid-19-payment-deferral), and Freddie Mac, Bulletin 2020-15, *Freddie Mac COVID-19 Payment Deferral* (May 13, 2020) (online at https://guide.freddiemac.com/app/guide/bulletin/2020-15).

[16] Freddie Mac requires its servicers to remit scheduled interest payments; Fannie Mae may require advances of scheduled principal payments and interest payments, depending on the terms of the servicer's contractual agreement with Fannie Mae.

[17] David Stevens, former head of the Federal Housing Administration, described this requirement as a "destructive incentive" that would encourage servicers to "try to scare people or at a minimum tell them that they're going to repay that in a balloon[.]" *See* Paul Kiernan, *Getting a Mortgage-Payment Break Isn't the Boon Many Expected*, Wall Street Journal (Apr. 23, 2020) (online at www.wsj.com/articles/getting-a-mortgage-payment-break-isnt-the-boon-many-expected-11587634200).

for up to 360 days. As a result, the mortgage servicer initially must fund the advances and then seek reimbursement.

On April 21, 2020, FHFA announced that servicers would have to advance principal and/or interest for only four months of the forbearance period, which aligned the Enterprises' policies. After that four-month period, FHFA instructed that the Enterprises would take over the servicers' obligations with respect to advancements of interest and principal. The Enterprises capped servicer liability for advances at four months, even though forbearances could last up to nearly a year under the CARES Act.

Servicing a loan in forbearance is more labor-intensive than servicing a performing loan and, accordingly, is more costly. Servicers must work directly with homeowners before the end of the forbearance period to review the homeowners' options with respect to how they will repay the monthly payments missed during forbearance; issue consumer communications required by the Consumer Financial Protection Bureau's mortgage servicing rules;[18] and, if needed, revise the applicable loan agreements to reflect new repayment terms at the end of the forbearance period (for example, loan modification agreements and repayment plans).

There are differing views on servicers' financial capacity to meet their obligations. In recent Congressional testimony, the FHFA Director focused specifically on servicers' ability to make principal and interest payments on Enterprise mortgages during the first four months of forbearance and reported that FHFA analyses determined that servicers will have sufficient capacity to advance principal and interest payments. However, the Urban Institute estimated, in May 2020, that the potential financial burden on servicers for mortgages in forbearance ranges from $33.2 billion and $117.8 billion, based on its analysis of three hypothetical scenarios using different combinations of forbearance rates and months of forbearance.[19] It observed that, during forbearance, servicers must advance principal and interest, or only interest depending on the servicer's contract with the Enterprise, for the first 120 days and make other payments, such as property insurance and property taxes, for the entire period. After forbearance ends, servicers must advance property taxes, insurance, and mortgage insurance premiums until the loan is modified or foreclosed upon. According to the Urban

[18] Regulation X, promulgated by the CFPB, establishes mortgage servicing requirements for all servicers. Regulation X, among other things, requires servicers to provide homeowners with several different loss mitigation notices when a homeowner seeks forbearance or other short-term loss mitigation options. Servicers must provide the loss mitigation notices required by Regulation X to homeowners with CARES Act forbearances.

[19] Laurie Goodman, et al., *The Mortgage Market Has Caught the Virus*, Urban Institute (May 14, 2020) (online at www.urban.org/research/publication/mortgage-market-has-caught-virus). These estimates include advance payments for Fannie Mae, Freddie Mac, Federal Housing Administration mortgages, as well as those securitized in private-label securities and held in bank portfolios.

Institute: "Under any scenario, the advances servicers are required to make to investors will be an overwhelming lift" for many servicers.

OBSERVATIONS ....

The Enterprises Have Issued CARES Act Guidance to Their Servicers but Have Not Required Them to Expressly Inform Homeowners of Their Forbearance-Related Rights

Both Enterprises have issued guidance to their servicers reinforcing the directive in the CARES Act that homeowners seeking forbearance must only provide an attestation of a financial hardship caused by the COVID-19 emergency.[20] However, this guidance does not require servicers to expressly inform homeowners that they have a legal right under the CARES Act to immediate forbearance without documentation, provided they submit the required attestation. Similarly, the Enterprises, which have issued sample scripts on their websites that explain FHFA's prohibition on lump sum repayments, do not require servicers to use the scripts.

The Servicers' Obligation to Advance Funds During Periods of Forbearance and the Additional Costs to Service Mortgages in Forbearance Creates a Risk that Some Servicers May Not Follow Provisions of the CARES Act and Implementing Guidance

As explained earlier, the CARES Act authorizes forbearance for up to nearly a year for homeowners. Servicing a loan in forbearance is more labor-intensive than servicing a performing loan and, accordingly, is more costly. Servicers are obligated to advance principal and interest, or only interest depending on the servicer's contract with the Enterprise, for the first 120 days, as well as to make other payments, including property insurance and property taxes for the entire forbearance period. Although FHFA projects that mortgage servicers have sufficient capacity to advance principal and interest on Enterprise loans in forbearance, the Urban Institute describes the potential financial burden on servicers for mortgages in forbearance as "an overwhelming lift."

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[20] *See* Fannie Mae, Lender Letter (LL-2020-02), *Impact of COVID-19 on Servicing* (July 15, 2020) (online at https://singlefamily.fanniemae.com/media/document/pdf/lender-letter-ll-2020-02-impact-covid-19-servicing); Freddie Mac Seller/Servicer Guide, Section 9203.13(a), *Requirements for a forbearance plan* (Dec. 1, 2018) (online at https://guide.freddiemac.com/app/guide/content/a_id/1001217); and Freddie Mac, Bulletin 2020-10, *Temporary Servicing Guidance Related to COVID-19* (Apr. 8, 2020) (online at https://guide.freddiemac.com/app/guide/bulletin/2020-10).

In our view, that potential financial burden creates the risk that some mortgage servicers may not follow the mandates in the CARES Act and implementing guidance.[21]

The Enterprises Rely on Their Servicers' Representations that They Comply with the CARES Act and Implementing Guidance and Do Not Test the Servicers' Representations

The three advisory bulletins issued by FHFA on the Enterprises' oversight of their servicers do not prescribe the mechanisms to be used by the Enterprises for such oversight. In its most recent bulletin on this issue, AB 2018-08, FHFA explained that, in connection with the Enterprises' efforts to monitor relationships with third parties, the Enterprises "consider whether the third party is complying with applicable legal and regulatory requirements, including documenting such compliance when necessary."

The Enterprises reported to us that they do not view their responsibilities to include testing whether their servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with servicers, the servicers' familiarity with seller/servicer guide requirements, and their continual contact with servicers gives them confidence that the servicers are well-informed of their legal and contractual obligations under the CARES Act and FHFA and Enterprise guidance.[22] Both Enterprises explained that they rely on each servicer's representations and warranties that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies, such as repurchase of the loan. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with

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[21] Anecdotes in media reports provide some support to this observation. *See, e.g.*, Michelle Singletary, *Mortgage relief was offered, but at a high price*, Washington Post (May 18, 2020) (online at www.washingtonpost.com/business/2020/05/18/mortgage-relief-was-offered-high-price/); Anna Bahney, *Confused about delaying your mortgage payments? You're not alone*, CNN Business (May 2, 2020) (online at www.cnn.com/2020/05/02/success/mortgage-forbearance-may-coronavirus/index.html); Kristen Mosbrucker, *Homeowners left to 'scramble' to make balloon payments, mortgage modifications amid coronavirus*, The Advocate (May 6, 2020) (online at www.theadvocate.com/baton_rouge/news/coronavirus/article_fdf73a4e-83f3-11ea-86c5-f32db8207d34.html). We recognize that these reports do not make clear whether such inaccurate information from the servicers: (1) was provided with respect to Enterprise mortgages; and (2) took place after the April 27, 2020, guidance from FHFA, reaffirmed by the Enterprises, that lump sum payments were not required.

[22] For example, a representative of one Enterprise advised that the Enterprise conducts weekly calls with its smaller servicers to afford them the opportunity to seek clarifications and raise questions regarding the Enterprises' respective servicing guidance. According to that Enterprise, it has issued several servicing policy updates in 2020 in response to feedback from servicers, including questions relating to the impact of the CARES Act. Representatives of the other Enterprise informed us that its customer management teams are assigned to over 1,100 single-family seller/servicers and these teams have responded to COVID-19 forbearance-related questions.

applicable law and regulations.[23] FHFA reported to us that the Agency considers the Enterprises' current practices to be "acceptable" at this time.

Our Sampling Shows Servicers' Public-Facing Websites Do Not Consistently Inform Homeowners of Their Rights Under the CARES Act and Implementing Guidance on Lump Sum Payments

Mortgage servicers are the first point of contact for homeowners experiencing COVID-19 related financial hardship. We sought to assess the accuracy and thoroughness of information about CARES Act forbearance and repayment options on servicer websites by sampling 20 websites hosted by large servicers, 20 websites hosted by medium servicers, and 20 websites hosted by small servicers.[24]

We found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the largest servicers.[25] Specifically, we determined that:

- Ten websites do not explain that homeowners can obtain forbearance of mortgage payments due to COVID-19 hardship without providing documentation.
- Ten websites identify lump sum payment as an option at the end of forbearance, but do not explain that homeowners will not be required to make up missed payments in a lump sum. For example, one of these ten sites reports that the total amount of payments suspended during the forbearance period will become due and payable at the end of the forbearance period if the homeowner does not seek further assistance.
- Five websites do not state that homeowners can obtain forbearance for up to 360 days.

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[23] The Enterprises require their servicers to certify their compliance with applicable laws within 90 days of the servicers' fiscal year-end. According to Freddie Mac, most servicers end their fiscal year on December 31. As such, the Enterprises would not receive certification of most servicers' compliance with the CARES Act until after the expiration of Section 4022.

[24] We conducted this review of servicer websites between June 21 and June 30, 2020. Our sample included only servicers that serviced single-family mortgage loans on behalf of both Enterprises. (The servicers may also service loans on behalf of other investors in addition to the Enterprises.) We divided the servicers into the large, medium, and small categories based on the amount of unpaid principal balance in their Enterprise servicing portfolios, as of March 31, 2020.

[25] We assessed the servicer websites to determine whether the following four questions were answered: (1) Does the website state explicitly that documentation of hardship is not required?; (2) Does the website state explicitly that borrowers will not be required to make up missed payments in a lump sum?; (3) Does the website state explicitly that borrowers can obtain forbearance for 180 days with an extension of 180 more days?; and (4) Does the website state explicitly that borrowers will not incur penalties, fees, or additional interest during the forbearance period?

- Six websites state that no penalties, fees, or additional interest would be charged during the period of forbearance; seven websites state that no late fees would be applied; five websites mention two of the three would not be charged; and two websites provide no information on this topic.

Most of the large servicers maintain online portals to assist homeowners in obtaining forbearance. Without account information, however, we were not able to access the portals and could not assess information available through them.

The 40 websites hosted by medium and small servicers generally provided limited to no information about forbearance under the CARES Act and repayment options.[26] Instead, many of the sites advise consumers to contact them for assistance, which we were unable to do because we lacked a customer account number.

In several cases, information on some of these servicers' websites appeared to contradict the CARES Act requirement that servicers shall grant homeowner forbearance requests without obtaining any additional documentation and FHFA and Enterprise guidance against servicers requiring lump sum repayments. For example, two of the small servicer websites instruct homeowners that they must provide proof of unemployment and other documentation of hardship in order to obtain mortgage forbearance. A medium-sized servicer website advised that "ALL payments missed during forbearance will be due the month following the forbearance. (ex: if missing 3 months payment, then ALL 3 payments PLUS the 4th month payment will be due at ONCE.)" (emphasis in original)

CONCLUSION

Congress granted homeowners with Fannie Mae and Freddie Mac mortgages a legal right to forbearance upon an attestation of financial hardship from COVID-19, and FHFA has announced that lump sum repayment is not required once forbearance ends. While we recognize that the websites maintained by FHFA and the Enterprises provide fulsome information about forbearance available under the CARES Act and payment options after forbearance ends, the results of recent surveys by Fannie Mae show that some homeowners are not aware of their forbearance rights and options under the CARES Act and implementing

[26] Of the 20 websites hosted by medium servicers, only one provided substantive information on COVID-19 forbearances. Two other websites for medium servicers linked to the text of the CARES Act and four others linked to forbearance information provided on CFPB's, the Enterprises', FHFA's, and/or HUD's websites. Our review of small servicer websites had similar results. Two small servicer websites provided substantive information about COVID-19 forbearance and eight other websites linked to forbearance information provided by the CFPB, the Enterprises, and/or HUD. Three small servicers' websites embedded or linked directly to a CFPB video that explains homeowners' rights under Section 4022 of the CARES Act.

guidance. The potential financial burden on servicers for mortgages in forbearance is significant and, in our view, creates the risk that some mortgage servicers may not follow the mandates in the CARES Act and implementing guidance.

We observe, from the information provided to us by the Enterprises, that neither Enterprise has collected data sufficient to permit an assessment of whether servicers are complying with the CARES Act and implementing guidance. The Enterprises reported to us that they have not asked any servicer to demonstrate compliance with the CARES Act and implementing guidance. Based on our survey of 60 websites hosted by servicers, we found incomplete and/or unclear information about forbearance and repayment on 14 of the 20 websites of the largest servicers and generally limited to no information on forbearance and repayment on the remaining 40 websites.

APPENDIX: FHFA MANAGEMENT RESPONSE...........................

CONTROLLED

Federal Housing Finance Agency

MEMORANDUM

TO: Kyle Roberts, Deputy Inspector General for Evaluations

FROM: Sandra Thompson, Deputy Director, Division of Housing Mission and Goals SANDRA THOMPSON Digitally signed by SANDRA THOMPSON Date: 2020.07.22 13:47:18 -04'00'

SUBJECT: Draft Report: *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers*

DATE: July 22, 2020

Thank you for the opportunity to respond to the Office of Inspector General's (OIG) draft report, *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers* (Report). The Report focuses on whether servicers are complying with the CARES Act's single-family forbearance provisions and the implementing guidance issued by Fannie Mae and Freddie Mac (the Enterprises). The Report makes several observations, but no recommendations for FHFA. FHFA shares the concerns in the Report that servicers may not be adequately informing borrowers that forbearance is available and will bring these issues to the Enterprises' attention so that they can contact these servicers directly.

FHFA took decisive action, starting before the coronavirus pandemic had been declared a national emergency, to support the market and American families who should not have to worry about losing their homes during a global health crisis. Prior to the enactment of the CARES Act on March 27, 2020, FHFA announced the Enterprises would make forbearance available for up to 12 months for homeowners struggling to pay their mortgage due to a COVID-related financial hardship.[1] Although these forbearance policies broadly aligned with the CARES Act, the Enterprises subsequently updated their guidance to better conform with the requirements set forth in the new law. Section 4022 also instituted a 60-day foreclosure moratorium for federally-backed single-family mortgages, which expired on May 17, 2020. FHFA has since extended this

[1] https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Suspends-Foreclosures-and-Evictions-for-Enterprise-Backed-Mortgages.aspx

moratorium on an ongoing basis for real estate owned (REO) properties owned by the Enterprises in order to continue to help borrowers who are at risk of losing their homes.[2]

While broadly sharing the Report's concerns, FHFA disagrees with the Report's implication that FHFA or the Enterprises are responsible for informing individual homeowners of their rights or for testing servicers for compliance with the CARES Act. FHFA and the Enterprises have no direct regulatory oversight of mortgage servicers to ensure compliance with laws; that responsibility sits with the appropriate regulator or supervisory body, and the CARES Act provided no additional authority to FHFA to do so. Indeed, the Report rightly notes that FHFA lacks the authority to examine mortgage servicers. FHFA has requested in its 2019 Annual Report to Congress a limited and tailored grant of examination authority, similar to that already provided to other federal safety and soundness regulators, over third-party service providers, including mortgage servicers.

Mortgage servicers' interaction with borrowers as it relates to offering and granting forbearance and post-forbearance loss mitigation options are subject to rules and regulations under the jurisdiction of the Consumer Financial Protection Bureau (CFPB). The Report does not clarify that CFPB has the primary regulatory authority with regard to a servicer's relationship with the borrower; rather, it presumes or implies that FHFA and the Enterprises have this responsibility. Although no express authority is granted to FHFA to enforce Section 4022 of the CARES Act, FHFA as regulator and conservator of the Enterprises continues to monitor the implementation of Section 4022 in relation to Enterprise-backed single-family mortgages.

FHFA has taken several steps to better monitor mortgage servicer activities, ensure that servicers properly follow Enterprise forbearance and loss mitigation guidance, and increase awareness of forbearance and other mortgage assistance options available to homeowners:

- On April 15, 2020, CFPB and FHFA announced a joint initiative called the Borrower Protection Program (BPP).[3] The BPP allows the sharing of information between the two agencies , under which CFPB will make complaint information and analytical tools available to FHFA, and FHFA will make available to CFPB information about forbearances, modifications, and other loss mitigation initiatives undertaken by the Enterprises. This will augment and enhance FHFA's understanding of servicer activities as it relates to interactions with borrowers.

- On April 27, 2020, FHFA issued a statement reiterating that borrowers in forbearance with an Enterprise-backed mortgage are not required to repay the missed payments in one

[2] https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-Eviction-Moratorium-6172020.aspx
[3] https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-and-CFPB-Announce-Borrower-Protection-Program.aspx

lump sum.[4] Although Section 4022 of the CARES Act did not address post-forbearance options for borrowers, the statement was intended to combat misinformation that could discourage borrowers from requesting forbearance. Additionally, both Enterprises released COVID-19 forbearance scripts for servicers to use with homeowners, which were subsequently translated into five additional language to better assist limited English proficiency borrowers.[5]

- On May 12, 2020, FHFA, CFPB, and the Department of Housing and Urban Development launched a mortgage and housing assistance website, cfpb.gov/housing.[6] This website consolidates federal information about mortgage relief options, including a video explaining how forbearance works and homeowners' rights under Section 4022 of the CARES Act. The website states explicitly that homeowners of federally-backed mortgages "experience[ing] financial hardship due to the coronavirus pandemic […] have a right to request and obtain a forbearance for up to 180 days," and "also have the right to request and obtain an extension for up to another 180 days (for a total of up to 360 days)."[7]

The Report acknowledges the "fulsome information" provided by FHFA and the Enterprises' websites but does not appear to reference the interagency mortgage assistance website mentioned above. Taken together, FHFA believes it has acted swiftly and in coordination with other federal agencies to provide homeowners with straightforward, accessible information regarding their rights and available mortgage assistance options.

Finally, the Report states that forbearance options mandated under the CARES Act pose a significant financial burden on servicers which may in turn discourage them from following the requirements under law. As the Report mentions, FHFA has taken steps to address concerns about financial burdens on servicers by instituting a four-month limit on servicers' obligations to advance principal and interest payments on loans in forbearance. Furthermore, FHFA's recent analysis of servicer capacity indicates that servicers as a whole have sufficient capacity to handle a forbearance rate of 15 percent,[8] whereas recent data from the Mortgage Bankers Association (MBA) indicate that the forbearance rate for Enterprise mortgages was just over 6 percent as of

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[4] https://www.fhfa.gov/Media/PublicAffairs/Pages/No-Lump-Sum-Required-at-the-End-of-Forbearance-says-FHFAs-Calabria.aspx

[5] https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Makes-Translated-COVID-19-Resources-Available-in-Six-Languages.aspx

[6] https://www.fhfa.gov/Media/PublicAffairs/Pages/CFPB-FHFA-HUD-Launch-Joint-Mortgage-and-Housing-Assistance-Website-for-Americans-Impacted-by-COVID-19.aspx

[7] https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief/

[8] https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-Dr-Mark-A-Calabria-FHFA-Director-Before-the-US-Senate-Committee-on-Banking-Housing-and-Urban-Affairs-06092020.aspx

June 28, 2020. In addition, according to MBA data the overall share of mortgages in forbearance has decreased for three consecutive weeks as of June 28, 2020.[9]

The Report also suggests that servicing a loan in forbearance is more labor-intensive and costly than servicing a performing loan. While this is generally the case, servicers that do not offer forbearance to a homeowner facing a financial hardship may have even more costly and labor-intensive outcomes, if a mortgage loan becomes seriously delinquent. The Report also does not mention the implementation of the Enterprises' payment deferral option, which provides operational efficiencies and financial incentives for mortgage servicers and, importantly, a new, simplified post-forbearance assistance option for homeowners.[10] FHFA believes its actions have ameliorated potential financial burdens on servicers while also promoting forbearance and post-forbearance mortgage relief options for borrowers.

In conclusion, we appreciate OIG's attention to this important issue. FHFA has taken swift and prudent action prior to and following the enactment of the CARES Act in order to protect homeowners during the pandemic. In coordination with other federal agencies, and with the recognition that CFPB primarily oversees a mortgage servicer's relationship with the borrower, FHFA has worked quickly to publish resources for homeowners about mortgage relief options through its own website and an interagency website. FHFA will continue to monitor data as well as new and evolving challenges as a result of the COVID-19 national emergency and will update policies accordingly.

If you have any questions related to our response, please do not hesitate to contact me.

cc: Chris Bosland
Kate Fulton
John Major

[9] https://www.mba.org/2020-press-releases/july/share-of-mortgage-loans-in-forbearance-decreases-for-third-straight-week-to-839

[10] https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Homeowners-in-COVID-19-Forbearance-Plans.aspx

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

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

Counterclaimants,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation,

Counter-Defendant.

CASE NO. A-20-819412-C

DEPT NO. 4

AFFIDAVIT OF YAKOOV GREENSPAN IN OPPOSITION TO APPLICATION TO APPOINT RECEIVER AND IN SUPPORT OF DEFENDANT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

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

WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; and WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company Third Party Plaintiffs, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation, Counter-Defendant.	

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

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

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

3. I am familiar with Westland's records regarding the two Multifamily Loan and Security Agreements entered into on August 29, 2018, (the "Loan Agreements") by and between Westland as the assuming borrower, Federal National Mortgage Association ("Fannie Mae") as lender, and Grandbridge Capital Real Estate LLC (who was known as Cohen Financial and SunTrust Bank at the time the loan was signed, and hereinafter referred to as "Grandbridge" and together with Fannie Mae, "Lenders") as lender/loan servicer, as well as the facts and circumstances giving rise to this lawsuit. As such, I am knowledgeable of the facts contained herein and am competent to testify thereto.

Background

4. Liberty LLC and Square LLC are single-purpose entities that each hold title to one of the two Properties owned at 4870 Nellis Oasis Lane and 5025 Nellis Oasis Lane, which are adjoining multi-family apartment communities, located in Las Vegas, Nevada.

5. Liberty LLC and Square LLC are entities affiliated with Westland Real Estate Group, which has 50 years of multi-family housing experience and is one of the most experienced housing providers in Nevada, with over 10,000 apartment units in 38 apartment communities the Las Vegas area, and more than 500 employees. To my knowledge, during its 50-year history, Westland Real Estate Group has never had a Notice of Default and Election to Sell filed against one of the properties in its portfolio.

The Purchase/Loan Assumption

6. On August 29, 2018, Liberty LLC and Square LLC purchased the two Properties located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-702-002 and 140-08-702-003] (the "Properties") from sellers Shamrock Properties VI LLV and Shamrock Properties VII LLC (collectively the "Shamrock Entities").

7. To purchase the Properties, Liberty LLC and Square LLC assumed the two Loan Agreements from the Shamrock Entities in the amount of $29,000,000 and $9,366,000, respectively (the "Loans") that were issued by Grandbridge (the successor to SunTrust Bank) in August 2018. Westland paid the remainder of the combined $60.3 million purchase price in cash, which resulted in Westland establishing over $20 million in equity in the Properties.

8. Pursuant to the Loan Agreements, Westland was responsible for a monthly debt service obligation of approximately $162,000 for the Liberty Property, and $52,000 for the Village Property, which includes taxes, insurance, and a replacement reserve escrow deposit.

9. As of the date of this Affidavit, and at all prior points in time, Liberty LLC and Square LLC have been current in the payment of its monthly debt service obligations related to the Liberty Property and the Square Property.

10. Even when Lenders stopped withdrawing the automatic ACH payments and refused payment from Westland, Westland began overnighting check payments each and every month. I have seen correspondence showing that Lenders admit to receiving those payments.

11. Since February 2020, out of an abundance of caution, rather than the base amount due of approximately $162,000, Liberty LLC has forwarded $180,621.79 each month for its Property, and rather than the base amount of approximately $52,000, Square LLC has forwarded $58,471.94 each month for its Property.

The Notice of Demand and Purported Default

12. Upon taking over the two Properties, Westland almost immediately began to repair and remediate them. In September 2019, f3 Inc., I believe at Grandbridge's request, prepared a property condition assessment. Grandbridge relied upon this report to issue Westland a Notice of Demand ostensibly based on the September 2019 property condition assessment of f3, Inc. Thereafter, just as Westland had done prior to that assessment, it continued to engage in ongoing repair and remediation of the Properties, including, but not limited to, the issues identified in the f3 report. Presently, Westland has made most, if not all, of these repairs.

13. Westland continued making repairs despite Lenders' refusal to honor its contractual obligations to release money from the Reserve Accounts to fund the work. Instead, the repairs were funded out of an additional infusion of Westland's own cash. Thus, all the Replacement Reserve Account funds have been preserved as further security for Lenders.

14. Despite the passage of over a year since the September 2019 property condition assessment was performed, Lenders never re-inspected the Properties.

15. After Lenders declared a default under the Loan Agreements in October 2019, I sought to have that default addressed with the Lenders. However, when Westland contacted Grandbridge, the Lenders refused to engage in any discussions by stating the matter had already been assigned to counsel.

16. I received a letter in December 2019, by which Lenders stated they were accelerating Westland's loan balance and wanted to deprive Westland of the ability to collect rents.

17. By mid-February 2020, it came to my attention that Lenders stopped withdrawing the monthly ACH payments, even though I had not received any notice that they would no longer be withdrawing those payments consistent with their practice from the time Westland assumed the Loans. Lenders seemingly tried to manufacture a financial loan default, where none had previously existed.

18. Notwithstanding Lender's unilateral change in payment method, Westland kept making its monthly debt payments. Next, Lenders failed to provide Westland any loan payment billing statements. So, to be conservative and to ensure there was no financial default under the Loans, Westland's management required the accounting department to forward an additional 10% on top of the monthly payment. Due to those overpayments, Westland has paid Lenders at least an extra $150,000 more than what is required by the Loan Agreements.

19. It is my understanding that Fannie Mae, through its counsel, has agreed to meet with Westland, but several conditions were placed on that meeting, including that Westland pay all the costs associated with the non-existent defaults Grandbridge had created, such as the f3 PCA report, which it was previously represented Westland would not need to pay for as long as Westland provided Lenders access to the Properties, and all attorney's fees. The Lenders demanding those costs just to talk about resolution, we believed was not good faith, so Westland advised Fannie Mae that it was unable to participate in settlement discussions until those unreasonable conditions were eliminated. Westland continues to be ready, willing, and able to engage in good faith settlement discussions without unreasonable preconditions.

20. Westland has continued to make efforts to resolve this dispute with Fannie Mae, because it was disruptive to our business, as Westland's entities were no longer able to easily refinance our loans_due to having these two significant loans, we believe, improperly placed into default status, and due to the Notice of Default that was filed against our Properties.

21. Westland does not dispute it has obligations under the Loan Agreements, but Westland has met those obligations, improved the conditions at the Properties, and continues to timely pay its loan obligation never missing a single payment to date, so I am at a complete loss as to what Westland could have done to prevent Lenders from asserting this default, other than

just let Grandbridge hold $2.7 million of Westland's cash just because they thought they could force that demand on us.

The Current Status of the Properties

22. In November 2019, Westland provided Lenders a strategic report, which outlined Westland's plan for continuing to make improvements at the Properties.

23. In the nine (9) months since the November 2019 strategic report, Westland has met its benchmarks, including that Westland has:

- improved the physical condition of the Properties,
- repaired virtually all of the vacant units in need of repairs,
- maintained crime at a small fraction of the amount of the prior owner,
- increased occupancy from 52% to over 80% consistent with Westland's strategic estimates (which in itself means that many of the previously vacant units have been renovated),
- achieved an occupancy rate exceeding the real occupancy rate at the Properties at the time the loans were assumed from Westland's predecessor,
- implemented its more stringent rental criteria, and
- improved the profitability of the Properties through sustainable rent increases while continuing to serve local hardworking families.

24. Westland has only been able to achieve those results because Westland employs leasing, management, maintenance, accounting and administrative staff in Las Vegas, including 32 employees onsite at the Properties. These employees have been trained for these Properties, and more importantly, have invested in relationships with tenants and local officials to create communities at the Properties. These 32 employees, who we are proud to say we were able to keep employed during the Pandemic, would be needlessly terminated if the Court appoints a receiver. I do not believe that any offsite property manager, including a bank-appointed receiver, who would cause the Properties much higher costs, including related to paying subcontractors, would be able to duplicate the positive momentum we have built up at the Properties for at least several months, if ever. Based on my experience, and prior proposals to purchase the Properties,

I know that they were previously listed at an REO sale in 2014, and were dilapidated with a major criminal presence at that time.

25. During Westland's ownership of the Properties, it invested $1.8 million in the Properties prior to the f3, Inc. PCA, and we invested $3.5 million in capital expenditures in the Properties to date and have spent an additional $1,573,000 in security costs.

26. Westland has not obtained reimbursement from Lenders for reserve funds Lenders obtained from joint checks of approximately one million dollars ($1,000,000.00) that Lenders deposited related to fire insurance claims. Lenders refuse to give that money over to Westland even though the funds were earmarked for the construction of two buildings at the Liberty Property. Those two buildings have been completely rebuilt, with substantial upgrades, all of which was completed with cash fronted by Westland. I am aware that the loan's servicer, Grandbridge, has failed to respond to Westland's reimbursement requests for release of its funds.

27. As opposed to most property management companies, it should also be noted that Westland makes a concerted effort to stabilize the local community. At the Liberty Village and Village Square properties, the need for local community services, such as a closer law enforcement presence and family support services, was apparent. Such resources are important to attract the working class families that serve as backbones of the communities that Westland owns and manages.

28. As such, Westland's efforts to build a positive community for the residents of Liberty Village and Village Square did not stop at the boundaries of the Properties. On that basis, when onsite management reported that a liquor store and bar located on a largely undeveloped parcel adjacent to the Square Property, at 3435 North Nellis Boulevard, Las Vegas (the "Parcel"), were attracting a criminal element to the neighborhood, Westland contacted the prior owners of that Parcel and purchased it. By doing so, Westland was able to more actively manage the Parcel then the prior owners had done, and is presently working with the Office of the County Commissioner to develop community based services in the open areas of the Parcel.

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

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

Executed this 31st day of August 2020 at Long Beach, California.

By: ______________________________
Yakoov Greenspan, Trustee of
Manager to Westland Liberty Village, LLC and
Westland Village Square LLC

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On August 31, 2020 before me, Jerry Don King Jr, Notary Public
(insert name and title of the officer)

personally appeared Yaakov Greenspan,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JERRY DON KING JR.
Notary Public - California
Los Angeles County
Commission # 2199394
My Comm. Expires Jun 24, 2021

Signature ______________________ (Seal)

3

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12/3/2020 4:04 PM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

ALL RELATED ACTIONS

Case No. A-20-819412-B

Dept No. 13

DECLARATION OF JAMES NOAKES IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STRIKE DEFENDANTS' DEMAND FOR JURY TRIAL

I, James Noakes, declare as follows:

1. I am a Senior Asset Manager for Federal National Mortgage Association ("Plaintiff"). I make this declaration in support of Plaintiff's Reply in Support of its Motion to Strike Defendants' Demand for Jury Trial.

2. As to the facts in this declaration, I know them to be true of my own knowledge or have obtained knowledge of them from employees who I supervise or work with and from my review of the business records of Plaintiff concerning the loans between Plaintiff and Westland Village Square, LLC and Westland Liberty Village, LLC (collectively, "Defendants"), as well as Defendants' parent company, Westland Real Estate Group ("Westland") and its affiliates. If called

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

3. I have also reviewed Defendants' Counterclaim, including page 17, wherein Defendants allege to have over $300 million in loans from Fannie Mae and can confirm that Defendants' representation is accurate. (Counterclaim, 17:22-24).

4. I have determined that Defendants, Westland, and their affiliates have at least forty active and inactive loans with Plaintiff. *See* List of Loans between Plaintiff and Defendants, attached hereto as **Exhibit 1**.

5. One of those loans, the Regency Heights Apartments loan in Las Vegas, was assumed by Westland in 2015 through an Assumption and Release Agreement signed by Yaakov Greenspan. As part of the assumption of that loan, Westland agreed to a jury trial waiver that is identical to the jury waiver contained in the Assumption and Release Agreements for Liberty Village and Village Square. A true and correct copy of the Regency Heights Apartments assumption agreement is attached hereto as **Exhibit 2**. The jury waiver in the Regency Heights assumption is contained in Section 24.

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

Executed this 3rd day of December, 2020 in Collin County, Texas.

/s/James Noakes
James Noakes

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DECLARATION OF JAMES NOAKES IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STRIKE DEFENDANTS' DEMAND FOR JURY TRIAL** by the method indicated:

______ U. S. Mail

______ U.S. Certified Mail

______ Facsimile Transmission

______ Federal Express

_X____ Electronic Service

______ E-mail

and addressed to the following:

John Benedict, Esq.
Law Offices of John Benedict
2190 E. Pebble Road, Suite 260
Las Vegas, Nevada 89123
John@BenedictLaw.com

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

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SRGambee@hollandhart.com

Attorneys for Third Party Defendant Grandbridge Real Estate Capital, LLC

DATED: December 3, 2020

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

EXHIBIT 1 - Westland Loans

EXHIBIT 1 - Westland Loans

Property Name	Loan Number	Current UPB	City
Queen Street Apartments	[redacted]5493	5,290,239.28	INGLEWOOD
Cudahy Apartments	[redacted]5493	5,290,239.28	BELL GARDENS
Nicholas Gardens Apartments	[redacted]5494	14,221,484.73	INGLEWOOD
Pacific Apartments	[redacted]5494	14,221,484.73	LONG BEACH
Hyde Park Apartments	[redacted]5494	14,221,484.73	INGLEWOOD
Pinafore Apartments	[redacted]5494	14,221,484.73	LOS ANGELES
Buford Apartments	[redacted]5494	14,221,484.73	INGLEWOOD
Regency Heights Apartments	[redacted]7164	2,721,051.58	LAS VEGAS
Park View Apartments	[redacted]1741	10,568,538.75	LONG BEACH
Westland Estates Long Beach	[redacted]5450	9,449,713.99	LONG BEACH
Westland Estates Pico Rivera	[redacted]5451	6,991,998.52	PICO RIVERA
Westland Estates Pomona	[redacted]5452	10,125,246.15	POMONA
Meridian Terrace MHC	[redacted]7706	12,847,838.39	SAN BERNARDINO
Alondra Park Apartments	[redacted]8524	8,144,900.04	COMPTON
Park View Apartments	[redacted]1741	10,568,538.75	LONG BEACH
CARONDELET Apartments	[redacted]0058	2,655,829.20	LOS ANGELES
Esther Apartments	[redacted]0059	9,759,278.28	LONG BEACH
Burlington Apartments	[redacted]0060	2,568,172.21	LOS ANGELES
Liberty Village Apartments	[redacted]3617	29,000,000.00	LAS VEGAS
Village Square Apartments	[redacted]3618	9,366,000.00	LAS VEGAS
Westland Village MHP	[redacted]5219	5,827,185.77	COMPTON
Westland Estates Long Beach	[redacted]5450	9,449,713.99	LONG BEACH
		221,731,907.83	
133 S PALM DR			BEVERLY HILLS
Santa Rosalia Apartments			LOS ANGELES
812 East Hyde Park Boulevard Apartments			INGLEWOOD
818 North Eucalyptus Avenue Apartments			INGLEWOOD
948 South Inglewood Avenue Apartments			INGLEWOOD
1000-1006 East Carson Apartments			LONG BEACH
3062-3066 West 7th Street Apartments			LOS ANGELES
Esther Apartments			LONG BEACH
Burlington Apartments	[redacted]0060	2,568,172.21	LOS ANGELES
Roxanne Apartments			LOS ANGELES
Bear Valley MHP			APPLE VALLEY
Carondelet Street Apartments	[redacted]0058	2,655,829.20	LOS ANGELES
Tudor Apartments			LOS ANGELES
Irolo Apartments			LOS ANGELES
Carlin Terrace Apartments			LYNWOOD
Regina Apartments			LOS ANGELES
Coliseum Apartments			LOS ANGELES
Aspen Meadows Apartments			LAS VEGAS
		5,224,001.41	
		226,955,909.24	

EXHIBIT 2 - Assumption Agreement

EXHIBIT 2 - Assumption Agreement

Prepared by, and after recording
Return to:

Cassin & Cassin LLP
711 Third Avenue – 20th Floor
New York, New York 10017
Attention: Recording Department

APN: 140-19-202-003
County: Clark

ASSUMPTION AND RELEASE AGREEMENT

Regency Heights Apartments
3650 East Lake Mead Boulevard
Las Vegas, Nevada

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ASSUMPTION AND RELEASE AGREEMENT

This ASSUMPTION AND RELEASE AGREEMENT ("**Agreement**") is dated as of July 15, 2015 by and among **REGENCY HEIGHTS LAS VEGAS LLC**, a Delaware limited liability company ("**Transferor**"), **WESTLAND REGENCY HEIGHTS LLC**, a Delaware limited liability company ("**Transferee**"), **CHARLES HILL, EDWARD LORIN, THE HILL FAMILY LIVING TRUST DATED SEPTEMBER 24, 1998** and **THE LORIN FAMILY TRUST, DATED MARCH 21, 2001** (collectively, "**Original Guarantor**"), **ALEVY DESCENDANTS TRUST NUMBER 1** ("**New Guarantor**") and **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Fannie Mae**").

RECITALS:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of November 1, 2012, executed by and between Transferor and **PILLAR MULTIFAMILY, LLC**, a Delaware limited liability company ("**Original Lender**") (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), Original Lender made a loan to Transferor in the original principal amount of **THREE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS ($3,200,000.00)** (the "**Mortgage Loan**"), as evidenced by, among other things, that certain Multifamily Note dated as of November 1, 2012, executed by Transferor and made payable to Original Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Note**"), which Note has been assigned to Fannie Mae. The current servicer of the Mortgage Loan is Original Lender ("**Loan Servicer**").

B. In addition to the Loan Agreement, the Mortgage Loan and the Note are secured by, among other things, (i) a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of November 1, 2012 and recorded November 2, 2012 in Book 20121102 as Instrument No. 04044 in the Office of the County Clerk, Clark County, Nevada (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Security Instrument**") encumbering the land as more particularly described in Exhibit A attached hereto (the "**Mortgaged Property**"); and (ii) an Environmental Indemnity Agreement by Transferor for the benefit of Original Lender dated as of the date of the Loan Agreement (the "**Environmental Indemnity**").

C. The Security Instrument has been assigned to Fannie Mae pursuant to that certain Assignment of Security Instrument dated as of November 1, 2012 and recorded November 2, 2012 in Book 20121102 as Instrument No. 04047 in the Office of the County Clerk, Clark County, Nevada.

D. The Loan Agreement, the Note, the Security Instrument, the Environmental Indemnity and any other documents executed in connection with the Mortgage Loan, including but not limited to those listed on Exhibit B to this Agreement, are referred to collectively as the

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"**Loan Documents.**" Transferor is liable for the payment and performance of all of Transferor's obligations under the Loan Documents.

E. Original Guarantor is liable under the Guaranty of Non-Recourse Obligations dated as of November 1, 2012 (the "**Guaranty**").

F. Each of the Loan Documents has been duly assigned or endorsed to Fannie Mae.

G. Fannie Mae has been asked to consent to (i) the transfer of the Mortgaged Property to Transferee and the assumption by Transferee of the obligations of Transferor under the Loan Documents (the "**Transfer**") and (ii) the release of Original Guarantor from its obligations under the Guaranty and accept the assumption by New Guarantor of Original Guarantor's obligations under the Guaranty (the "**Guarantor Assumption**").

H. Fannie Mae has agreed to consent to the Transfer and Guarantor Assumption subject to the terms and conditions stated below.

<u>AGREEMENTS</u>:

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Defined Terms.

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. The following terms, when used in this Agreement, shall have the following meanings:

"**Amended Loan Agreement**" means either (a) the Amendment to Multifamily Loan and Security Agreement executed by Transferee and Fannie Mae dated as of even date herewith, together with the Loan Agreement, or (b) the Amended and Restated Multifamily Loan and Security Agreement executed by Transferee and Fannie Mae dated as of even date herewith.

"**Claims**" means any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which Transferor, Original Guarantor, or any of their respective partners, members, officers, agents or employees, may now or hereafter have against the Indemnitees, if any and irrespective of whether any such claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Mortgage Loan, but in each case only to the extent permitted by applicable law.

"**Indemnitees**" means, collectively, Original Lender, Fannie Mae, Loan Servicer and their respective successors, assigns, agents, directors, officers, employees and attorneys, and each current or substitute trustee under the Security Instrument.

"**Transfer Fee**" means $30,516.42.

3. Assumption of Transferor's Obligations.

Transferor hereby assigns and Transferee hereby assumes all of the payment and performance obligations of Transferor set forth in the Note, the Security Instrument, the Loan Agreement, and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified from time to time, including payment of all sums due under the Loan Documents. Transferee further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Loan Documents had been made, executed and delivered by Transferee.

4. Assumption by New Guarantor; Release of Transferor and Original Guarantor.

New Guarantor hereby assumes all liability of Original Guarantor under the provisions of the Guaranty.

In reliance on Transferor's, Original Guarantor's and Transferee's and New Guarantor's representations and warranties in this Agreement, Fannie Mae releases Transferor and Original Guarantor from all of their respective obligations under the Loan Documents other than for any liability pursuant to this Agreement, the Guaranty and the Environmental Indemnity for any liability that relates to the period prior to the date hereof, regardless of when such environmental liability is discovered. If any material element of the representations and warranties made by Transferor and Original Guarantor contained herein is false as of the date of this Agreement, then the release set forth in this Section 4 will be deemed cancelled as of the date of this Agreement and Transferor and Original Guarantor will remain obligated under the Loan Documents as though there had been no such release.

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5. Transferor's and Original Guarantor's Representations and Warranties.

Transferor and Original Guarantor represent and warrant to Fannie Mae as of the date of this Agreement that:

(a) the Note has an unpaid principal balance of $3,051,641.55 and prior to default currently bears interest at the rate of four and 10/100 percent (4.10%) per annum;

(b) the Loan Documents require that monthly payments of principal and interest in the amount of $15,462.35 be made on or before the first (1st) day of each month, continuing to and including November 1, 2022, when all sums due under the Loan Documents will be immediately due and payable in full;

(c) there are no defenses, offsets or counterclaims to the Note, the Security Instrument, the Loan Agreement, the Guaranty or the other Loan Documents;

(d) there are no defaults by Transferor under the provisions of the Note, the Security Instrument, the Loan Agreement, the Guaranty or the other Loan Documents;

(e) all provisions of the Note, the Security Instrument, the Loan Agreement, the Guaranty and other Loan Documents are in full force and effect; and

(f) there are no subordinate liens covering or relating to the Mortgaged Property, nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Mortgaged Property, nor has notice of a lien or notice of intent to file a lien been received except for mechanics' or materialmen's liens which attach automatically under the laws of the Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Transferor is not delinquent in the payment for any such services or materials.

6. Transferee's and New Guarantor's Representations and Warranties.

Transferee and New Guarantor represent and warrant to Fannie Mae as of the date of this Agreement that neither Transferee nor any New Guarantor has any knowledge that any of the representations made by Transferor and Original Guarantor in Section 5 above are not true and correct.

7. Consent to Transfer.

(a) Fannie Mae hereby consents to the Transfer and to the assumption by Transferee of all of the obligations of Transferor under the Loan Documents, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the transfer of the Mortgaged Property to Transferee is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Lender's consent pursuant to the terms of the Loan Agreement.

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(b) Transferor, Transferee, New Guarantor and Original Guarantor understand and intend that Fannie Mae will rely on the representations and warranties contained herein.

8. Consent to Guarantor Assumption.

Fannie Mae hereby consents to the Guarantor Assumption, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the Guarantor Assumption is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Lender's consent pursuant to the terms of the Loan Agreement.

9. Amendment and Modification of Loan Documents.

As additional consideration for Fannie Mae's consent to the Transfer and Guarantor Assumption as provided herein, Transferee, New Guarantor and Fannie Mae hereby agree to a modification and amendment of the Loan Documents as set forth in the Amended Loan Agreement.

10. Consent to Key Principal Change.

The parties hereby agree that the party identified as the Key Principal in the Loan Agreement is hereby changed to **YAAKOV GREENSPAN** and **ALEVY DESCENDANTS TRUST NUMBER 1**.

11. Limitation of Amendment.

Except as expressly stated herein, all terms and conditions of the Loan Documents, including the Loan Agreement, Note, Security Instrument and Guaranty, shall remain unchanged and in full force and effect.

12. Further Assurances.

Transferee and New Guarantor agree at any time and from time to time upon request by Fannie Mae to take, or cause to be taken, any action and to execute and deliver any additional documents which, in the opinion of Fannie Mae, may be necessary in order to assure to Fannie Mae the full benefits of the amendments contained in this Agreement.

13. Modification.

This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. Except as expressly modified by this Agreement, the Loan Documents shall remain in full force and effect

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and this Agreement shall have no effect on the priority or validity of the liens set forth in the Security Instrument or the other Loan Documents, which are incorporated herein by reference. Transferee and New Guarantor hereby ratify the agreements made by Transferor and Original Guarantor to Fannie Mae in connection with the Mortgage Loan and agree(s) that, except to the extent modified hereby, all of such agreements remain in full force and effect.

14. Priority; No Impairment of Lien.

Nothing set forth herein shall affect the priority, validity or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the date of this Agreement, become liable, primarily or secondarily, under the Loan Documents.

15. Costs.

Transferee and Transferor agree to pay all fees and costs (including attorneys' fees) incurred by Fannie Mae and the Loan Servicer in connection with Fannie Mae's consent to and approval of the Transfer, Guarantor Assumption, and the Transfer Fee in consideration of the consent to that transfer.

16. Financial Information.

Transferee and New Guarantor represent and warrant to Fannie Mae that all financial information and information regarding the management capability of Transferee and New Guarantor provided to the Loan Servicer or Fannie Mae was true and correct as of the date provided to the Loan Servicer or Fannie Mae and remains materially true and correct as of the date of this Agreement.

17. Indemnification.

(a) Transferee and Transferor and Original Guarantor and New Guarantor each unconditionally and irrevocably releases and forever discharges the Indemnitees from all Claims, agrees to indemnify the Indemnitees, and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims or the transfer of the Mortgaged Property. Notwithstanding the foregoing, Transferor and Original Guarantor shall not be responsible for any Claims arising from the action or inaction of Transferee and New Guarantor, and Transferee and New Guarantor shall not be responsible for any Claims arising from the action or inaction of Transferor or Original Guarantor.

(b) This release is accepted by Fannie Mae and Loan Servicer pursuant to this Agreement and shall not be construed as an admission of liability on the part of any party.

(c) Each of Transferor and Transferee and Original Guarantor and New Guarantor hereby represents and warrants that it has not assigned, pledged or contracted to assign or pledge any Claim to any other person.

18. Non-Recourse.

Article 3 (Personal Liability) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

19. Governing Law; Consent to Jurisdiction and Venue.

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

20. Notice.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

(1) in writing and shall be:

(A) delivered, in person;

(B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;

(C) sent by overnight courier; or

(D) sent by electronic mail with originals to follow by overnight courier;

(2) addressed to the intended recipient at its respective address set forth at the end of this Agreement; and

(3) deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address.

Any party to this Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Agreement in accordance with this Section 20.

(c) Default Method of Notice.

Any required notice under this Agreement which does not specify how notices are to be given shall be given in accordance with this Section 20.

(d) Receipt of Notices.

No party to this Agreement shall refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

21. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

22. Severability; Entire Agreement; Amendments.

The invalidity or unenforceability of any provision of this Agreement or any other Loan Document shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect. This Agreement contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Agreement. This Agreement may not be amended or modified except by written agreement signed by the parties hereto.

23. Construction.

(a) The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.

(b) Any reference in this Agreement to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Agreement or to a Section or Article of this Agreement. All exhibits and schedules attached to or referred to in this Agreement, if any, are incorporated by reference into this Agreement.

(c) Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(d) Use of the singular in this Agreement includes the plural and use of the plural includes the singular.

(e) As used in this Agreement, the term "including" means "including, but not limited to" or "including, without limitation," and is for example only and not a limitation.

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(f) Whenever a party's knowledge is implicated in this Agreement or the phrase "to the knowledge" of a party or a similar phrase is used in this Agreement, such party's knowledge or such phrase(s) shall be interpreted to mean to the best of such party's knowledge after reasonable and diligent inquiry and investigation.

(g) Unless otherwise provided in this Agreement, if Lender's approval is required for any matter hereunder, such approval may be granted or withheld in Lender's sole and absolute discretion.

(h) Unless otherwise provided in this Agreement, if Lender's designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender's sole and absolute discretion.

(i) All references in this Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

"Lender may" shall mean at Lender's discretion, but shall not be an obligation.

24. WAIVER OF TRIAL BY JURY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES, THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, the parties intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

TRANSFEROR:

REGENCY HEIGHTS LAS VEGAS LLC, a Delaware limited liability company

By: **SRC LAS VEGAS III, LLC**, a Nevada limited liability company, its Sole Member

By:________________________ (SEAL)
Name: Charles Hill
Title: Manager

By:________________________ (SEAL)
Name: Edward Lorin
Title: Manager

Notice Address: 1411 5th Street, Suite 406
Santa Monica, California 90401

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/10/15 before me, Myron Chang, notary public, personally appeared **CHARLES HILL**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MYRON CHANG
Commission # 2000585
Notary Public - California
Los Angeles County
My Comm. Expires Dec 9, 2016

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________
Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/10/15 before me, Myron Chang, notary public, personally appeared **EDWARD LORIN**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MYRON CHANG
Commission # 2000585
Notary Public - California
Los Angeles County
My Comm. Expires Dec 9, 2016

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________
Signature of Notary Public

ORIGINAL GUARANTOR:

____
CHARLES HILL

Notice Address: 1411 5th Street, Suite 406
Santa Monica, California 90401

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/10/15 before me, Myron Chang, notary public personally appeared **CHARLES HILL**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MYRON CHANG
Commission # 2000585
Notary Public - California
Los Angeles County
My Comm. Expires Dec 9, 2016

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature______________________
Signature of Notary Public

ORIGINAL GUARANTOR:

____
EDWARD LORIN

Notice Address: 1411 5th Street, Suite 406
Santa Monica, California 90401

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/10/15 before me, Myron Chang, notary public personally appeared **EDWARD LORIN**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

MYRON CHANG
Commission # 2000585
Notary Public - California
Los Angeles County
My Comm. Expires Dec 9, 2016

WITNESS my hand and official seal.

Signature______________________________
Signature of Notary Public

ORIGINAL GUARANTOR:

THE HILL FAMILY TRUST DATED SEPTEMBER 24, 1998

By: ______________________ (SEAL)
Name: Charles Hill
Title: Trustee

Notice Address: 1411 5th Street, Suite 406
Santa Monica, California 90401

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/10/15 before me, Myron Chang, notary public personally appeared **CHARLES HILL**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MYRON CHANG
Commission # 2000585
Notary Public - California
Los Angeles County
My Comm. Expires Dec 9, 2016

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________
Signature of Notary Public

ORIGINAL GUARANTOR:

THE LORIN FAMILY TRUST, DATED MARCH 21, 2001

By:__________________________(SEAL)
Name: Edward Lorin
Title: Trustee

Notice Address: 1411 5th Street, Suite 406
Santa Monica, California 90401

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On 7/10/15 before me, Myron Chang, notary public, personally appeared **EDWARD LORIN,** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MYRON CHANG
Commission # 2000585
Notary Public - California
Los Angeles County
My Comm. Expires Dec 9, 2016

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________________
Signature of Notary Public

TRANSFEREE:

WESTLAND REGENCY HEIGHTS LLC, a Delaware limited liability company

By:________________________ (SEAL)
Name: Yaakov Greenspan
Title: Manager

The name, chief executive office and organizational identification number of Borrower (as Debtor under any applicable Uniform Commercial Code) are:

Debtor Name/Record Owner: **WESTLAND REGENCY HEIGHTS LLC**, a Delaware limited liability company

Debtor Chief Executive Office Address:

520 West Willow Street
Long Beach, California 90806

Debtor Organizational ID Number: N/A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On July 10 2015 before me, Maria R. Scandalios, personally appeared **YAAKOV GREENSPAN**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MARIA R. SCANDALIOS
Commission # 2034477
Notary Public - California
Los Angeles County
My Comm. Expires Aug 21, 2017

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________
Signature of Notary Public

NEW GUARANTOR:

ALEVY DESCENDANTS TRUST NUMBER 1

By:______________________________(SEAL)
Name: Yaakov Greenspan
Title: Trustee

Notice Address: 520 West Willow Street
Long Beach, California 90806

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On July 10, 2015 before me, Maria R. Scandalios, personally appeared **YAAKOV GREENSPAN**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

MARIA R. SCANDALIOS
Commission # 2034477
Notary Public - California
Los Angeles County
My Comm. Expires Aug 21, 2017

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________
Signature of Notary Public

FANNIE MAE:

FANNIE MAE

By: **PILLAR MULTIFAMILY, LLC,** a Delaware limited liability company, its Attorney-in-Fact

By: _______________ (SEAL)
Name: Paul Sherrington
Title: Authorized Signatory

Notice Address: 8245 Boone Boulevard, Suite 710
Vienna, Virginia 22182

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared **PAUL SHERRINGTON**, the **AUTHORIZED SIGNATORY** of **PILLAR MULTIFAMILY, LLC,** a Delaware limited liability company, the **ATTORNEY-IN-FACT** for **FANNIE MAE,** the limited liability company that executed the foregoing instrument, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited liability company, and that he executed the same as the act of such limited liability company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of July, 2015.

Madeline E. Mooney-Harte
Notary Public in and for New York
County, State of New York
My Commission Expires: Feb. 23, 2019

MADELINE E. MOONEY-HARTE
Notary Public, State of New York
Registration #01MO6319622
Qualified In New York County
Commission Expires Feb. 23, 2019

EXHIBIT A to
ASSUMPTION AND RELEASE AGREEMENT

[Description of the Land]

PARCEL I:

A PORTION OF THE EAST (E 1/2) OF GOVERNMENT LOT TWO (2), SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.B. &M., CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT TWO (2); THENCE NORTH 89°33'46" WEST ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT TWO (2), 360.91 FEET; THENCE NORTH 00°44'27" WEST 703.69 FEET; THENCE NORTH 89°33'46" WEST, 314.35 FEET TO A POINT ON THE WEST LINE OF SAID EAST HALF (E 1/2); THENCE NORTH 00°52'52" WEST ALONG SAID WEST LINE 649.45 FEET TO A POINT ON THE NORTH LINE OF SAID GOVERNMENT LOT TWO (2); THENCE SOUTH 89°38'21" EAST ALONG SAID NORTH LINE 669.36 FEET TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT TWO (2); THENCE SOUTH 01°03'25" EAST ALONG THE EAST LINE OF SAID GOVERNMENT LOT TWO (2), 1354.18 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE SOUTH 40.00 FEET, THE EAST 20.00 FEET, THE NORTH 30.00 FEET AND THE WEST 30.00 FEET ALONG THAT PORTION DESCRIBED ABOVE OF THE SAID WEST LINE OF THE EAST HALF (E 1/2) OF GOVERNMENT LOT TWO (2).

ALSO EXCEPTING THEREFROM A PORTION LYING AND BEING WITHIN THE BOUNDARIES OF REGATTA ESTATES AS SHOWN BY MAP THEREOF ON FILE IN BOOK 22 OF PLATS, PAGE 98, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF THE EAST HALF (E 1/2) OF GOVERNMENT LOT TWO (2), SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.B. &M., CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT TWO (2); THENCE NORTH 01°03'25" WEST, ALONG THE EASTERLY LINE THEREOF, 425.05 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 01°03'25" WEST, 329.32 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF REGATTA ESTATES AS SHOWN BY A PLAT ON FILE AS BOOK 22 OF PLATS, PAGE 98, ON FILE IN THE CLARK COUNTY, NEVADA, OFFICIAL RECORDS; THENCE ALONG THE SAID SOUTHERLY BOUNDARY THE FOLLOWING COURSES: SOUTH 88°56'35" WEST, 140.00 FEET; NORTH 01°03'25" WEST, 457.72 FEET; NORTH 89°38'21" WEST, 529.77 FEET TO A POINT ON THE WEST LINE OF THE AFORESAID EAST HALF (E 1/2) OF THE GOVERNMENT LOT TWO (2); THENCE ALONG SAID LINE, SOUTH 00°52'52" EAST, 503.92 FEET; THENCE DEPARTING SAID LINE, SOUTH 89°33'46" EAST, 314.35 FEET; THENCE SOUTH 00°44'27" EAST, 278.69 FEET; THENCE SOUTH 89°33'46" EAST, 358.57 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT TWO (2); THENCE NORTH 01°03'25" WEST ALONG THE EAST LINE OF SAID GOVERNMENT LOT TWO (2), 76.46 FEET; THENCE SOUTH 88°56'35" WEST, 20.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 88°56'35" WEST, 10.00 FEET; THENCE NORTH 01°03'26" WEST ALONG A LINE 30.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE, 349.38 FEET; THENCE SOUTH 89°33'46" EAST, 10.00 FEET; THENCE SOUTH 01°03'25" EAST, 349.12 FEET TO THE TRUE POINT OF BEGINNING AS CONVEYED TO CLARK COUNTY BY DEED RECORDED AUGUST 27, 1985 IN BOOK 2174 AS DOCUMENT NO. 2133168 OF OFFICIAL RECORDS.

AND ALSO EXCEPTING THEREFROM THOSE PORTIONS OF LAKE MEAD BOULEVARD AND SANDY LANE AS THE SAME NOW EXISTS.

PARCEL II:

BEING A PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.B. &M.

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 19; THENCE SOUTH 89°24'44" EAST 675.555 FEET ALONG SAID SECTION LINE; THENCE SOUTH 0°25'41" EAST, 2002.84 FEET TO A POINT; THENCE CONTINUING SOUTH 0°25'41" EAST, 703.69 FEET TO A POINT ON THE SOUTHERLY LINE OF GOVERNMENT LOT TWO (2); THENCE SOUTH 89°15'29" EAST, 338.888 FEET TO A POINT; THENCE NORTH 0°25'41" WEST, 550 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°25'41" WEST, 153.69 FEET TO A POINT; THENCE NORTH 89°15'29" WEST, 169.444 FEET TO A POINT; THENCE SOUTH 153.69 FEET TO A POINT 139.44 FEET WESTERLY OF THE EASTERLY LINE OF THE PREMISES HEREIN INTENDED TO BE DESCRIBED; THENCE EASTERLY ON A LINE PARALLEL TO THE NORTHERLY LINE OF THE PREMISES HEREIN INTENDED TO BE DESCRIBED 169.444 FEET TO THE TRUE POINT OF BEGINNING.

SAVE AND EXCEPT THE EAST 30 FEET TO BE USED FOR ROAD PURPOSES.

PARCEL III:

BEING THE SOUTHERLY 550 FEET OF THE EAST HALF (E 1/2) OF THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.B. &M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 19; THENCE SOUTH 89°24'44" EAST, 675.555 FEET TO A POINT; THENCE SOUTH 0°25'41" EAST, 2002.84 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0°25'41" EAST, 703.69 FEET TO A POINT; THENCE SOUTH 89°15'29" EAST, 338.888 FEET TO A POINT; THENCE NORTH 0°28'26" WEST, 703.29 FEET TO A POINT; THENCE NORTH 89°24'44" WEST, 338.888 FEET TO THE TRUE POINT OF BEGINNING OF THE PREMISES HEREINABOVE DESCRIBED.

SAVING AND EXCEPTING THEREFROM ALL ROAD AND HIGHWAYS.

SAVING AND EXCEPTING THEREFROM THE EAST 30 FEET AND THE SOUTH 40 FEET THEREFROM FOR ROAD PURPOSES.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LAKE MEAD BOULEVARD AS THE SAME NOW EXISTS.

AS TO PARCEL I AND III:

FURTHER EXCEPTING THEREFROM THE INTEREST IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

PORTION OF THE EAST HALF (E 1/2) OF GOVERNMENT LOT TWO (2), SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.M., CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT TWO (2); THENCE NORTH 01°03'25" WEST ALONG THE EAST LINE OF SAID GOVERNMENT LOT TWO (2), 76.46 FEET; THENCE SOUTH 88°56'35" WEST, 30.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 01°03'25" EAST ALONG A LINE 30.00 FEET WEST OF THE PARALLEL OF SAID EAST LINE OF GOVERNMENT LOT TWO (2), 35.66 FEET; THENCE NORTH 89°33'46" WEST ALONG A LINE OF 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID GOVERNMENT LOT TWO (2), 470.12 FEET; THENCE NORTH 00°44'27" WEST, 10.00 FEET; THENCE SOUTH 89°33'46" EAST, 444.41 FEET TO A POINT OF CURVE, SAID CURVE BEING

CONCAVE NORTHWESTERLY HAVING A RADIUS OF 25.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 91°29'39"; THENCE CURVING TO THE LEFT ALONG THE ARC OF SAID CURVE, 39.92 FEET TO THE TRUE POINT OF BEGINNING, AS CONVEYED TO CLARK COUNTY BY DEED RECORDED AUGUST 27, 1985 IN BOOK 2174 AS DOCUMENT NO. 2133168 OF OFFICIAL RECORDS.

PARCEL IV:

BEING A PORTION OF GOVERNMENT LOT TWO (2) LYING WITHIN THE NORTHWEST QUARTER (NW1/4) OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.M., CLARK COUNTY NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT TWO (2); THENCE NORTH 89°33'46" WEST ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT TWO (2) A DISTANCE OF 360.91 FEET; THENCE NORTH 00°44'27" WEST, A DISTANCE OF 50.01 FEET TO THE NORTHERLY LINE OF LAKE MEAD BLVD. AND BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00°44'27" WEST, A DISTANCE OF 653.64 FEET TO THE SOUTHERLY LINE OF A PARCEL CONVEYED TO REGENCY MEADOWS NEVADA, LLC RECORDED IN BOOK 20051229, INSTRUMENT NUMBER 0001527, DATED DECEMBER 29, 2005; THENCE NORTH 89°33'46" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 5.46 FEET TO THE EAST LINE OF THE WEST 308.89 FEET OF SAID GOVERNMENT LOT TWO (2) AS RECORDED IN FILE 22, PAGE 98 OF SURVEYS; THENCE SOUTH 00°52'51" EAST ALONG SAID EAST LINE A DISTANCE OF 653.68 FEET TO SAID NORTHERLY LINE OF LAKE MEAD BLVD.; THENCE SOUTH 89°33'46" EAST ALONG SAID NORTHERLY LINE A DISTANCE OF 3.87 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS LEGAL DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 02, 2012 IN BOOK 20121102 AS INSTRUMENT NO. 04043.

SAID PROPERTY BEING FURTHER DESCRIBED AS A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 62 EAST, MOUNT DIABLO BASE MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF GOVERNMENT LOT TWO (2); THENCE NORTH 01°03'25" WEST FOR A DISTANCE OF 76.46 FEET TO A POINT ON THE CENTERLINE OF SANDY LANE; THENCE LEAVING THE CENTERLINE OF SANDY LANE, SOUTH 88°56'35" WEST FOR A DISTANCE OF 30.00 FEET TO THE TRUE POINT OF BEGINNING.

THENCE ALONG A NON-TANGENT CURVE CONCAVING NORTHWESTERLY WITH A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 91°29'24", A TANGENT DISTANCE OF 25.66 FEET FOR AN ARC LENGTH OF 39.92 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LAKE MEAD BOULEVARD;
THENCE NORTH 89°33'46" WEST FOR A DISTANCE OF 448.27 FEET TO A POINT;
THENCE NORTH 00°52'51" WEST FOR A DISTANCE OF 653.68 FEET TO A POINT;
THENCE SOUTH 89°33'46" EAST FOR A DISTANCE OF 144.90 FEET TO A POINT;
THENCE SOUTH 00°44'27" EAST FOR A DISTANCE OF 278.56 FEET TO A POINT;
THENCE SOUTH 89°33'46" EAST FOR A DISTANCE OF 328.56 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SANDY LANE; THENCE SOUTH 01°03'25" EAST FOR A DISTANCE OF 349.47 FEET TO THE POINT OF BEGINNING

EXHIBIT B to
ASSUMPTION AND RELEASE AGREEMENT

1. Multifamily Loan and Security Agreement (including any amendments, riders, exhibits, addenda or supplements, if any) dated as of November 1, 2012 by and between **REGENCY HEIGHTS LAS VEGAS LLC**, a Delaware limited liability company and **PILLAR MULTIFAMILY, LLC**, a Delaware limited liability company.

2. Multifamily Note dated as of November 1, 2012 by **REGENCY HEIGHTS LAS VEGAS LLC**, a Delaware limited liability company for the benefit of **PILLAR MULTIFAMILY, LLC**, a Delaware limited liability company, (including any amendments, riders, exhibits, addenda or supplements, if any).

3. Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, (including any amendments, riders, exhibits, addenda or supplements, if any) dated as of November 1, 2012, by **REGENCY HEIGHTS LAS VEGAS LLC**, a Delaware limited liability company for the benefit of **PILLAR MULTIFAMILY, LLC**, a Delaware limited liability company.

4. Environmental Indemnity Agreement dated as of November 1, 2012, by **REGENCY HEIGHTS LAS VEGAS LLC**, a Delaware limited liability company for the benefit of **PILLAR MULTIFAMILY, LLC**, a Delaware limited liability company.

5. Guaranty of Non-Recourse Obligations dated as of November 1, 2012, by Charles Hill, Edward Lorin, **THE HILL FAMILY LIVING TRUST DATED SEPTEMBER 24, 1998** and **THE LORIN FAMILY TRUST, DATED MARCH 21, 2001** for the benefit of **PILLAR MULTIFAMILY, LLC**, a Delaware limited liability company.

4

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12/16/2020 4:19 PM
Steven D. Grierson
CLERK OF THE COURT

OPPS

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

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS.

CASE NO. A-20-819412-B

DEPT NO. XIII

OPPOSITION TO PLAINTIFF'S MOTION TO STAY PENDING APPEAL ON AN ORDER SHORTENING TIME; OPPOSITION TO GRANDBRIDGE REAL ESTATE CAPITAL, LLC's JOINDER; COUNTER-MOTION TO COMPEL COMPLIANCE WITH NOVEMBER 20, 2020 ORDER; MEMORANDUM OF POINTS AND AUTHORITIES

Hearing Date: December 17, 2020
Hearing Time: 9:00 a.m.

PLEASE TAKE NOTICE that Westland will bring this Counter-Motion to Compel Compliance with the Court's November 20, 2020 Order before the District Court, Department XIII (Courtroom 3D) located at Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV, on the 17th day of December 2020, at 9:00 a.m., or as soon thereafter as counsel may be heard.

Additionally, Defendants/Counterclaimants/Third-Party Plaintiffs, Westland Liberty Village, LLC ("Liberty LLC") and Westland Village Square, LLC ("Square LLC" and in combination with Liberty LLC, "Westland"), by and through its counsel of record, the Law Offices of John Benedict, hereby files this Opposition to Plaintiff's Motion for Stay Pending Appeal on Order Shortening Time, Opposition to Grandbridge Real Estate Capital, LLC's Joinder to Federal National Mortgage Association's Motion to Stay Pending Appeal on an Order Shortening Time, and Counter-Motion to Compel Compliance By Counter-Defendant Federal National Mortgage Association ("Fannie Mae") with Court's November 20, 2020 Order.

The Rules of Practice for the Eighth Judicial District permit the granting of orders shortening time when good cause exists. See EDCR 2.26. In this case, Plaintiff has made a Motion to Stay Pending Appeal on Order Shortening Time, as such Westland requests that this counter-motion be scheduled to the same date based on EDCR 2.20(f) because this motion requests an order to compel by a date certain that is based on the same order for which Fannie Mae requests a stay pending appeal. If Westland's Countermotion is not heard simultaneously with Fannie Mae's Motion, it would cause immediate and irreparable injury, loss, and damage to Westland, if Fannie Mae is allowed to continue to abuse the borrower-lender contractual relationship until the appeal of the Court's November 20, 2020 Order.

This Countermotion is made pursuant to NRCP 65(d), NRS 33.010, & NRS 22.030(2), and is further based on the pleadings on file herein, the attached Memorandum of Points and Authorities, and any arguments of counsel that this Court may allow at the time of the hearing.

Dated: December 16, 2020

LAW OFFICES OF JOHN BENEDICT

____/s/ John Benedict____________________
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MEMORANDUM OF POINTS AND AUTHORITY

I. INTRODUCTION

Westland invests in the Las Vegas community. In this case, Westland invested $60.3 million to purchase two large multi-family communities with a troubled past, by assuming $38.4 million of loans from Fannie Mae, and paying an additional $20 million in equity. After its initial investment, Westland kept spending to the tune of $1.8 million on capital improvements by September 2019, and $3.5 million total on capital improvements by September 2020. During the first two years of ownership Westland invested another $1,573,600 in private security. The end result has been a property that has been turned around, with reduced crime, a dedicated 32 member staff, and that has even received commendations from the Clark County Commissioner, Nevada State Apartment Association, and Las Vegas Metro Police Department. Moreover, Westland has paid its bills, or more accurately stated, has overpaid its bills to it Lender by more than $200,000, so Westland is more than current on its debt service payments.

Notwithstanding this huge investment and despite there being no monetary default, in July 2019, during Westland's rebuilding of the two properties, Fannie Mae demanded access to conduct an improper property condition assessment. By October 2019, Fannie Mae's loan servicer, Grandbridge Real Estate Capital, LLC, ("Grandbridge") was involved, and based on that property condition assessment demanded an additional $2.85 million reserve deposit ostensibly for more repairs. This demand was made despite the loan agreements allowing for no more than about $143,000 in such reserves, and even though Grandbridge was already holding $1 million of Westland's funds in an insurance reserve, and several hundred thousand more in other escrow accounts. When Westland declined to send the $2.85 million as Fannie Mae demanded, Grandbridge forwarded a Notice of Default.

A few months later Fannie Mae began the foreclosure process, and sought to have a receiver appointed. Westland responded with a Countercomplaint and Cross-Motion for a Preliminary Injunction. Ultimately, on October 13, 2020, having already reviewed a voluminous record that she said made her "felt like she did a trial," and after investing "hours and hours" reviewing all the documents and considering all of the legal arguments, the Honorable Kerry Earley heard those motions, denied Fannie Mae's Application for a Receiver and granted Westland's Preliminary Injunction. At that hearing, Judge Earley made clear that she was deciding the motion in Westland's favor, and found that Westland had a reasonable likelihood of success on the merits and would be irreparably harmed if Westland's requested relief was not granted. At that point, both Westland and the Court believed Westland would be returned to its pre-default status. But instead, Grandbridge made a request to transfer the matter to this Court, and along with Fannie Mae, filed an appeal.

Fannie Mae's Motion for a "Stay" is flawed in that it follows the same tactic as its earlier application for appointment of a receiver, namely that it necessarily relies on this Court finding – this time, contrary to Judge Earley's ruling – that a non-existent non-monetary default occurred, even though Westland has not missed a single debt service payment and has actually overpaid the loans. This time Fannie Mae challenges the Order Granting a Preliminary Injunction, not by seeking a stay consistent with the title to its motion, but by directly challenging the propriety of a portion of the injunction order. Thereafter, Fannie Mae attacks the merits of a preliminary injunction motion, similar to a Motion for Reconsideration, rather than a stay by: 1) arguing the non-foreclosure aspects are mandatory as opposed to prohibitory, 2) devoting five of the eight pages of the "stay" argument to an attempt to re-litigate the underlying propriety of the injunction, 3) arguing that "interfering with Westland's enjoyment of the Properties" equates to "quiet enjoyment," and 4) arguing the bond's inadequacy.[1] Thus, Fannie Mae's "Stay" motion amounts to an EDCR Rule 2.24 Motion for Reconsideration, without leave, on shortened time, with a voluminous record, before a new jurist. If granted, this Motion will not preserve the *status quo ante litem* for appeal, but instead, it would negate much of the relief the Court granted - relief that only requires Fannie Mae to service the loan in the same manner as it is contractually required to do in the absence of a default while continuing to receive the full non-accelerated loan payments from Westland.

Notably, in making this Motion, Fannie Mae insidiously buries within its "factual background" the ultimate legal conclusion it requests from the Court, namely that: Westland "failed to meet their obligations under the Loan Documents by failing to make adequate repairs and refusing to fund the repair and replacement accounts." (Motion, at 9.) However, such a finding is not warranted, because Fannie

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[1] For its part, Fannie Mae's loan servicing agent, Grandbridge, joins in Fannie Mae's motion to argue enforcing the order as to Grandbridge would amount to a lack of due process. Based on the NRCP 65(d)(2), Grandbridge's argument is misplaced, because for an agent to be bound nothing more is required than actual notice of the injunctive order.

Mae has repeatedly failed to, and cannot, show any deterioration of the physical condition of the Properties, as required by the loan documents. As such, the facts support, as the Court found, that "*you can't just say, this is what we want, and if you don't give us what we want, then you're in default. . . [i]f you look at the invoices and everything they did, Mr. Olson, they did a lot. . . It may not have been enough . . . to Fannie Mae, but they did*." (Transcript, at 45:22-47:1.) To be blunt, the Court's ruling, as shown by the comment that Westland "did a lot" was based on the facts that: Westland has invested millions in increased security, repairs, and renovation; Westland has spent countless hours and efforts on-site and with the local community to remove a notorious criminal element from the properties; Westland has improved neighborhood conditions; Westland has fostered community-based services and other critically needed resources in an underserved low-income area. Ultimately, Fannie Mae requests a second time that this Court rely on a specious "default," and if successful this Court would necessarily be finding that Fannie Mae may validly use this Motion for a "Stay" to continue to service the loan agreements in the same manner a loan is serviced for borrowers in default. On that basis, this Motion for a Stay is directly contrary not only to the Court's determination but the law, because returning parties to the status quo after an injunction means the parties should be returned to their "*last uncontested status* which preceded the pending controversy."

Consistent with that standard for a preliminary injunction, the Court noted that "there is a reasonable probability of success on the merits as far as . . . there's a question of fact as to whether there was a default, etcetera. So, I do not want the default to go forward" and flowing from that statement, the Court acted within its discretion by ordering relief that returned the parties to the *last uncontested status* preceding the assertion of a default. Fannie Mae now argues that it would be improperly harmed if that Order is maintained through appeal. The harm it claims is that it will be required to treat Westland as any other borrower and no longer black ball it for the non-existent default, will no longer be permitted to convert nearly $1 million of Westland's funds that were earmarked for insurance repairs that have been completed for months. In short, Fannie Mae will have to adhere to the terms of loan documents it drafted. On that basis, the Court's determination, and the Order that it entered, should not be subject to reconsideration on this Motion, but rather this Court should DENY Fannie Mae's Motion to Stay, and maintain the status quo by GRANTING Westland's Motion to Compel Compliance With the Order for a

Preliminary Injunction.

II. STATEMENT OF FACTS & PROCEDURAL HISTORY

A. Statement of Underlying Facts[2]

Liberty LLC and Square LLC are single-purpose entities that each hold title to one of the properties, which are adjoining multi-family apartment communities, located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 and 5025 Nellis Oasis Lane, Las Vegas, NV 89115, which were purchased on August 29, 2018 (collectively the "Properties").[3] Liberty LLC and Square LLC are entities affiliated with Westland Real Estate Group, which has 50 years of multi-family housing experience and is one of the most experienced housing providers in Nevada, with over 10,000 apartment units in 38 apartment communities in the Las Vegas area, and which employs more than 500 employees, the vast majority of which are in Las Vegas.[4]

Liberty LLC and Square LLC assumed two loan agreements from the prior owners for $29,000,000 and $9,366,000, respectively (the "Loans"), which were loans issued by Grandbridge (the successor to SunTrust Bank) through a joint loan program with Fannie Mae.[5] Westland paid the remainder of the combined $60.3 million purchase price in cash, which resulted in Westland establishing over $20 million in equity in the Properties.[6] Pursuant to the Loan Agreements, Westland was responsible for a monthly debt service obligation of approximately $162,000 for the Liberty Property and $52,000 for the Village Property; and at all relevant times, Westland has been and remains current on all payments required under the Loan Agreements, including overpaying those payments by approximately 10% since February 2020.[7]

The Loans also provided that the borrower would fund two types of reserve escrow accounts, namely the Required Repair and Required Replacement reserve accounts. A specific, agreed-upon

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[2] Due to the shortened time prior to the scheduled hearing, Westland has included an abridged statement of facts, and has not included the voluminous exhibits attached to the Countermotion for a Preliminary Injunction. Westland believes that full statement of facts, and complete set of exhibits was instrumental to show the Court the extraordinary actions taken by Westland to maintain the referenced Properties. Upon request, Westland will provide a full set of those motion papers related to the Countermotion for Preliminary Injunction and corresponding exhibits to chambers.
[3] Counterclaim, ¶ 14, 15, 17.
[4] Counterclaim, ¶ 13.
[5] Counterclaim, ¶ 45-50, 65-66; Counterclaim, Exhibits F & G.
[6] *Id*.
[7] Counterclaim, ¶ 203-204; Counterclaim, Exhibit T.

amount was set for those accounts at the time of the initial loan closing, and those specific amounts were later reduced at the time the Loans were assumed by Westland.[8] Specifically, Lenders reduced the repair and replacement reserves for both Properties to a combined total of $143,319.30.[9] The Loan Agreements also provided Westland would make a monthly deposit into a Replacement Reserve Escrow account of approximately $18,800.80 per month for Liberty LLC and approximately $10,259.06 per month for Square LLC, to provide Lenders with additional security for completing estimated repairs that may be necessary at the Properties in the future, which amounts are included as part of Westland's monthly debt service payments listed above.[10] It is undisputed that the initial funding of the repair and replacement reserves was timely made and that all monthly debt service payments specifically identified in the Loan Agreements have been paid.[11]

Before Westland purchased the Properties in August 2018, the Properties had been in a distressed condition for years, with poor management, exceedingly high levels of serious crime, and onsite physical disrepair.[12] In fact, while in escrow the Properties received a nuisance abatement complaint for extreme levels of crime that threatened the prior owner's interest in the Properties. After Westland's purchase, it spent $1.8 million in capital improvements before the PCA was conducted in September 2019, and approximately $3.5 million by the filing of the request for a receiver; it cleaned up the crime; added a dedicated 32 employee staff; and spent time and money integrating the Properties with local community services, all of which improved the condition of the Properties, as recognized by non-biased third parties such as the Clark County Commissioner and Nevada State Apartment Association, so it is clear no deterioration occurred.[13]

Still, by mid-2019, without a valid basis, Lenders approached Westland and demanded a property condition assessment at the Properties.[14] As there was no basis for such an inspection, Westland would not agree to permit such an inspection at its own cost, but acting in good faith, Westland provided access

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[8] Counterclaim, ¶¶ 55-61, 71-72.
[9] Counterclaim, ¶¶ 71; Counterclaim, Exhibit J, at 5 (replacement reserve maintained at $65,657.03, and repair reserve reduced to $39,375); Counterclaim, Exhibit K, at 5 (replacement reserve set at $38,287.25, with no repair reserve) & 7.
[10] Counterclaim, ¶ 72; Counterclaim, Exhibits H & I
[11] Counterclaim, ¶¶ 1,
[12] Counterclaim, ¶¶ 2, 19-40, 81-90; Counterclaim, Exhibit A.
[13] Counterclaim, ¶¶ 1, 4, 80, 90-119, 208, 212; Counterclaim, Exhibit L & M.
[14] Counterclaim, ¶ 137.

to the Properties after Lenders made certain representations, including that Lenders would cover the cost of any PCA performed.[15] For the reasons listed above, Westland had no concern about providing access to Lenders to maintain its positive relationship with Fannie Mae because it knew the condition of the Properties had not deteriorated but had improved. Most recently, a Fannie Mae executive who was not involved with the matter during 2019, has asserted a decline in the occupancy rate at the Properties as a purported justification for the property condition assessment and foreclosure proceedings,[16] but that assertion is a red herring. The purported basis for "deterioration" is not consistent with the loan documents, which require a showing "that the condition of the Mortgaged Property has deteriorated (ordinary wear and tear excepted) since the Effective Date" of the loan.[17] Simply stated, there has been: 1) no deterioration, 2) of the physical condition of the Mortgaged Property, and 3) certainly no evidence of deterioration since the Effective Date of the loans. Moreover, contrary to Fannie Mae's assertion, no demand was ever made for Westland to complete repairs, as opposed to simply deposit $2.845 million in the reserve accounts, as required by the loan documents. Thus, the assertion of a default, and the demand to fund an additional $2,845,980 of reserves, is contrary to the proper servicing of Westland's loans.

After Lenders had a PCA conducted, on October 18, 2019, Lenders sent Westland a Notice of Demand (the "Notice") that alleged maintenance deficiencies existed at the Properties, as set forth in a September 2019 PCA report, and demanded that Westland deposit additional sums in the Replacement Reserve Account amounting to $2.85 million.[18] Such an assessment would necessarily mean one of two things: 1) the condition of the Properties deteriorated by $2.85 million in one year, despite Westland spending $1.8 million on capital expenditures during the same period, or 2) Lenders employed f3, Inc. to game the system by utilizing a differing standard that artificially inflated its PCA.[19]

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[15] Counterclaim, ¶¶ 138-140.
[16] Motion for a Stay, at 7-8.
[17] The meaning of the term "Condition of the Mortgaged Property" is explicitly addressed in Section 6.01(d) of the Loan, and Section 6.03(c) only permits a PCA after it is found that the condition of the Mortgaged Property has deteriorated. When using the term condition of the Mortgaged Property, the Loan Agreements only address physical conditions at the Properties, including the "construction or condition of the Mortgaged Property or the existence of any structural or other material defect therein" and in situations related to casualty related property damages, where "neither the Land nor the Improvements has sustained any damage other than damage which has been fully repaired." In contrast, occupancy is simply not addressed anywhere in the loan documents, and certainly not in the context of deterioration.
[18] Counterclaim, ¶ 151, 163; Plaintiff's Complaint, Exhibit 12.
[19] Counterclaim, ¶ 142-153; Counterclaim Exhibits D & E; *cf*. Plaintiff's Complaint, Exhibit 11, at 24 & 332.

The alleged maintenance issues cited were based on the use of a varying standard between the initial PCA conducted at the time of the initial loan and the PCA conducted in September 2019.[20] The September 2019 version included increased monthly deferred maintenance charges for capital improvements, but by far the highest immediate cost at each Property was purportedly for the repair of vacant units, which was estimated at a value of $1.9 million for both Properties. Notably, even though f3 inspected vacant units, and the Lenders included those amounts in their calculus to raise reserves by twenty times, the cost to "turn" those units was not even a type of cost included in the earlier 2017 Loan Agreements' schedules derived from the CBRE PCA report.[21] Ultimately, despite the passage of over a year, Lenders never sought a further PCA prior to filing their foreclosure papers or requesting a receiver.

On November 13, 2019, Westland, in good faith, responded to Grandbridge's Notices by contesting the demand.[22] Westland's reasons for objecting included that: 1) the requested $2.85 million adjustment to the reserves would defeat the purpose of the parties' $38.3 million loan, 2) many of the issues identified by Lenders in the PCA report pre-existed the Loans, *i.e.*, the Property was already dilapidated at the time of the initial loan and at the Loan assumption, 3) Westland had already spent $1.8 million for substantial renovations of the Properties, and was continuing to spend money and was improving the Properties, 4) the PCA inspections were slanted through the use of out-of-state vendor f3, Inc. that varied the standard from the original PCAs, 5) Grandbridge improperly obtained the PCA without any right under the Loan Agreements, 6) the PCA was inflated, 7) Lenders never made a demand to perform maintenance, a pre-condition in the Loan Agreements, prior to their demand to fund twenty times higher reserves, and 8) the requested repair reserve increased was duplicative of the request for increased monthly replacement reserve deposits.[23] Thereafter, Westland continued to maintain a good faith dialogue with Lenders, including supplying a copy of its Strategic Business Plan for the Properties, but it was to no avail.[24]

Instead, on December 17, 2019, Lender's counsel forwarded a boilerplate Notice of Default and

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[20] Counterclaim, Exhibit D & E, at 7-9; *cf*. Plaintiff's Complaint, Exhibit 11 & 12, at 24 & 332.
[21] *Id*.
[22] Counterclaim, Exhibit Q.
[23] *Id*.
[24] Counterclaim, ¶¶ 189-199; Counterclaim, Exhibits N, R, S.

Acceleration of Note, rejecting Westland's good-faith proposal, ignoring the substantial renovations that Westland had already made, and failing to address any of the substantive issues that Westland had raised.[25] Since that time, Lenders have refused to address the actual factual circumstances or identify the purported default with any level of particularity and have simply continued to demand payment in full, plus interest, including exceedingly high and manufactured default interest, fees and costs of all sums due under the Loan Agreements.[26]

In February 2020, without prior notice and after a misleading delay, Lenders unilaterally stopped withdrawing monthly ACH payments from Westland's account, which was seemingly done to manufacture a financial default where none had existed.[27] Westland responded by forwarding monthly payments to meet the Loan obligations by check plus approximately 10% to account for any variance in payment because Grandbridge failed to submit monthly debt service statements for this variable loan even after representing that it would do so.[28]

Notably, that was not the first time that Lenders had engaged in unsavory servicing of the Loans, as Westland had previously made several reserve disbursement requests, but Lenders took disingenuous actions to delay and thereafter simply failed to respond to those requests.[29] Such requests included a request for the release of funds that Lenders had no good faith basis to hold after repairs had been performed, including but not limited to nearly $1 million that Lenders obtained from insurance payments earmarked for reconstruction of two buildings at the Liberty Property that Westland has already completed at its sole cost.[30] As Westland has met all conditions for the release of its funds from escrow, and requested the release of a substantial portion of those funds even prior to the assertion of the phantom

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[25] Plaintiff's Complaint, Exhibit 13. Notably, in the Strategic Business Plan, Westland disclosed the preferable rates that it could achieve with its pre-approved preferred vendors for the items listed in the f3 PCA, as opposed to the inflated rates that f3 cited. However, providing such an assessment did not mean that Fannie Mae could demand that Westland achieve those repairs, because nothing supported that the items cited in the f3 PCAs were the result of deterioration of the condition of the Mortgaged Property since the Effective Date, and all known information actually supports that the condition of the Mortgaged Property was actually dilapidated on the Effective Date and had only improved. See e.g., Counterclaim, Exhibits L & M.

[26] *Id*; Counterclaim, ¶¶ 178-179, 195-198, 205-211; Counterclaim, Exhibits R & S.

[27] Counterclaim, ¶¶ 199-203.

[28] Counterclaim, ¶¶ 201-204; Counterclaim, Exhibit T (showing monthly debt service payments being made).

[29] Counterclaim, ¶¶ 154, 285-289.

[30] Id.

default, Westland is entitled to have its funds released.[31]

On July 14, 2020, Fannie Mae filed the NODs alleging a default of the Loan Agreements based on Westland's alleged failure properly to maintain the Properties and to deposit additional funds into the Replacement Reserve Escrow Account upon demand, and later this receiver action.[32] After the September 2019 PCAs, and prior to filing the NODs, no request was ever made by Fannie Mae for access to re-inspect the property, and noticeably absent from Fannie Mae's papers is any demand for access. Based on the foregoing conduct of Lenders, Westland was forced to file its Counterclaim and Countermotion for a Preliminary Injunction to stop all foreclosure proceedings, obtain a ruling that the notice of default was improper, restore its good name, and obtain damages for Lenders' improper conduct.

a. Fannie Mae's Application for a Receiver

By an Application filed on August 12, 2020, Fannie Mae sought the appointment of a receiver. Fannie Mae's primary assertions in the Application was that Westland assumed two loans, a receiver could be appointed in the event of a default, and that an automatic event of default occurred when "failing to increase the reserve amounts as required by Plaintiff" through a $2.85 million demand, which Fannie Mae had done "based upon the results of the property condition assessment conducted for [Fannie Mae] in September 2019." (Application, at 5-8.) After Westland attempted to discuss the extraordinary request with Fannie Mae's Servicer, Fannie Mae filed a Notice of Default in December 2019 and the application for appointment of a receiver on order shortening time nearly a year after the property condition assessment. Importantly, Fannie Mae attached a 17-page proposed Order Appointing Receiver to the Application, which affirmatively sought, *inter alia*, to order that the receiver be provided 34 different "duties, rights, and powers" and set forth 8 separate acts that Westland was enjoined from performing with respect to the receiver. (Application, Exhibit 4, at 3-10, ¶¶ 5 & 7.)

b. Westland's Countermotion for a Preliminary Injunction

Westland's Opposition and Countermotion provided that appointment of a receiver was improper,

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[31] As is addressed below, Judge Earley has already ordered to those funds be released, but Fannie Mae continues its refusal after a demand by the owner of those escrowed funds, which amounts to a conversion.
[32] Plaintiffs' Complaint, Exhibits 15 & 16.

because Westland was maintaining the Properties, by that time had already spent over $3.5 million in capital expenditures, had improved the condition of the Properties, and certainly had not permitted any deterioration to have occurred (which was required by the loan documents for Fannie Mae to perform a property condition assessment or obtain additional lender reserves). Based on the lack of a default, Westland both opposed the relief sought in the proposed order for appointment of a receiver and sought a preliminary injunction to enjoin Fannie Mae from:

> (1) conducting *any foreclosure proceeding* ***or*** *foreclosure sale* on the multi-family apartment communities owned by Westland and located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 . . . . and 5025 Nellis Oasis Lane, Las Vegas, NV . . . (in combination the "Properties"); (2) interfering with Westland's enjoyment of the Properties . . . , or (3) using a receiver to displace Westland at the Properties.

(Countermotion for Preliminary Injunction, Notice of Motion, at 1-2 [emphasis added].)

c. The October 13, 2020 Hearing

On October 13, 2020, the Court conducted a hearing on Plaintiff's Application for a Receiver and Defendant's Countermotion for a Preliminary Injunction. However, Fannie Mae's recitation of that record of the hearing in its Motion is limited, incomplete and misleading, in that it is limited to three pages of a more than fifty page transcript. The Court's ruling went well beyond the limited section of the Transcript Fannie Mae cited, with responses showing the Court's interpretation of the facts and the arguments made by Fannie Mae that were specifically rejected.

First, the Court did not convey it was refraining from, or unable to make, factual findings or legal conclusions. Instead, the Court referenced there was a fully developed record by stating, "I pulled out and I, as best I could, *did a whole lawsuit, I felt like*, in one Motion to Appoint Receiver and, actually his Countermotion for a TRO."[33]

Second, during the hearing, Fannie Mae's counsel admitted that "Fannie Mae has initiated foreclosure proceedings . . . It's about time that we can file and serve the Notice of Sale. . . . Is there a foreclosure proceeding pending? And the answer is: Yeah."[34]

Third, the Court specifically noted that it disagreed with Fannie Mae's continuing to retain the

[33] Motion to Stay, Exhibit 1, Transcript of 10/13/2020 Hearing, at 19:9-12.
[34] Motion to Stay, Exhibit 1, Transcript of 10/13/2020 Hearing, at 10:18-25.

Restoration Reserve funds, which is clearly evident by the Court's exchange with Fannie Mae's counsel.[35, 36]

As such, while Fannie Mae indignantly references that Westland requested a return of those funds, the Court clearly recognized that the funds belong to Westland and should have been released, so it is not surprising that the Court ordered the release of those funds.[37]

Fourth, the Court recognized that Fannie Mae's entire argument necessarily required that the Court agree that Westland was in default.[38] But, the Court decided that such a finding was not possible even though Fannie Mae had already acted as if a default had occurred.[39]

Fifth, the Court opined that Westland appeared to be meeting it obligations related to maintaining the Properties, by stating: "No. I don't think they're disputing that the property shouldn't be maintained.

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[35] [THE COURT:] What is this $1 million insurance policy? . . . Oh, fire damage. . . .
[MR. OLSON:] and the insurance company delivered to Fannie . . . Mae approximately a million dollars to put into a reserve account for the repair of those units.
[THE COURT:] Okay. So, then did Fannie Mae give it for those repairs, give it to defendant so that those repairs can be done?
[MR. OLSON:] Fannie Mae's position is it has no obligation to do so under the contract.
[THE COURT:] Oh goodness.
[MR. OLSON:] And I believe . . . the 6th Amendment to the contract in section 17 provides that if there's any kind of default under the Agreement, we don't have to do it.
[THE COURT:] Okay. That makes no sense. Motion to Stay, Exhibit 1, at 47:23-48:21.

[36] Surprisingly, Bob Olson's Declaration in Support for an Order Shortening Time represents the return of the $1 million held in the insurance restoration reserve was not sought by Westland "in their moving papers or at the hearing, nor was such a request part of the Court's oral ruling." (Olson Declaration, dated December 8, 2020, at 3, ¶ 11.) This quotation shows that statement is either false or misleading.

[37] As seen in the quote above, the Court specifically asked about the $1 million reserve based on both the motion papers and counsel argument, and held that Westland's funds should be released based on the fact that Fannie Mae's continued holding of such specifically earmarked insurance restoration reserves "makes no sense." (See Exhibit 1, at 27:22-28:1; Counter-Motion, dated August 31, 2020, at 3 ["Lenders are holding nearly $1 million of reserves to which they are no longer entitled, which they obtained from insurance funds earmarked for construction of two buildings at the Liberty Property, which instead had to be completed with cash fronted by Westland. Grandbridge has failed to respond to Westland's reimbursement requests."].)

[38] Motion, Exhibit 1, at 27:6-11 ("[i]t all stems from the default notice. . . . Then the question is: Is it - - who makes the determination . . . whether your client was in default?").

[39] I could see if they didn't fund [the Loans] or anything, if they didn't do - - they hadn't been paying their escrow account at all . . . I really could not understand how this Court could say . . . that there's no dispute as to whether there was or was not a breach by this client. I mean, especially on – there's no specific amount. . . . But, . . . what I was thinking in terms of, *at the very minimum, there's a factual dispute on whether there is a default* by these defendants on that funding of the escrow. Further, the Court expanded its comments regarding the validity of the purported default stating:
So, I think what they're saying is: We understand that you have the right to do that, but it's a question of whether you can't just say, this is what we want, and if you don't give us what we want, then you're in default . . . they gave you what they had - - were doing, and gave you information to assist you, you as the lender, to understand that they are taking care of the property, what their duties are, they are funding, and doing things - - [short interruption by Olson] *That's how I interpreted it*. [another short interruption by Olson] If you look at the invoices and everything they did, Mr. Olson, they did a lot. . . It may not have been enough – [short interruption by Olson] to Fannie Mae, but they did." Motion, Exhibit 1, at 46:7-47:1 (emphasis added).

I think they're showing -- they gave us many, many exhibits showing me what they're doing besides their initial 20 million investment."[40]

Sixth, Fannie Mae's present position taken in its Motion for a Stay, which necessarily relies on the existence of a finding that a default having occurred, is directly contrary to the following exchange between Judge Earley and Fannie Mae's Counsel at the Preliminary Injunction hearing, which shows the Court wanted to retract any relief premised on a default having occurred.[41]

Thereafter, despite the Court's repeated statement that the Notice of Default was questionable at best, Mr. Olson again attempted to shift the Court's focus for a sound bite that could be used to cloud the record, by stating "right now Fannie Mae is at the stage where it can record a Notice of Sale. Fannie Mae has not done so and I was inquiring whether Your Honor would just simply order that Fannie Mae is prohibited at this time from recording the Notice of Sale." Judge Earley responded, "Yes, Because that would [interruption] - - flow, Mr. Olson, from my reasoning." (Exhibit 1, at 51:17-22.)

d. The Resulting November 20, 2020 Order

After a copy of the hearing transcript was obtained on October 19, 2020, the Parties each attempted to draft a joint proposed order for submission to the Court,[42] but were unable to reach an agreement on its contents. (Motion, Exhibit 4; Motion, Exhibit 5, at 10-12 [Proposed Order attached to Fannie Mae's Position Statement].) Westland's position in those discussions were documented in in a position letter, which noted that many of the categories of relief sought in Westland's proposed order

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[40] Motion, Exhibit 1, at 46:7-47:1.

[41] THE COURT: As far as the Defendant's Countermotion for a Preliminary Injunction Regarding the Notice of the Foreclosure, I applied the 65 standard as well as the NRS . . . 33.010 standard. I do find that, at this point, there is irreparable harm and that standard is met because it is property. I also find that *there is a reasonable probability of success on the merits as far as* what -- there's a question of fact as to *whether there was a default*, etcetera. So, *I do not want the default to go forward*. So, I am granting the Countermotion by plaintiffs for the preliminary injunction under NRS 65, NRS 33.010. . . .
MR. OLSON: Your Honor, I do have a question concerning the preliminary injunction. *You stated that you do not want the default or the foreclosure to go forward*. I just want to clarify that. . . .
THE COURT: *I'm stopping the Notice of Default*. Didn't you enter - - didn't your client . . . Didn't they enter a Notice of Default?
MR. OLSON: We did, Your Honor.
THE COURT: Okay. I want to stop - - *I'm stopping Fannie Mae from going forward with anything based on that Notice of Default*. Motion, Exhibit 1, at 48:3-51:13 (emphasis added).

[42] Fannie Mae's assertion that the Court ordered "Defendants' counsel to prepare the order granting the Countermotion is misleading. While it is clear that the Court made that statement, Fannie Mae wrote a seven page letter arguing its position related to the drafting of the order, and submitted a competing order to the Court. After Fannie Mae's Order was rejected by the Court, Fannie Mae now shamelessly implies they were not represented in the process.

were prohibitory relief that tracked the powers Fannie Mae sought for a receiver in its own17 page proposed Order that was submitted *prior to* the Motion hearing when Fannie Mae believed it had an opportunity for relief.[43] When Fannie Mae lost the application to appoint a receiver, negating specific powers that Fannie Mae had been denied should not have been controversial, because Westland simply sought to foreclose Fannie Mae from attempting to backdoor such powers through another agent. Interestingly, *after* the Court ruled against Fannie Mae's receiver application, Fannie Mae proposed a limited 2 page proposed order that impermissibly attempted to remove necessary factual findings, legal conclusions and specificity required by NRCP 65(d), which if not included would likely render the Order legally insufficient. [44]

As such, Westland provides the information below for the convenience of this Court in matching the basis for each requested restraint with the motion papers[45] and the hearing transcript:

Relief Ordered	Order Citation	Reference in Motion/ Fannie Mae's Proposed Order	Hearing Transcript Citation
Fannie Mae . . .[is] enjoined from taking any and all actions to foreclose or continue the foreclosure process upon Westland's Properties	Order, Page 7, Relief ¶ 1	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding	Motion, Exhibit 1, at 50:8-51:22
Fannie Mae "may not continue to maintain the Liberty Village Notice of Default and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed from" title	Order, Page 7, Relief ¶ 2	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding	Motion, Exhibit 1, at 50:8-51:22

[43] Exhibit 1, Letter of John Benedict, dated November 6, 2020, at 6 ("[a]s a reminder, Fannie Mae requested much of the relief that is included in the proposed order within its own proposed order" prior to the application for a receiver); Exhibit 2, Fannie Mae's proposed order appointing receiver, submitted with its moving papers. Notably, the vast majority of powers contemplated as being reserved for the receiver in Fannie Mae's proposed order were not specifically addressed in Fannie Mae's own papers.

[44] While at the time the orders were exchanged, Fannie Mae challenged the factual findings, legal conclusions and ordered relief, it now seemingly only challenges the requested relief as purportedly excessive in scope.

[45] References to the Fannie Mae order in this table address relief that is reciprocal to the relief sought in Fannie Mae's Order Appointing Receiver. For example, if Fannie Mae's sought to appoint a receiver in its pre-argument order, the post-argument order provides a prohibition against appointing a receiver. Similarly, in some cases if the pre-argument order sought for Westland to turn over books, records and invoices to a receiver, then the post-argument order provided that Fannie Mae would turn over the servicing invoices and records that it had recently failed to produce.

Fannie Mae “may not continue to maintain the Village Square Notice of Default and Election to Sell under Deed of Trust, dated July 8, 2020, which shall immediately be removed from” title	Order, Page 7, Relief ¶ 3	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding	Motion, Exhibit 1, at 50:8-51:22
Fannie Mae “may not interfere with Westland’s enjoyment of the Properties pending a final determination”	Order, Page 7, Relief ¶ 4	Notice of Cross-Motion, Request for Relief 2 – Interfere with Enjoyment	Motion, Exhibit 1, at 50:8-51:22
“Fannie Mae . . . [is] enjoined from and may not do the following acts: a) appoint a receiver”	Order, Page 8, Relief ¶ 5a	Notice of Cross-Motion, Request for Relief 3 – Appoint Receiver; Fannie Mae Order, at 3, ¶ 5b	Motion, Exhibit 1, at 49:14-50:2
“Fannie Mae . . . [is] enjoined from and may not do the following acts: b) take possession of any real or personal property, . . .including, . . . all land, buildings and structures, leases, rents, fixtures, and movable personal property that may be identified as “Leases,” “Rents” or “Mortgaged Property”	Order, Page 8, Relief ¶ 5b	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment or 3 – Appoint Receiver; Fannie Mae Order, at 2-3, ¶¶ 5a & 2 [defining the Property covered]	Motion, Exhibit 1, at 48:3-51:13
“Fannie Mae . . . [is] enjoined from and may not do the following acts: c) obtain possession of, exercise control over, enforce a judgment, enforce a lien, foreclose, enforce a Deed of Trust, or otherwise take any action against the Property, without specific permission from or a further determination of this Court”	Order, Page 8, Relief ¶ 5c	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding & 2 – Interfere with Enjoyment; Fannie Mae Order, at 2, ¶ 4	Motion, Exhibit 1, at 48:3-51:13
“Fannie Mae . . . [is] enjoined from and may not do the following acts: d) interfere with Westland, directly or indirectly, in the management and operation of the Property, the collection of rents derived from the Property, or do any act which will, or which will tend to, impair, defeat, divert, prevent, or prejudice Westland’s use or preservation of the Property (including the leases, rents and reserve-escrow accounts related thereto) or the interest of Westland in the Property and in said leases, rents, and reserve-escrow accounts”	Order, Page 8, Relief ¶ 5d	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 9-10, ¶¶ 7a, 7b and 7h	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: e) fail to turn over to Westland the monthly debt service invoices for the Property, which have been withheld between February 2020 and present, and on a going forward basis, Fannie Mae or its servicer will forward the monthly statements Fannie Mae’s servicers produce for any borrower who is not in default”	Order, Page 8, Relief ¶ 5e	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 10, ¶ 8a	Motion, Exhibit 1, at 48:3-51:13

““Fannie Mae . . . [is] enjoined from and may not do the following acts: f) fail to process loan payments consistent with the terms of the loan agreement, including that Fannie Mae, or its servicer, will return to the ordinary practice of auto-debiting Westland’s account for the amount of the non-default normal monthly debt service payment each month”	Order, Page 8, Relief ¶ 5f	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 9, ¶ 5o	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: g) retain possession of any funds paid in excess of the non-default monthly debt service payments, which excess funds Westland paid between February 2020 and the present based on the refusal of Fannie Mae’s servicer to produce monthly statements to Westland;”	Order, Page 9, Relief ¶ 5g	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 5, 7 & 11, ¶¶ 5q, 5cc, 8g & 8i	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: h) fail to disburse or turn over to Westland any funds currently held or initially held in the Restoration Reserve Account, which funds were earmarked for the repair of the fire-damaged buildings, Buildings 3426 and 3517, regardless of whether Fannie Mae continues to maintain those funds in the same account or has transferred those funds to another account”	Order, Page 9, Relief ¶ 5h	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 5, 7 & 11, ¶¶ 5q, 5cc, 8g & 8i	Motion, Exhibit 1, at 47:23-48:21
““Fannie Mae . . . [is] enjoined from and may not do the following acts: i) continue to improperly maintain the funds designated to be held in the interest bearing Replacement Reserve Account for each of the Properties in the non-interest bearing Repair Reserve Account . . ., to restore any balance that has already been transferred, and to credit the Replacement Reserve Account for the interest that Westland would have earned”	Order Page 9, Relief ¶ 5i	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 5, 7 & 11, ¶¶ 5q, 5cc, 8g & 8i	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: j) continue to refuse to respond to Reserve Disbursement Requests for more than 10 days, or to fail to disburse funds held in the Repair Reserve and Replacement Reserve escrow accounts in response to requests submitted consistent with the terms of the loan agreements”	Order, Page 9, Relief ¶ 5j	Notice of Cross-Motion, Requests for Relief 2 Interfere with Enjoyment; Fannie Mae Order, at 5, 7 & 11, ¶¶ 5q, 5cc, 8g & 8i	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: k) continue to maintain the Notice of Demand, dated October 18, 2019, which will be held to be retracted and stricken	Order, Page 9, Relief ¶ 5k	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding & 2 – Interfere with Enjoyment	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: l) continue to maintain the Notice of Default and Acceleration of Note, dated December 17, 2019, which will be deemed retracted and stricken	Order, Page 9, Relief ¶ 5l	Notice of Cross-Motion, Request for Relief 1 - Foreclosure	Motion, Exhibit 1, at 48:3-51:13

		Sale/Proceeding & 2 – Interfere with Enjoyment	
““Fannie Mae . . . [is] enjoined from and may not do the following acts: m) continue to maintain the Demand and Notice Pursuant to NRS 107A.270, dated December 17, 2019, which will be deemed retracted and stricken	Order, Page 9, Relief ¶ 5m	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding & 2 – Interfere with Enjoyment	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: n) otherwise displace Westland from the operation or management of the Property	Order, Page 9, Relief ¶ 5n	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding & 2 – Interfere with Enjoyment	Motion, Exhibit 1, at 48:3-51:13
““Fannie Mae . . . [is] enjoined from and may not do the following acts: o) take any adverse action against any Westland entity in relation to other loans, discriminate against or blacklist any Westland entity on new loan or loan refinancing applications, including by placing Westland on “a-check,” adding a fee to any loan quoted or adding an interest rate surcharge to such applications, based on the purported default that arose from failing to deposit the additional $2.85 million into escrow as requested”	Order, Page 10, Relief ¶ 5o	Notice of Cross-Motion, Request for Relief 1 - Foreclosure Sale/Proceeding & 2 – Interfere with Enjoyment	Motion, Exhibit 1, at 48:3-51:13

Thus, as the foregoing table shows, each request for relief was addressed in the motion papers and at the hearing for this matter. However, of even greater importance is simply that upon submission of the two proposed orders, which were sent in an editable format, along with the correspondence that provided guidance to the Court on the basis for both parties’ legal position, the Court knowingly signed the Order presented by Westland and thereby accepted its findings of fact, legal conclusions and ordered relief as embodying the Court’s ruling on the matter.

III. LEGAL ARGUMENT

As this Court well knows, the purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm until a hearing can be held, See *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974), cited by *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir, 2006); NRCP 65(b). At the time of the preliminary injunction hearing, the Court ordered precisely such relief, which was narrowly tailored to address Fannie Mae’s improper loan servicing tactics, and return the parties to the *status quo ante litem*.

Specifically, Westland sought three categories of relief in its notice of motion, which including prohibiting: (1) any *foreclosure proceeding*[46] *or foreclosure sale* related to the two "Properties"; (2) interference with Westland's enjoyment of the Properties, and (3) using a receiver to displace Westland at the Properties. While Fannie Mae claims the second category is not sufficiently detailed, definition of its meaning is available from the prior filings in this matter, which clarified that inference with enjoyment prohibits impairing the use, marketable title, or employment of that property in relation to business. In combination, the three prohibitory provisions amount to fair lending practices, and in that context without a default, a borrower is able to receive current loan statements, obtain reserve funds to which the Court found it was entitled, stop the foreclosure of its Properties when the Court found the "default" that the Lender declared to be questionable at best, and obtain removal of a cloud on title to its Properties. As such, Westland finds it telling that Fannie Mae asserts the Order violates Due Process, when it only requires Fannie Mae to utilize fair loan servicing practices.[47]

For the reasons stated below, this Court should find that Westland is entitled to maintain the injunctive relief from the Order, especially in light of the fact that the Court has already found that Westland has a reasonable likelihood of success and would suffer irreparable harm.

A. Fannie Mae's Mandatory Injunction Argument Is Simply An Improper Attack On The Court's Prior Ruling, And When Viewed From the Status Quo Ante Litem, As Required, The Injunction is Prohibitory

1. Fannie Mae Addresses a Multitude of Arguments Unrelated to a Stay, Which Amount to an Improper EDCR Rule 2.24 Motion for Reconsideration

Under Nevada law, "[a] preliminary injunction to preserve the status quo is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy. *Dixon v. Thatcher*, 103 Nev. 414, 415 (1987) (reversing decision not to grant a preliminary injunction to stop a foreclosure). Judge Earley had already found that standard has been met by determining that Westland had shown a reasonable probability of success on the merits, and

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[46] While Fannie Mae now seeks to interpret the two terms narrowly to only prevent conducting a foreclosure sale, during the hearing, Fannie Mae's counsel admitted that "foreclosure proceedings" had already begun with the filing of the Notice of Default and Intention to Sell. However, Fannie Mae now refuses to remove its filing from the Properties' title.

[47] Fannie Mae's due process arguments are misplaced. In *Schwartz v. Adams*, 93 Nev. 240, 243 (1977), that Court addressed due process in the context of whether a party has knowledge of a lawsuit related to service by publication, not a certain level of specificity regarding relief. Simply stated, Fannie Mae was at the hearing, so *Schwartz* is satisfied.

stating she believed that it was questionable whether any default occurred at all. Further, she found that without ordering the specified injunctive relief that there was likely to be irreparable harm for which compensatory damage would not be an inadequate remedy. Essentially, in seeking a "stay" pending appeal, Fannie Mae actually files what amounts to an improper Motion for Reconsideration that addresses arguments that both could and should have been raised in its opposition to a preliminary injunction.

Pursuant to EDCR Rule 2.24(a), "[n]o motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." Further, a party may not simply make such a motion, but rather "must file a motion for such relief . . . [and if granted] a motion for rehearing or reconsideration must be served, noticed, filed and heard." EDCR Rule 2.24(b) & (c).

Moreover, "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562-63 (1995). "This rule is equivalent to holding that matters so waived cannot be entertained later," *Brandon v. West*, 29 Nev. 135, 141-42 (1906). For example, in *Edward J. Achrem, Chtd. v. Expressway Plaza Ltd. Pshp.*, the Nevada Supreme Court upheld a district court's refusal to consider evidence presented in a motion for reconsideration because it had not been submitted as evidence prior to the court's decision. 112 Nev. 737, 742 (1996).

Here, Fannie Mae was clearly capable of raising the prohibitory versus mandatory relief distinction on the Motion for a Preliminary Injunction at the October 13, 2020 hearing, but Fannie Mae failed to do so. Further, Fannie Mae did not seek leave of the Court to file a EDCR Rule 2.24 motion, before making the arguments, which re-challenge the Court's October 13, 2020 Order. Court rules such as EDCR 2.24 are designed to limit repetitive, oppressive motion practice which interferes with the fair, just and timely administration of cases. Motions asserted in violation of these rules sap the resources of our courts, the parties and their attorneys, and must be discouraged. On that basis, Fannie Mae mandatory injunction argument should be precluded.

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2. Prohibitory Injunctions Both Prohibit Conduct And Maintain the Status Quo Ante Litem, From The Last Uncontested Status – But Fannie Mae's Arguments Necessary Require That A Default Is Assumed To Have Occurred to Prevail

"A preliminary injunction can take two forms. A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009) (*quoting Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir.1988); *see also Heckler v. Lopez*, 463 U.S. 1328, 1333, 104 S.Ct. 10, 77 L.Ed.2d 1431 (1983) (a prohibitory injunction "freezes the positions of the parties until the court can hear the case on the merits"). Injunctive relief should be granted in order to protect a party from irreparable injury and to preserve the status quo until such time as the underlying action is resolved. *Pickett v. Commanche Construction, Inc.*, 108 Nev. 422, 426 (1992).

Importantly, returning parties to the status quo with an injunction, does not refer to simply any time period, but rather means the parties should be returned to their "*last uncontested status* which preceded the pending controversy." *See GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000). For instance, the Nevada Supreme Court reinstated an injunction despite that a foreclosure judgment was obtained prior to the initiation of the action where the injunction was sought, because when the foreclosure judgment was placed on record, the parties were already past the last uncontested status in the matter. *Pickett v. Comanche Const., Inc.*, 108 Nev. 422, 430, 836 P.2d 42, 47 (1992). Likewise, when legislation had already forced registered representatives to become a real estate salesperson or broker to engage in their trade, and without the additional license such persons would have to leave established, intrinsically lawful employment, the court found their employment should be maintained to preserve the status quo in case the legislation was invalidated. *Ottenheimer v. Real Estate Div. of Nevada Dept. of Commerce*, 91 Nev. 338, 342 (1975).

Here, contrary to every paper that Fannie Mae has filed in this case, each of which assumes the existence of a default, relief has been tailored to place the parties in the "last uncontested status" pending a determination in this matter. That point is at the latest December 2019 before Fannie Mae declared that any default occurred, and likely by October 2019 before Fannie Mae sent its demand. Looking from that point, all of the relief requested by Westland was prohibitory, because prior to the default Westland was entitled to have its payments auto-debited, receive loan statements, maintain clean title to property, and submit reserve reimbursement requests to obtain its funds out of escrow.[48]

Such relief does not "order the responsible party to take action" or "restore" rather than maintain the status quo, because in those cases, the parties were required to take actions that would lead to their detriment unlike the circumstances that exist here. *See e.g.*, *Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Mem'l Gardens, Inc.*, 88 Nev. 1, 4 (1972) (determining that the "[s]tatus quo in the case was the growing lawn, plants and trees and that could only have been accomplished by restoring the water to the land" even if the land was rendered barren] before the action is instituted"); *Elliott v. Denton & Denton*, 109 Nev. 979, 982 (1993) (mandatory injunction ordered a law firm to pay funds to obtain a return of an impounded car); *Marlyn Nutraceuticals*, 571 F.3d at 879 (finding a product recall may be prohibitory, but was mandatory because the product was no longer in the producer's possession, had already reached end customers, and required customers be paid restitution). In contrast to those cases, while Fannie Mae would take some action by releasing reserves or issuing billing statements, those are direct actions under its control, as opposed to actions taken outside its ordinary scope of operations. Further, the present case is not similar to recalling a product that was already purchased by a customer and paying that customer restitution. Requiring restitution be paid to a customer would necessarily damage a manufacturer's name in the market by signaling that a manufacturer had engaged in wrongful action. However, here, as Judge Earley recognized, to continue to permit Fannie Mae's present course of action in servicing the loan would essentially mean that the Court would be signaling that Westland had engaged in wrongful conduct by finding that the default Fannie Mae claims occurred was valid. As such, enforcing the injunction is consistent with establishing the status quo ante litem and with a prohibitory injunction.

3. *Based on the Court's Ruling A Stay Pursuant to NRAP 8 Is Inappropriate, And If Required NRCP 62 Would Mandate That Fannie Mae Obtain a Stay Bond*

NRAP 8(a)(1)(c) addresses stays pending appeal when seeking relief in the form of "an order suspending, modifying, restoring or granting an injunction while an appeal . . . is pending." A reviewing

[48] The assertion of a pre-judgment writ of attachment is ludicrous, because a generic money judgment is not being enforced, the $951,407.55 is Westland's own segregated funds held in escrow, and thus cannot be attached by Westland.

court should "generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition." NRAP 8(c).

When such a motion is filed directly with an appellate court, the moving party is required to include the reasons for relief, factual basis, and relevant parts of the record. NRAP 8(a)(2). Seemingly, that requirement gives a reviewing court a fully developed record. The same standard would have seemed appropriate here based on the transfer of this matter from Department 4. However, here, the reason that Fannie Mae fails to forward such materials is clear, the Court previously recognized that Westland would be substantially harmed, and Fannie Mae would not.

a. The Object of the Appeal Will Not Be Defeated If the Stay is Denied

Unlike the seminal case of *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004), where the opportunity to engage in arbitration would be lost after a trial was conducted, Fannie Mae literally has been unable to identify what would be lost here without a stay. Simply stated, at the Preliminary Injunction hearing the Court found that at best it was a question of fact whether a default occurred. Without a default, which finding is highly questionable, all of Fannie Mae's complaints disappear, because the Notices of Default and Notices of Demand should have never have been filed or served, and the $1 million of Westland's own funds that are being held in reserves after Westland fronted the cost to repair the two buildings would need to be returned. However, such a result is expected, because those are Westland's own funds. Finally, while Fannie Mae continues to assert that the ordered relief would require it to lend to Westland, but nothing could be farther from the truth, because in reality all Westland has sought is for Fannie Mae to remove Westland's affiliated entities from its present blacklist status and to stop discriminating against Westland based solely on the purported default from this case.

b. Fannie Mae Will Not Suffer Irreparable or Serious Injury Absent a Stay

Fannie Mae would suffer no harm at all from denial of a stay. When the Court granted a preliminary injunction, it did so based on a full record that supported doing so would maintain the status quo until the Court could adjudicate the rights and obligations of the parties under the Loan Agreements.

Specifically, the Court stated that to appoint a receiver "I have to find that the properties would be in danger of being lost or suffer irreparable harm. And based on all the facts that I've reviewed, including the argument, I do not feel the properties are."[49]

Further, each item of harm that Fannie Mae cites only involves monetary damages, including the potential loss of access to the $1 million reserves, the need to "disgorge payments Defendant voluntarily paid" and the costs of delays caused by the need to refile Notices of Default, none of which amount to serious or irreparable harm. *See e.g., Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 658 (2000) (being required to incur the "expense of lengthy and time-consuming discovery, trial preparation, and trial" are at best "substantial [not] irreparable nor serious"). In fact, based on Nevada law for a real estate lender to have a serious injury, their underlying real property security would need to be "in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures." See NRS 107.100(2); NRS 32.010(2). However, here the closest that Fannie Mae is to being able to meet that standard is the baseless assertion that without a stay, then Fannie Mae would be entitled to retain the $1.0 insurance reserves, but would be "unlikely to recover them in light of Defendant's financial position and the fact that the injunction is secured by a grossly inadequate $1,000 bond." That is simply a monetary loss, which would not support a stay.

Therefore, as the Court recognized, Fannie Mae is not at any real risk of loss, because there is no risk of the underlying mortgaged Properties being insufficient to discharge any obligation, as Westland had over $20 million of equity in the Properties at the time of purchase, and it is independently verifiable that the condition of the Properties has improved with the additional $3.5 million of capital improvements that Westland has performed, plus the $1.5 million in security it has implemented and employed there. Likewise, Fannie Mae's recognition of the excess funds payments, and citation to the "voluntary" payment doctrine means that Fannie Mae admits it *has not only received every rental payment on a timely basis, but has even been overpaid by at least $200,000*. Simply stated, Fannie Mae has received *more* than Lenders are entitled to receive based on the Parties' contract. As such there is no realistic risk of

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[49] Motion, Exhibit 1, at 49:21-24.

even serious injury absent a stay.

c. Westland Will Suffer Irreparable or Serious Injury If a Stay Is Granted

While Fannie Mae has removed the appointment of a receiver and foreclosure as particular items of relief that it is not challenging through this stay, there are still several items of relief that touch the title of Westland's real property. In particular, the Notice(s) of Default and Intention to Sell that Fannie Mae had recorded continues to cloud the title of Westland's two Properties.

The Nevada Supreme Court has recognized that real property implicates a broad range of potential rights, including "all rights inherent in ownership, including the right to possess, use, and enjoy the property," *as well as security in and title to the property*. *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 298-99 (2008); *see also McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 658 (2006). Thus, not only real property, but also its attributes are considered unique, and the loss of real property rights generally results in irreparable harm, even absent a foreclosure. *See Dixon v. Thatcher*, 103 Nev. 414, 416 (1987).

In relation to real property, a party's recorded documents pertaining to extinguished Deed(s) of Trust impede the marketability and transferability of a party's interests in a property, or of re-financing the Properties, free of defects in title. The Nevada Legislature has codified Nevada's interest in the free transfer of real property within NRS 11.860, which provides that "[t]he public policy of this State favors the marketability of real property and the transferability of interests in real property free of defects in title or unreasonable restraints on the alienation of real property. . ." NRS 11.860(1). As Westland is the owner of the Properties at issue in this matter, Fannie Mae's actions will dispossess Westland of its security in and title to the Properties, and because the Properties are unique, losing security in their title constitutes irreparable injury to Westland. Thus, on that basis alone, an injunction is necessary to prevent irreparable harm to the Properties, since title of those Properties has already been impaired by the Notice of Default and Election to Sell that has been recorded on the title of each Property.

Likewise, a loss of business and credit rating caused by the impairment of the Properties also constitutes irreparable harm, and Westland has a significant commercial interest in ensuring that its contracts are implemented correctly. The Nevada Supreme Court recognized such reputational and business harms are immeasurable and cannot be adequately remedied later through a monetary judgment in *Sobol v. Capital Mgmt. Consultants, Inc*., 102 Nev. 444, 446 (1986) (acts that "interfere with a business or destroy its credit or profits, may do an irreparable injury"); *Guion v. Terra Mktg. of Nevada, Inc.*, 90 Nev. 237, 240 (1974).

Moreover, aside from the direct effect on realty, loss of employment can also be found to be irreparable harm. Westland employs 32 individuals on-site whose efforts would be for naught in the event that a stay is entered and Fannie Mae is able to operate a stay that impairs the value of the asset where they work.

As such, this Court should deny the stay to preserve the status quo until a determination of the parties' contractual rights can be reached, because otherwise Westland will be irreparably harmed by the impairment of real property, the rights inherent thereto, and the loss of business generated from lost rent for the Properties, and the potential impairment of Westland's employee's jobs, in the event Fannie Mae's conduct is permitted to continue.

d. Fannie Mae is Unlikely to Succeed on the Merits on Appeal

"Because the district court has discretion in determining whether to grant a preliminary injunction, the reviewing appellate court will only reverse Judge Earley's decision if it is found "the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 351 (2015) (*quoting in part Boulder Oaks Cmty, Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403 (2009). Respectfully, based on the well documented submissions, the arguments made at the preliminary injunction hearing, Judge Earley's ruling, and the documentation of the factual and legal basis for the Court's finding in the Order, the chance of a reversal on appeal is scant.

B. Westland Argued Both That Losses of Real Property and Business Constituted Irreparable Harm, Which Support An Injunction Against Interference With Westland Enjoyment of The Properties, Not Quiet Enjoyment.

The Order validly provides that the "Enjoined Parties may not interfere with Westland's enjoyment of the Properties pending a final determination" of this matter, because Westland argued that the loss of real property, the associated benefits of owning real property, and the curtailment of the business operated on the Properties constitutes irreparable harm. (Opposition, at 20-23.) Specifically, Westland's Opposition and Countermotion argued that Nevada law recognizes that "real property implicates a broad range of potential rights, including 'all rights inherent in ownership, including *the right to possess, use, and enjoy* the property,' as well as security in and title to the property." (Opposition, at 20 [citations omitted].) Further, Westland argued not only that Fannie Mae should be enjoined from foreclosing on the Properties, but also that "Defendants' recorded documents pertaining to the extinguished Deed of Trust are impeding the marketability and transferability of Plaintiff's interests in the Property, or of re-financing the Properties, free of defects in title" consistent with NRS 11.860. (*Id.* at 21.) Moreover, Westland argued that aside from impairing the title to the Properties, Fannie Mae's wrongful foreclosure was not only costing "Westland two unique, irreplaceable assets, but also the permanent loss of business opportunities stemming from their ownership, and damaging Westland's credit, standing in the real estate investment community, and ability to obtain financing to invest in future real estate ventures." (*Id.*) Westland also specifically cited *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446 (1986), which stated that acts "which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction . . . [including acts that] clearly interferes with the operation of a legitimate business by creating public confusion, infringing on goodwill, and damaging reputation in the eyes of creditors." Thus, while Fannie Mae's Motion argues that "no allegations or evidence in the record shows that Fannie Mae has interfered with Defendant's enjoyment of the Properties, or threatened to do so" (Motion, at 27), it is clear that Westland alleged such interference with Westland's enjoyment of its Properties.

Similarly, in relation to evidence, Fannie Mae's supporting Declaration of Bob Olson for this Motion and Mr. Olson's statements at the hearing before Judge Earley show that this argument is simply false. Specifically, it is undisputed that by the time of the hearing Fannie Mae had already begun foreclosure proceedings by filing the Notice of Default and Intent to Sell, and Mr. Olson even admitted that "Fannie Mae is at the stage where it can record a Notice of Sale." (Transcript, at 51:15-16; 2; Motion, at 2, ¶ 5 ["Immediately following the Court's oral ruling, *Fannie Mae ceased all activity in connection with the pending foreclosure* of Defendant's Properties"] [emphasis added].) But, you need not take Bob's word for it, because after declaring Westland in default, Fannie Mae served a demand purportedly retracting Westland's ability to collect rents and served a Notice of Default and Election to Sell both of Westland's Properties. (Complaint, Exhibits 14-16.)

Further, while Fannie Mae argues that the particular injunctive term is impermissibly "unclear," in light of the foregoing, the reasons in support of the injunction and prohibited conduct is sufficiently definite. *See e.g., Dangberg Holdings Nevada, L.L.C. v. Douglas County & its Bd. of County Com'rs*, 115 Nev. 129, 143–44 (1999) (*discussing Las Vegas Novelty v. Fernandez,* 106 Nev. 113, 119 (1990)). In *Dangberg*, the Court reiterated that injunctions are enforceable unless "the reasons for the injunction are not readily apparent elsewhere in the record, or appellate review is otherwise significantly impeded due to lack of a statement of reasons" and then found that when the record supported that injunctive relief was ordered "to prevent [the parties] from finalizing their settlement agreement" to be sufficient. (*Id*. at 144.) Further, the restrained conduct was "any further action on the purported settlement agreement between [the parties] until further order of the Court." (*Id*.) As such, the restraint here against interfering with enjoyment of the Properties, is clearly meant to prohibit conduct that would impair Westland's ability to *possess, use, and enjoy* the property, including by impairing Westland's security in and title to the property, curtailing Westland's business opportunities stemming from ownership, or damaging Westland's credit and standing in the real estate investment community based on the unproven purported default at these Properties.

Accordingly, because the district court clearly specified the reason for its grant of temporary injunctive relief, and set forth in sufficient detail the act or acts to be restrained, we conclude that the district court did not abuse its discretion in granting temporary injunctive relief on this basis.

C. With Full Knowledge of the Ordered Relief, the Court Found a $1,000 Bond Adequate Based on the Substantial Collateral and Repair-Replacement Reserves.

Rule 65(c) contemplates the posting of a bond as security upon issuance of an injunction "in an amount that *the court considers proper* to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." *Id*. (emphasis added). Such a bond protects "a party from damages incurred as a result of a wrongful injunction, not from damages existing before the injunction was issued." *Am. Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 591 (1993) (failing to find any amount due under an injunction bond). Moreover, where it was found that a party had a high likelihood of success on its claims, only a minimal bond of $1,000.00 was required. *V'Guara Inc. v. Dec*, 925 F. Supp. 2d 1120, 1127 (D. Nev. 2013).

Here, Westland specifically argued based on the foregoing authority that: 1) a de minimis bond in the amount of $1,000 was more than adequate, 2) Fannie Mae would not suffer any harm as Westland continued to make full periodic payments, and 3) Fannie Mae had more than ample security due to Westland's equity in the Properties and the approximately $1.7 million of reserves. (Mot. Ex. 1 (Transcript), at 33:23-34:3.) Further, aside from the $951,407.55 in the Restoration Reserve earmarked for the fire loss, Fannie Mae is separately holding approximately $700,000 in reserves, which amount Fannie Mae admits is increasing by $38,416.50 per month and is more than adequate to protect Fannie Mae's interests.[50]

Also, there is no "$3.9 million swing," without a legal conclusion that a default occurred. Notably, Judge Earley did not find a default and agreed with Westland's request to set a de minimis bond *both* at the time of the hearing and by signing the Order. Specifically, the Order signed by Judge Earley clearly shows: 1) Westland would not be required to pay $2.85 million to Fannie Mae, 2) Fannie Mae was improperly holding $1 million of Westland's funds as Restoration Reserves, and 3) those funds would be released consistent with her finding that holding the funds "makes no sense, and 4) there was adequate security in the Properties and *other* reserves."[51] Moreover, releasing those earmarked funds makes sense because it represents a return to the pre-default status quo that is consistent with the Loan Documents since Westland has already performed the insurance-related repairs. As such, the Court knowingly ordered a $1,000 bond while simultaneously ordering that the Restoration Reserve funds to be disbursed, and even if it is found injunctive relief is not warranted, Fannie Mae will have suffered no harm arising from the Court entering a $1,000 bond.

D. Fannie Mae Has Failed To Adhere to the Preliminary Injunction Order and This Court Should Require Fannie Mae to Show Cause Why It Cannot Comply By December 31, 2020.

A District Court can enforce a preliminary injunction by a subsequent proceedings. *City Council*

[50] Complaint, Exhibit 12.

[51] (Motion, Exhibit 1, at 47:23-48:21; 50:24-25; Order, at 6, ¶ 10 ["Westland has made a substantial investment in the collateral securing the loan and continue[s] to maintain substantial funds within the **Repair** Escrow Account and **Replacement** Escrow Account that render the need for a bond for a preliminary injunction to be de minimis."] [emphasis added showing relief was based on reserves other than the Restoration Reserve].)

of Reno v. Reno Newspapers, Inc., 105 Nev. 886 (1989). A court has the inherent power to protect the "dignity and decency in its proceedings, and to enforce its decrees." *In re Determination of the Relative Rights of the Claimants and Appropriators of the Waters of the Humboldt River Stream System & Tributaries*, 118 Nev. 901, 909 (2002).

Here, Westland has attempted on two occasions, in written communications, to coax Fannie Mae to comply with the Court's November 20, 2020 Preliminary Injunction Order. Those written communications, which have been included in Fannie Mae's moving papers, outline the requests made by Westland for Fannie Mae to honor its obligations as a lender and to comply with the terms of the Order Granting a Preliminary Injunction, by ensuring Fannie Mae had notice of the terms of the Court's Order. However, those attempts to ensure compliance with the Order have failed.

It is essential for Westland to obtain the relief sought in its communications. Westland requested a copy of loan statements, because next month these loans will be converting to a new amortized payment calculation in January 2021, and having Fannie Mae return to auto-debiting Westland's payment and forwarding billing statements will ensure that a fully compliant payment is withdrawn from Westland's account.[52] Moreover, the nefarious results that have arisen even when the payments are vaguely calculable have led to Westland making over $200,000 of excess loan payments on these variable loans during the past year due to the lack of information on the proper loan payment amount. However, in response to Westland's good faith payments, Fannie Mae refuses to return the excess funds, which it deems to be "voluntary" excess payments. Basically, Fannie Mae failed to provide proper disclosures, and profited off its bad acts.

It is therefore requested that the Court issue an Order to Show Cause to Fannie Mae and hold a hearing in order to ensure compliance with the Preliminary Injunction Order, if Fannie Mae continues to refuse to comply with the Preliminary Injunction Order by December 31, 2020.

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[52] Fannie Mae's counsel has asserted that Fannie Mae will forward the requested loan statements and process the auto-debits, but no statement has yet to be received to date, and the time for Westland to determine the new payment amount is short. Westland is simply attempting to ensure it is able to make full, timely payments on both loans.

IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Honorable Court **GRANT** its Motion to Compel Compliance With The Preliminary Injunction by a Date Certain, and **DENY** Fannie Mae's Motion for a Stay Pending Appeal.

Dated this 16th day of December 2020

Respectfully submitted,

LAW OFFICES OF JOHN BENEDICT

By: /s/ John Benedict

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2020, a copy of the foregoing Motion was served on the parties listed below via electronic service through Odyssey to the following:

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EXHIBIT “1”

EXHIBIT “1”

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November 6, 2020

Via U.S. Mail and via Email to: bolson@swlaw.com

Robert L. Olson, Esq.
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Re: Federal National Mortgage Ass'n v. Westland Liberty Village, LLC, *et al*.
Case No. A-20-819412-B
Response to Objection to Proposed Order Granting Motion for Preliminary Injunction and Denying Application for Appointment of Receiver

Dear Mr. Olson:

Please accept this letter as Westland Liberty Village LLC's and Westland Village Square LLC's (together "Westland") response to your October 30, 2020, objection to the proposed order granting a preliminary injunction against Federal National Mortgage Association's (Fannie Mae), and denying Fannie Mae's request for appointment of a receiver. While I understand that your office would like to take this opportunity to mitigate the loss that Fannie Mae suffered, Westland will not water down the order in the manner that your letter suggests because it is not consistent with the Court's ruling, would not be consistent with the relief requested by both parties, and would not even be compliant with Nevada law to do so. As such, Westland rejects and refuses to submit the legally invalid order you have suggested.

First, I direct your attention to the law, which in Nevada Rule of Civil Procedure ("NRCP") 65(d) provides:

> **(d) Contents and Scope of Every Injunction and Restraining Order.**
> (1) *Contents*. Every order granting an injunction and every restraining order must:
> (A) state the reasons why it issued;
> (B) state its terms specifically; and
> (C) describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.

Further, the Nevada Supreme Court has said:

> This court reviews a district court's issuance of a preliminary injunction for an abuse of discretion. *Guerin v. Guerin*, 114 Nev. 127, 134, 953 P.2d 716, 721 (1998), *abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev. 646, 648–49, 5 P.3d 569, 570–71 (2000). "A decision that lacks support in the form of substantial evidence is arbitrary or capricious and, therefore, an abuse of discretion." *Stratosphere Gaming Corp. v. Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004) (quotation omitted). "Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion." *McClanahan v. Raley's, Inc.*, 117 Nev. 921, 924, 34 P.3d 573, 576 (2001) (quotations omitted).

Finkel v. Cashman Prof'l, Inc., 128 Nev. 68, 72–73 (2012).

This standard clearly requires findings of fact and conclusions of law by the Court in support of the order, otherwise, the order would be subject to challenge as lacking substantial evidence and/or the specificity required by NRCP 65(d). On that basis, Westland will be proposing an order with the findings of fact that are direct findings by Judge Earley from the record and those which necessarily had to be reached for her to make her rulings.[1] Thus, we

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[1] Your recitation of the Court's "ruling" is limited, incomplete and misleading. The Court's ruling went well beyond the limited section of the Transcript that you have cited, with responses during the hearing showing how the Court interpreted the facts, and comments in response to arguments made by Fannie Mae that were specifically rejected. For instance, the Court clearly found that the Application for a Receiver and the Countermotion "it would be a preliminary injunction . . . to stop their default proceedings . . . They're all intertwined, at least going through all this, I could see." Transcript of Hearing, dated October 13, 2020, at 29:7-14. Also, the Court stated: "I could see if they didn't fund it or anything, if they didn't do - - they hadn't been paying their escrow account at all . . . I really could not understand how this Court could say . . . that there's no dispute as to whether there was or was not a breach by this client. I mean, especially on – there's no specific amount. . . . But, as Mr. Benedict said, which was what I was thinking in terms of, at the very minimum, there's a factual dispute on whether there is a default by these defendants on that funding of the escrow." Transcript of Hearing, dated October 13, 2020, at 37:15-38:11. "So, *I think what they're saying* is: We understand that you have the right to do that, but it's a question of whether you can't just say, this is what we want, and if you don't give us what we want, then you're in default . . . they gave you what they had - - were doing, and gave you information to assist you, you as the lender, to understand that they are taking care of the property, what their duties are, they are funding, and doing things - - [short interruption by Olson] *That's how I interpreted it.* [another short interruption by Olson] If you look at the invoices and everything they did, Mr. Olson, they did a lot. . . It may not have been enough – [short interruption by Olson] to Fannie Mae, but they did." Transcript of Hearing, dated October 13, 2020, at 46:7-47:1 (emphasis added). "No. I don't think they're disputing that the property shouldn't be maintained. I think they're showing -- they gave us many, many exhibits showing me what they're doing besides their initial 20 million investment. What is this 1 million insurance policy? I just had a note on -- what is that? What is the 1 million that your client got in insurance proceeds? Was that –[short interruption by Olson] Oh, fire damage. . . . Okay. So, then did Fannie Mae give it for those repairs, give it to the defendant so that those repairs can be done? [Response by Olson: Fannie Mae's position is it has no obligation to do so under the contract.] Oh goodness. [Response by Olson: And I believe -- . . . the 6th Amendment to the contract in section 17 provides that if there's any kind of a default under the Agreement, we don't have to do it.] Okay. That makes no sense." Transcript of Hearing, dated October 13, 2020, at 47:19-48:21 (emphasis added). Finally, the Court clearly stated: "I'm stopping the Notice of Default. Didn't you enter - - didn't your client - - let me look at my notes. Didn't they enter a Notice

reject any proposal by your office that fails to include findings of fact because such an order is legal invalidity.

When proposing facts for the order, I have several suggestions that may help. First, as I am sure you recall, Fannie Mae lost both motions, so this is not an invitation for you to submit factual findings inconsistent with the Court's ruling. Second, in the proposed order submitted on behalf of Westland, only findings of fact that were not reasonably subject to dispute were included. When proposing facts for inclusion, the Transcript was reviewed, as well as the pleadings filed by the parties. As such, it would seem most appropriate for you to respond by identifying the factual statements in the proposed order that Fannie Mae is willing to accept, because in the event that we cannot reach an agreement, we will at least have narrowed the issues for the Court.

In relation to the findings of fact and conclusions of law, please note the following:

1) Findings of Fact 2-4: It is undisputed that Westland submitted that evidence to the Court. Fannie Mae may not like those facts, but it is indisputable that Westland submitted such evidence.

2) Findings of Fact 5-6: As cited within the quote above, the Court specifically referenced that Westland "gave you information to assist you, you as the lender, to understand that they are taking care of the property, what their duties are, they are funding, and doing things - - [short interruption by Olson] That's how I interpreted it. [another short interruption by Olson] If you look at the invoices and everything they did, Mr. Olson, they did a lot. . . It may not have been enough – [short interruption by Olson] to Fannie Mae, but they did." It is quite surprising that Fannie Mae is disputing this point. Further, the Court clearly made findings that there was a factual dispute based on the repairs that were provided, which occurred during Fannie Mae's arguments based on Section 6.03(c).

3) Findings of Fact 7-9: Fannie Mae admitted the same through its submission of exhibits containing that information, and as such, this is an issue that is not even fairly in dispute based on Fannie Mae's own submissions. Further, the Court did state," *could see if they didn't fund it or anything*, if they didn't do - - they hadn't been paying their escrow account at all." As such, the Court recognized the initial funding of the escrows, and that they had been paying the monthly service payments specifically designated in the loan documents, including those related to the escrows. Moreover, this is a fact derived from Fannie Mae's own exhibits, which Westland

of Default? . . . Okay. I want to stop - - I'm stopping Fannie Mae from going forward with anything based on that Notice of Default. [After suggestion by Olson to prohibit recording notice of sale] Yes. Because that would [interruption by Olson] flow, Mr. Olson, from my reasoning." Transcript of Hearing, dated October 13, 2020, at 51:7-51:22 (emphasis added). Clearly, the Court did not want any further action to be taken on the Notice of Default, including but not limited to an ensuing Notice of Sale.

noted in its motion papers, was not contested by Fannie Mae, and on that basis, has been admitted.

4) Findings of Fact 12: For the portion of the facts that Fannie Mae now asserts that it does not admit, during argument Mr. Olson acknowledged the $1 million was being held from insurance funds related to fire damage on behalf of his client and that the 6th Amendment meant that Fannie Mae could continue to hold those funds, but the Court held that the argument made no sense. Please advise the basis on which Fannie Mae now objects to those same facts.

5) Findings of Fact 1, 10, 13 & 14: Fannie Mae does not contest the accuracy of the assertions of fact. Please advise whether Fannie Mae consents to inclusion of such facts to the extent that the Court includes findings of fact in its proposed order.[2]

6) Conclusions of Law 1-4 (Paragraphs 12-15): Seemingly, Fannie Mae has no objection.

7) Conclusions of Law 5 (Paragraph 16): The Court actually stated "at the very minimum, there's a factual dispute on whether there is a default by these defendants on that funding of the escrow" and "it's a question of whether you can't just say, this is what we want, and if you don't give us what we want, then you're in default . . . they gave you what they had - - were doing, and gave you information to assist you, you as the lender, to understand that they are taking care of the property, what their duties are, they are funding, and doing things - - [short interruption by Olson] That's how I interpreted it. [another short interruption by Olson] If you look at the invoices and everything they did, Mr. Olson, they did a lot. . . It may not have been enough – [short interruption by Olson] to Fannie Mae, but they did." Fannie Mae's comments are not to the contrary, the Court clearly found that fact questions remained. But for purposes of the Motion for a Preliminary Injunction, Fannie Mae has not established that a default occurred, and that point is indisputable.

8) Conclusions of Law 6 (Paragraph 17): The Court explicitly recognized that irreparable harm would be suffered as the Properties are real property. Further, the Court recognized the substantial improvements that had been made to the Properties. It follows that those improvements, which are discussed in the remainder of the paragraph, are part of that potential loss.

9) Conclusions of Law 7 (Paragraph 18): In relation to harm to Fannie Mae, the Court held that "I have to find that the properties would be in danger of being lost or suffer irreparable harm. And I -- based on all the facts that I've reviewed, including the argument, I do not feel that these properties are." Transcript, 49:21-24. In relation to Westland, the Court found "that, at this point, there is irreparable harm." Transcript,

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[2] For each Finding of Fact noted as a Fannie Mae admission, i.e. Paragraphs 7, 8, 10-14 of the Order, the statement is specifically based on the fact that Fannie Mae enclosed exhibits, which it relied upon when filing its motion, which contained those facts.

50:6-7. Based on those statements alone, the Court clearly saw that the balance of harms weighed in favor of Westland. In fact, based on the record before the Court, including that Westland has made every single payment required under the contract, Fannie Mae has received more than what it bargained for, so it could not have been irreparably harmed.

10) Conclusions of Law 8 (Paragraph 19): Westland disagrees because the intent of the Court was clear - "I'm stopping Fannie Mae from going forward with anything based on that Notice of Default," so that the status quo could be maintained. While Mr. Olson attempted to limit the Court's ruling by slipping in the word "only," Fannie Mae's interpretation is clearly inconsistent with the Court's response. Judge Earley stated that prohibiting the "Notice of Sale" would "*flow*" from her ruling that the Notice of Default be stopped along with all consequences related thereto, not that her ruling would be *limited* to stopping the Notice of Sale. Despite that Mr. Olson desperately interrupted in order to ensure that the court reporter would be able to record both his and Judge Earley's statement in a clear manner, Judge Earley's ruling was still clear. As will be addressed later in relation to the Paragraphs on relief, Fannie Mae's position is simply in error. We are prepared to go back to Judge Earley on this point if necessary, and we are confident she will be none too happy that Mr. Olson's suggestion at the end of the hearing is now being be seized upon as a "gotcha." Your misinterpretation follows neither the letter nor the spirit of the Judge's ruling.

11) Conclusions of Law 9 (Paragraph 20): This may be the most ridiculous statement in a letter full of them. Is it even possible that a Court can validly grant a Motion for Preliminary Injunction without the burden being met and competent evidence being provided? Fannie Mae's opposition to this conclusion is telling, as it expects the Court to enter an invalid order so that it can later challenge its validity. Of course, Westland will not join in this invited error.

12) Conclusion of Law 10 (Paragraph 21): The Court recognized that Westland had made a $20 million initial investment in the Properties. Further, the Court recognized that the evidence submitted showed significant, millions of dollars, in additional investment by Westland to better the Properties.

13) Conclusion of Law 11 (Paragraph 22): While your letter states, "the Court did not address irreparable harm or substantial loss to collateral to Fannie Mae," your statement is simply wrong. Specifically, the Court stated, "I have to find that the properties would be in *danger of being lost* or suffer *irreparable harm*. And I -- based on all the facts that I've reviewed, including the argument, *I do not feel that these properties are*." It doesn't get much clearer.

It is interesting that you would attempt to limit the relief sought to the conclusion of the brief, which is typically a throw in that does not include every item of requested relief. If it had been successful, I am sure that Fannie Mae would not have limited itself in the same manner.

However, before we review Fannie Mae's own practices, you should consider the relief that was actually requested in the *motion* itself, rather than the conclusion of the memorandum of law. Westland sought:

> **to prevent and enjoin** Counter-Defendant Federal National Mortgage Association ("Fannie Mae") and/or Third Party Defendant Grandbridge Real Estate Capital, LLC ("Grandbridge," or in combination with Fannie Mae, "Lenders") from: (1) conducting **any foreclosure proceeding or foreclosure sale** on the multi-family apartment communities owned by Westland and located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-702-002 and 140-08-702-003] (individually each is referred to as the "Property" or in combination the "Properties"); (2) **interfering with Westland's enjoyment of the Properties pending a determination of the rights and obligations of the parties** pursuant to the Multifamily Loan and Security Agreement entered by and between Lenders and Westland on August 29, 2018, (the "Loan Agreements"), **or (3) using a receiver to displace Westland at the Properties**.
>
> On August 29, 2018, Westland purchased the Properties and has recorded its deeds with the Clark County Recorder's Office as Instrument Nos. 20180830-0002684 and 20180830-0002651 (the "Deeds"). Thus, Liberty LLC and Square LLC are title owners of the Properties that are facing an improper and illegal non-judicial foreclosure sale by Lenders. Westland seeks a preliminary injunction **to stop Lenders from improperly foreclosing on the Properties or interfering with Westland's enjoyment of the Properties until Westland's Counterclaim and Third Party Complaint are heard on the merits**.

Countermotion, 1:21-2:12 (emphasis added). Fannie Mae fought against this proposed relief from Page 1 of the Motion, and it lost. All of the relief sought within the proposed order is consistent with the request in the motion papers, including through reference to item three above related to prohibiting all of the relief that Fannie Mae put in issue when it sought in its own application for appointment of a receiver to displace Westland from the Properties.

While Fannie Mae asserts that much of the relief requested in the order was not requested in Westland's motion, as shown above, that is simply not true. Further, as a reminder, Fannie Mae requested much of the relief that is included in the proposed order within its own proposed order, and the Court specifically noted on the record that the two motions were "intertwined." Ultimately, Fannie Mae lost that Application. As such, the enjoined activities would necessarily include any of the relief that Fannie Mae put at issue when requested in its motion and order to appoint a receiver, which Westland now fairly requests in the negative consistent with that denial, and it is appropriate to order such relief, especially where the motions were so intertwined.

Moreover, it is telling that when Fannie Mae requested relief in its own motion, it only did so by reference to its order, not by listing every item of relief sought. Also, Fannie Mae's papers do not reference, and no argument was provided, related to the specific powers to be provided to the receiver that are sought as relief in Fannie Mae's own order. Fannie Mae simply relied on a reference to its own proposed order, and now Westland is simply doing the same, with its reference to "using a receiver to displace Westland" with the powers that Fannie Mae requested.

Westland takes offense to the fact that Fannie Mae flaunts that "recording the Notices of Sale" is "something Fannie Mae has not done even though the injunction is not in place." I am sure that Judge Earley will appreciate your view of the same, because the Court already gave its opinion and ruling on the record, which in itself binds Fannie Mae. Finally, based on the actions Fannie Mae has taken, the contrarian position taken with respect to Fannie Mae's own motion papers and order, the interruptions of Judge Earley that appear to have been made in a flaccid attempt to cloud the record, the October 30, 2020 letter's apparently intentional failure to recognize additional statements of the Court made on the record during the hearing that demonstrated her factual findings, the advocating of submission of a legally invalid order, and disingenuous October 30, 2020, proposed order that was submitted with your letter, your assertion of a violation of Nevada Rule of Professional Conduct is unsurprising.[3] It is equally baseless.

In the extremely likely event that Fannie Mae continues to act unreasonably and continues to refuse to address the order in good faith, this letter will be disclosed to the Court with the proposed order. Westland will expect Fannie Mae's response to this letter within five (5) days. If I do not hear back from you or if we are unable to resolve the terms of this order with you within five (5) days, Westland will understand that Fannie Mae's course of conduct is simply continuing its long line of bad faith actions, including: failing to respond or provide statements for the servicing of these loans, failing to release reserve funds, the improper inspection, the purported default based on a unilateral modification of the contracts, the notices and filings in furtherance of a baseless foreclosure, and the request for a receiver without a deterioration of the Properties.

Sincerely,

/s/ John Benedict
John Benedict

cc: Client (via email)

[3] The assertion of "lack of candor" is clearly absurd. Judge Earley will be the jurist that receives the order, and as the same jurist that made the ruling, is more than capable of addressing whether the order fairly articulates her own ruling. Moreover, the Transcript has been ordered, and is part of the Court's record, so it will readily be available to Judge Earley.

EXHIBIT "2"

EXHIBIT "2"

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

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

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

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

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

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

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

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

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

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

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

f. To lease the Property, or portions thereof;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the Property; and

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

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

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

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

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

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

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

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

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

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

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

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

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

10. RECEIVERSHIP REPORTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated: ___________________, 2020

____
DISTRICT COURT JUDGE

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Respectfully submitted,

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; and WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company, Defendants.	CASE NO. A-20-819412-C DEPT NO. 13 **LIMITED OPPOSITION TO FEDERAL HOUSING FINANCE AGENCY'S MOTION TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES** Hearing Date: May 3, 2021 Hearing Time: 9:00 a.m.
AND ALL RELATED ACTIONS.	

Defendants/Counterclaimants/Third Party Plaintiffs, Westland Liberty Village, LLC and Westland Village Square, LLC (together "Westland"), hereby file this limited Opposition to the Federal Housing Finance Agency's ("FHFA") Motion to Intervene (the "Motion" and "Opposition"). This Opposition is based on the pleadings filed herein, the attached Memorandum of Points and Authorities, and any arguments of counsel that this Court may allow at the time of the hearing.

I. INTRODUCTION

Fannie Mae is certainly aware of Thomas H Palmer's motto, "If at first you don't succeed, try, try and try again." This latest "try" comes after Fannie Mae's own repeated challenges and noncompliance with this Court's valid order have been over-exhausted by at least six prior attempts.[1] Still, make no mistake, the FHFA's present Motion is just another "try" to challenge the preliminary injunction, albeit this time via an untimely, futile, procedurally improper motion by a Fannie Mae-friendly government agency asserting statutory preemption.[2]

While the Motion asserts it is for "the limited purposes set forth above," two of those three reasons for intervention amount to an *untimely* challenge to the preliminary injunction, including to "(1) . . . preclud[e] injunctive relief . . . and [ ] (2) mov[e] to dissolve the preliminary injunction." (Motion, at 2 [the remaining portions seek to stop any sanctions or penalties against Fannie Mae, and to "contest [] Defendant's counterclaims.") As such, those portions of the FHFA's intervention motion are just a late, futile, last ditch effort to dissolve the preliminary injunction, after the time to

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[1] Fannie Mae has previously lost every such try, including unsuccessfully trying to stay the injunction on appeal. Nonetheless, with every filing Fannie Mae's positions have grown more extreme and offensive. For instance, in its latest motion for reconsideration with this Court, styled as a "Motion to Estimate," Fannie Mae argued it made $12 billion in profits in 2020 alone, and thus in essence "is good for the money" in an attempt to justify that it could continue to hold approximately $1.5M in funds it converted from Westland's insurance reimbursement reserve (nearly a $1,000,000 that was required to be held in a custodial reserve accounts that Fannie Mae admitted was improperly "swept" in reliance on a now enjoined baseless "default"), and another approximately $550,000 of "voluntary" overpayments that it refuses to account for. Further, any dispute related to the need for such an "estimate" was self-inflicted, because Fannie Mae and its servicer improperly swept the payments, and then refused to issue monthly billing statements, refused to auto debit Westland's account, and refused to provide an accounting to show the actions it had taken. Unsurprisingly, without account statements, Westland was not willing to take a chance that it would be asserted the monthly debt service payments had been underpaid so it was forced to make "voluntary" overpayments. In response to those good faith payments, made pursuant to a reservation of rights, Fannie Mae not only refused to give the money back, it claimed, incredibly, it could not calculate the overpayment and asked the Court to "estimate" the amount, stay Fannie Mae's obligation to pay it based on its financial prowess, or allow it to post a bond in lieu of giving Westland's money back. The Court denied the request via a Minute Order that expressly held Fannie Mae has fully litigated the preliminary injunction both in this Court and with the Nevada Supreme Court, including its repeated requests for a stay. In essence, the endless "trys" to avoid the impact of the preliminary injunction entered against it on November 20, 2020 must end.

[2] After briefing, evidence, and argument that Judge Earley likened to a full-blown bench trial, she granted Westland a preliminary injunction, recognized Fannie Mae's $2.85 million demand for additional loan reserves modified specific amounts in loan schedules, found that Fannie Mae failed to prove a default, and was troubled with Fannie Mae's conduct in using that faulty and improperly orchestrated "default" to seize and hold *Westland*'s reserve funds. (Preliminary Injunction Transcript ("Tr."), at; 36:19-38:14; 49:14-50:14; Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver, dated November 20, 2020.)

file a Motion for Reconsideration has passed, after Fannie Mae's repetitive failures to comply with a lawful order that prohibited the continued refusal to release *Westland's own funds* without impairing any Fannie Mae asset, and most importantly, after the FHFA filed a Writ of Prohibition with the Nevada Supreme Court seeking the same relief.[3]

But, NRCP 24 only permits a party entry to the suit with a *timely* Motion to Intervene, not the ability to resurrect an *untimely* motion for reconsideration, so any intervention order should be limited to preclude a further challenge to the preliminary injunction by the FHFA. In that regard, the FHFA's motion improperly asks this Court to allow intervention to challenge the validity of the preliminary injunction even though that exact issue is currently being addressed by the Nevada Supreme Court. Because Fannie Mae's notice of appeal divested this Court of jurisdiction to modify or dissolve the preliminary injunction, the FHFA's motion is futile to the extent it seeks to allow an end run around the Nevada Supreme Court's consideration of those issues.

Also, while NRCP 24 permits intervention based on statutory provisions, the FHFA should not be permitted to delay release of the funds addressed in the preliminary injunction based on a futile assertion of the FHFA's power to conserve assets and property of Fannie Mae. Simply stated, the assets and property that is the subject of the preliminary injunction are personal property, in the form of funds, held in custodial accounts at Grandbridge for Westland's benefit - not assets of Fannie Mae. Therefore, a challenge to the preliminary injunction that exceeds the scope of the powers and functions permitted by the FHFA's enabling statute should not be permitted as a basis to withhold Westland's own assets, which this Court has ordered to be released five months ago.[4]

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[3] The FHFA's proposed intervention is premised on the application of 12 U.S.C. § 4617(f) of the Housing and Economic Recovery Act of 2008 ("HERA"), which provides that "no courts may take any action to restrain or affect the exercise of powers or functions of FHFA as a conservator. To be clear, Westland categorically rejects the FHFA's contention that 12 U.S.C. § 4617(f) has any application to the instant proceeding and looks forward to addressing the issue in the appropriate forum for this dispute—the Nevada Supreme Court.

[4] Such a challenge is particularly improper when submitted as it appears to be yet another guise, similar to the "Motion to Estimate," for Fannie Mae to continue to withhold Westland's own assets, which were ordered to be released in the November 20, 2020 order of the Court, and should not be permitted to serve as cover for Defendants' contemptuous refusal to release Westland's own funds for more than two months after this Court's temporary stay expired, and two months since the Nevada Supreme Court refused to extend any stay on February 11, 2021.

This motion should be seen for what it is, which is not really about a possible aggrieved party trying to enter a case to protect its interest, despite that an aligned entity has adequately and aggressively protected those interests. Rather, the FHFA's Motion, is a quick and direct attack of the long ago entered injunction – and goes even further, in essence trying to circumvent the Nevada Supreme Court's review of the preliminary injunction and preempt the whole case in the trial court.

As such, Westland submits this limited Opposition to the Motion to Intervene and requests that this Court specify in its ruling on this Motion that: (1) the FHFA may not file yet another challenge to the preliminary injunction because this intervention motion is untimely, (2) this Court lacks jurisdiction to consider such a request, and (3) the basis for intervention is inapplicable to a release of Westland's funds as specified in the preliminary injunction because any argument the FHFA may make with respect to those funds cannot extend to "preservation" of Westland's separate funds held in custodial accounts, which are not a Fannie Mae asset.

II. STATEMENT OF FACTS

Westland holds title to two adjoining multi-family apartment communities, located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 and 5025 Nellis Oasis Lane, Las Vegas, NV 89115, which were purchased on August 29, 2018 (collectively the "Properties").[5] The owning entities are affiliated with Westland Real Estate Group, which has 50 years of multi-family housing experience and is one of the most experienced housing providers in Nevada, with over 10,000 apartment units in 38 apartment communities in the Las Vegas area, and which employs more than 500 employees, the vast majority of which are in Las Vegas.[6]

To purchase the Properties, Westland assumed two loan agreements from the prior owners for $29,000,000 and $9,366,000, respectively (the "Loans"), which were loans issued by Grandbridge (as the successor to SunTrust Bank) through a joint loan program with Fannie Mae.[7] Westland paid the remainder of the combined $60.3 million purchase price in cash, which resulted in

[5] Counterclaim, ¶ 14, 15, 17.
[6] Counterclaim, ¶ 13.
[7] Counterclaim, ¶ 45-50, 65-66; Counterclaim, Exhibits F & G.

Westland establishing over $20 million in equity in the Properties.[8] Pursuant to the Loan Agreements, Westland was responsible for a monthly debt service obligation of approximately $162,000 for the Liberty Property and $52,000 for the Village Property; and at all relevant times, Westland has been and remains current on all payments required under the Loan Agreements, including overpaying by approximately 10% for nearly a year when the loan servicer stopped auto-debiting Westland's account and refused to provide monthly loan statements from February 2020 until December 2020.[9]

The Loans also provided that the borrower would fund two types of reserve escrow accounts, namely the Required Repair and Required Replacement reserve accounts. A specific, agreed upon amount was set for those accounts at the time of the initial loan closing, and those specific amounts were later reduced when Westland assumed the Loans.[10] Specifically, Lenders reduced the repair and replacement reserves for both Properties to a combined total of $143,319.30.[11] The Loan Agreements also provided Westland would make a monthly deposit into a Replacement Reserve Escrow account in the amount of approximately $18,800.80 per month for the Liberty Property and approximately $10,259.06 per month for Square Property, to provide Lenders with additional security for completing estimated repairs at the Properties in the future, which amounts are included as part of Westland's monthly debt service payments listed above.[12] It is undisputed that the repair and replacement reserves' initial funding was timely made and that all monthly debt service payments specifically identified in the Loans have not only been paid in full, but overpaid, and on time.[13]

Before Westland purchased the Properties in August 2018, the Properties had been in a distressed condition for years, with poor management, exceedingly high levels of serious crime,

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[8] *Id*.
[9] Counterclaim, ¶ 203-204; Counterclaim, Exhibit T.
[10] Counterclaim, ¶¶ 55-61, 71-72.
[11] Counterclaim, ¶¶ 71; Counterclaim, Exhibit J, at 5 (replacement reserve maintained at $65,657.03, and repair reserve reduced to $39,375); Counterclaim, Exhibit K, at 5 (replacement reserve set at $38,287.25, with no repair reserve) & 7.
[12] Counterclaim, ¶ 72; Counterclaim, Exhibits H & I
[13] Counterclaim, ¶¶ 1,

onsite physical disrepair, and two buildings at the Liberty Property had been completely destroyed by fire.[14] After Westland's purchase, it spent $1.8 million in capital improvements even before Fannie Mae conducted a Property Condition Assessment ("PCA") in September 2019 and approximately $3.5 million by the filing of the request for a receiver. Westland cleaned up the crime, completely rebuilt the two fire damaged buildings at the Liberty Property with its own funds, added a dedicated 32 employee staff to oversee, maintain, repair, and improve the Properties, and spent time and money integrating the Properties with local community services, all of which improved the condition of the Properties, as recognized by non-biased third parties such as the Clark County Commissioner, Nevada State Apartment Association, and the Las Vegas Metropolitan Police Department. So it is clear no "deterioration" occurred as Fannie Mae improperly claimed as the sole basis for its now enjoined default.[15]

One indisputable indication of improvement at the Liberty Property is that before Westland assumed the Loan Agreements, two buildings on the Liberty Property had been completely destroyed by fire.[16] Moreover, Lenders were aware the buildings were completely destroyed, but Lenders chose not to: 1) apply the insurance proceeds to the loan balance at the time of the loss, or 2) require any additional reserves for the reconstruction of those buildings from the seller at the time of the loan assumption as expressly permitted by the Loan Agreement.[17] Notably, Westland's purchase from the seller of the Liberty Property included an assignment to Westland of all of the funds in the custodial and reserve accounts held by Lenders and any remaining insurance proceeds from insurance carriers after the date of sale.[18] Thus, Westland paid the seller full value for the $544,840.14 of insurance funds that had already been provided to Lenders related to the fire-damaged buildings, and full value for an assignment of the rights to any further insurance proceeds

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[14] Counterclaim, ¶¶ 2, 19-40, 81-90; Counterclaim, Exhibit A; Exhibit 1.
[15] Counterclaim, ¶¶ 1, 4, 80, 90-119, 208, 212; Counterclaim, Exhibit L & M; Yanki Greenspan Affidavit in Opposition to Application to Appoint Receiver, etc. , dated August 31, 2020, at ¶ 26.
[16] Exhibit 1.
[17] Exhibit 2 (Schedule identified as Exhibit "A" shows a list of accounts that included loss draft proceeds reserves for the two fire-damaged buildings).
[18] Exhibit 1 & 2.

that were not payable by the carrier until the buildings had been fully restored. After closing, Westland spent approximately $1.1 million to completely restore those two buildings.[19] So, until Lenders' release those insurance funds, Westland has in effect been required to pay for the restoration of those buildings twice.

Still, by mid-2019, without a valid basis, Lenders approached Westland and demanded a property condition assessment at the Properties.[20] As there was no basis for such an inspection, Westland would not agree to pay for that inspection, but acting in good faith, Westland provided access to the Properties after Lenders made certain representations, including that Lenders would cover the cost of any PCA performed.[21] For the reasons listed above, Westland had no concern about providing access to Lenders in order to maintain its positive relationship with Fannie Mae because it knew the condition of the Properties had not deteriorated but had improved.

However, after Lenders had a PCA conducted, on October 18, 2019, Lenders sent Westland a Notice of Demand (the "Notice") that alleged maintenance deficiencies existed at the Properties, as set forth in a September 2019 PCA report, and demanded that Westland deposit additional sums in the Replacement Reserve Account amounting to $2.85 million.[22] Such an assessment would necessarily mean one of two things: 1) the condition of the Properties deteriorated by $2.85 million in one year, despite Westland spending $1.8 million on capital expenditures during the same period, or 2) Lenders employed f3, Inc. to game the system by utilizing a different inspection and review standard that artificially inflated its PCA repair and replacement amounts.[23]

Clearly, it is the latter, because the alleged maintenance issues f3 cited resulted solely from use of a different standard for the September 2019 PCA compared to the initial PCA conducted in 2017 at the time of the initial loan, and not due to "deterioration" of the Properties.[24] The September

[19] Exhibit 3.
[20] Counterclaim, ¶ 137.
[21] Counterclaim, ¶¶ 138-140.
[22] Counterclaim, ¶ 151, 163; Plaintiff's Complaint, Exhibit 12.
[23] Counterclaim, ¶ 142-153; Counterclaim Exhibits D & E; *cf.* Plaintiff's Complaint, Exhibit 11, at 24 & 332.
[24] Counterclaim, Exhibit D & E, at 7-9; *cf.* Plaintiff's Complaint, Exhibit 11 & 12, at 24 & 332.

2019 version included increased monthly deferred maintenance charges for capital improvements, but by far the highest immediate cost at each Property was purportedly for the repair of vacant units, which was estimated at a value of $1.9 million for both Properties. Notably, even though f3 inspected vacant units, and the Lenders included those amounts in their calculus to raise reserves twentyfold, the cost to "turn" those units was not even a type of cost included in the earlier 2017 Loan Agreements' schedules derived from the CBRE PCA report.[25]

On November 13, 2019, Westland, in good faith, responded to Grandbridge's Notices by contesting the demand.[26] Westland's reasons for objecting included that: 1) the requested $2.85 million adjustment to the reserves would defeat the purpose of the parties' $38.3 million loan, 2) many of the issues identified by Lenders in the PCA report pre-existed the Loans, *i.e.*, the Property was already dilapidated at the time of the initial loan and at the Loan assumption, 3) Westland had already spent $1.8 million for substantial renovations of the Properties, and was continuing to spend money and was improving the Properties, 4) the PCA inspections were slanted through the use of out-of-state vendor f3, Inc. that varied the standard from the original PCA's, 5) Grandbridge improperly obtained and relied upon the PCA without any right to do so under the Loan Agreements, 6) the PCA was inflated, 7) Lenders never made a demand for Westland to perform maintenance, a pre-condition in the Loan Agreements, prior to their demand to fund twenty times higher reserves, and 8) the requested repair reserve increase was duplicative of the request for increased monthly replacement reserve deposits.[27]

Thereafter, Westland continued to maintain a good faith open dialogue with Lenders, including by supplying a copy of its Strategic Business Plan for the Properties, but it was to no avail.[28] Instead, on December 17, 2019, Lenders had their counsel forward a boilerplate Notice of Default and Acceleration of Note, rejecting Westland's good-faith proposal and sharing of strategic

[25] *Id.*
[26] Counterclaim, Exhibit Q.
[27] *Id.*
[28] Counterclaim, ¶¶ 189-199; Counterclaim, Exhibits N, R, S.

information, ignoring the substantial renovations that Westland had already made at the Properties, and failing to address any of the substantive issues that Westland had raised.[29] Since that time, Lenders have refused to address the actual factual circumstances or identify the purported default with any level of particularity. They have simply continued to demand payment in full, plus interest, including exceedingly high and manufactured default interest, fees and costs of all sums due under the Loan Agreements.[30]

In February 2020, without prior notice and after a misleading delay, Lenders unilaterally stopped withdrawing monthly ACH payments from Westland's account, which was seemingly done to manufacture a financial default where none existed.[31] Westland responded by forwarding a reservation of rights and then submitting monthly payments to meet the Loan obligations by check plus an additional approximately 10% overpayment to account for any variance. The overpayments were involuntary, but necessary to avoid a financial default, because Grandbridge failed to submit monthly debt service statements for this variable loan even after representing that it would do so.[32]

Notably, that was not the first time that Lenders engaged in unsavory servicing of the Loans, as Westland had previously made several reserve disbursement requests, but Lenders took disingenuous actions to delay and thereafter simply failed to respond to those requests.[33] Such requests included a request for the release of funds that Lenders had no good faith basis to hold after repairs had been performed, including but not limited to nearly $1 million that Lenders obtained from insurance payments earmarked for reconstruction of two buildings at the Liberty Property that Westland has already completed at its sole cost.[34]

On July 14, 2020, Fannie Mae filed the NODs alleging a default of the Loan Agreements based on Westland's alleged failure to maintain the Properties and deposit additional funds into the

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[29] Plaintiff's Complaint, Exhibit 13.
[30] *Id*; Counterclaim, ¶¶ 178-179, 195-198, 205-211; Counterclaim, Exhibits R & S.
[31] Counterclaim, ¶¶ 199-203.
[32] Counterclaim, ¶¶ 201-204; Counterclaim, Exhibit T (showing monthly debt service payments being made).
[33] Counterclaim, ¶¶ 154, 285-289.
[34] Id.

Replacement Reserve Escrow Account upon demand, and soon thereafter filed this receivership action.[35] On August 31, 2020, based on the foregoing conduct of Lenders, Westland was required to file a Counterclaim and its countermotion for a preliminary injunction to preserve the Properties by stopping foreclosure proceedings, obtain a ruling that the December 2019 notice of default was improper, restore its good name, and obtain reimbursement for Lenders' improper conduct.

On October 13, 2020, this Court rendered a decision granting the preliminary injunction. After competing submissions to the Court, the Order was entered on November 20, 2020 (the "Order"), to maintain the status quo ante litem, and to stop Lender's actions related to the baseless December 2019 Notice of Default that would result in further irreparable harm to Westland. (Order, at ¶¶ 3-4, 8.) Specifically, through the Order the Court found that "in the best light for it, at best for Fannie Mae there are substantial factual disputes related to whether any default occurred" and that Fannie Mae "has not shown good cause for its Application for Appointment of a Receiver . . . based on the lack of evidence of irreparable harm or substantial loss to collateral to Fannie Mae." (Order, at ¶¶ 5, 11.)

Within the Order, the Court preserved the status quo by prohibiting a foreclosure on Westland's real property, denying the application for appointment of a receiver, and consistent with Westland's requested relief that Fannie Mae not interfere with Westland's enjoyment of the Properties (as well as the denial of Fannie Mae's request for a receiver) this Court prohibited Lenders' improper conduct based on the non-existent December 2019 default. (Order, at Relief ¶¶ 1, 4, 5(a)-(o).) That prohibited conduct included failing to provide monthly debt service invoices, failing to process loan payments, failing to return possession of Westland's funds held in custodial escrow accounts by Grandbridge, and discriminating against other Westland entities solely based on the concocted default. (Order, at Relief ¶¶ 5(a)-(o).)

In response, for over four months, Fannie Mae has: 1) refused to release Westland's own funds that are held in custodial accounts by Grandbridge, 2) failed to fully comply with the Order's

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[35] Plaintiffs' Complaint, Exhibits 15 & 16.

other prohibitions, and 3) repeatedly challenged the Order by filing a detailed written objection, an appeal, two motions for a stay pending appeal, a motion to estimate and file a supersedeas bond in lieu of returning Westland's funds, and a motion for reconsideration before the Nevada Supreme Court. Most recently, on April 8, 2021, this Court denied Fannie Mae's Motion to Estimate and file a supersedeas bond. To date, the Nevada Supreme Court has issued one ruling, which in February 2021 upheld the preliminary injunction by denying a stay. During that entire period, the FHFA was Fannie Mae's conservator but failed to intervene. Contemporaneously with this Motion, the FHFA filed a Writ of Prohibition before the Nevada Supreme Court challenging the Order.

III. LEGAL ARGUMENT

A. *The Motion to Intervene Is An Untimely Challenge Of The Preliminary Injunction*

NRS 12.130 permits intervention "as provided by the Nevada Rules of Civil Procedure." NRCP 24(a) and (b) govern intervention of right and permissive intervention, and each section of the Rule "permit[s] anyone to intervene" but only "[o]n timely motion." In fact, timeliness is a threshold matter, so that even when a party claims intervention as of right, the Court must first consider whether the motion was timely as a condition to considering intervention, and has the discretion to deny the motion unless the court is satisfied it is timely. *See e.g.*, *Nat'l Ass'n for Advancement of Colored People v. New York*, 93 S. Ct. 2591, 2603 (1973) (upholding the denial of the NAACP's motion to intervene in a civil rights suit, because it did not intervene immediately when it obtained knowledge of the suit when at that point the suit "had reached a critical stage"); *Equal Employment Opportunity Commission v. Westinghouse Elec. Corp.*, 675 F.2d 164, 165 (8th Cir. 1982) (even where a party has a statutory right to intervene under Fed.R.Civ.P. 24(a), "a condition precedent to intervention . . . requires that the application be timely.") Ultimately, "[t]imeliness is a determination that lies within the sound discretion of the trial court." *Cleland v. Eighth Judicial District Court*, 92 Nev. 454, 456, 552 P.2d 488 (1976); *see also* NRCP 24(b)(3) ("*Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or *prejudice* the adjudication of the *original parties' rights*.").

Contrary to the FHFA's suggestion, NRS 12.130 does not provide intervention is timely as long as an application is made before trial. Instead, "[t]he plain language of NRS 12.130 clearly indicates that intervention is appropriate only during ongoing litigation, *where the intervenor has an opportunity to protect or pursue an interest* which will otherwise be infringed. The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1267–68 (1993) (emphasis added). The Nevada Supreme Court has also provided that other judicial determinations preclude a motion to intervene, such as an entry of default or an order resulting from a settlement. *Nalder v. Eighth Judicial Dist. Court in & for County of Clark*, 136 Nev. 200, 203, 462 P.3d 677, 682 (2020) ("no intervention after judgment, including default judgments and judgments rendered by agreement of the parties"); *Dangberg Holdings Nevada, L.L.C. v. Douglas County & its Bd. of County Com'rs*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999) (voluntary written settlements preclude intervention). The implication of these rulings is clear, intervention is not permitted to allow a potential party to challenge a prior ruling of the Court.

Thus, the Nevada Supreme Court stated that "even when made before trial, an application must be 'timely' in the sense afforded the term under NRCP 24." *Am. Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 1229, 1244, 147 P.3d 1120, 1130 (2006). "The most important question to be resolved in the determination of the timeliness of an application for intervention is not the length of the delay by the intervenor *but the extent of prejudice to the rights of existing parties* resulting from the delay." *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 669 (1978) (emphasis added). "Further, the timeliness of an application may depend on when the applicant learned of its need to intervene to protect its interests." *Am. Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 1229, 1244, 147 P.3d 1120, 1130 (2006). So that the longer a party "waits after the litigation commences before applying to intervene, the more the [party's] acceptance of the [existing party's] representation as adequate can be implied, and the stronger the showing to the contrary must be to overcome that inference." *Id.* at 1242. In such cases, "[a]lthough the applicant[ ] 's burden to prove [inadequate representation] has been described as 'minimal,' when the [applicant] 's interest or ultimate objective in the litigation is the same as the [existing party] 's interest or subsumed within the [existing party] 's objective, the [existing party] 's representation should generally be adequate, unless the [intervention applicant] demonstrates otherwise." *Id.* at 1241.

Here, the Notice of Default was issued in December 2019, Fannie Mae began foreclosure proceedings in July 2020, and Fannie Mae filed for appointment of a receiver on August 12, 2020. Moreover, by August 31, 2020, Westland had filed its Counterclaim, which asserted all of its claims that are presently pending, and its Countermotion for a preliminary injunction. At that point, like in *NAACP v. New York*, the litigation was at a critical stage. Still, the FHFA took no action for the next seven months. In the meantime, this Court and the original parties engaged in extensive motion practice, and Fannie Mae even filed an interlocutory appeal and appellate motions related to the preliminary injunction. Thus, intervention to permit a further challenge to the injunction at this point can be seen as nothing short of prejudicial to the adjudication of Westland's right to enforcement of the preliminary injunction ruling.

Additionally, there would be no prejudice to the FHFA if it is denied permission to intervene in order to challenge the preliminary injunction. First, Fannie Mae has repeatedly and vigorously opposed the preliminary injunction, and is directly aligned with the FHFA's interest. Second, the FHFA's conduct here is not an isolated mistake because it is consistent with its pattern of *intentionally* delaying intervention until after a trial court renders decisions with which the FHFA disagrees. *See Burke v. Fed. Nat'l Mortg. Ass'n*, No. 3:16CV153-HEH, 2016 WL 5662007, at *6 (E.D. Va. Sept. 29, 2016), vacated on other grounds, No. 3:16-cv-153-HEH, 2016 WL 7451624 (E.D. Va. Dec. 6, 2016). In *Burke*, the court precluded the FHFA from intervening when it found that the FHFA "knew of the underlying litigation and intentionally delayed[.]" *Id.* By now, the FHFA should know better, but again here has continued to delay solely in an attempt to obtain an improper procedural advantage to the prejudice of Westland, which is a practice that should not be rewarded.

Thus, intervention to permit a challenge to the preliminary injunction is untimely, because it would be prejudicial to Westland as the litigation had reached a *critical stage* at the time of the preliminary injunction motion, which was filed on August 31, 2020. As the Nevada Supreme Court has recognized, intervention is not permitted to disturb a Court's prior settled ruling. If the FHFA had wanted to challenge that Order at the district court level, it should have immediately intervened and sought reconsideration within 14 days as specified by EDCR Rule 2.24(b) & (c), a rule that that is narrowly construed by the Nevada Supreme Court, but it did not. Moreover, such relief would be especially inappropriate here the FHFA is not without other recourse, which is the case here, because the FHFA has already submitted a Writ of Prohibition challenging the preliminary injunction before the Nevada Supreme Court. As such, this Motion should be seen as too untimely to permit the preliminary injunction determination from being disturbed yet again in the trial court.

B. *The Motion to Intervene Is Futile To The Extent It Seeks To Challenge The Preliminary Injunction*

Where "[i]t would be futile and wasteful of the resources of the Court and the parties to permit [a party] to intervene at this time. . . . as when considering a motion to amend, the Court must weigh whether granting the relief sought would be 'nothing more than an exercise in futility." *Summer H. v. Fukino*, CIV 09-00047 SOM-BMK, 2009 WL 1649910, at *2 (D. Haw. June 9, 2009) (*quoting in part Bonin v. Calderon*, 59 F.3d 815 (9th Cir.1994)); *U.S. v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 856 (2d Cir.1998) (upholding denial of motion to intervene due to futility; *Williams & Humbert, Ltd. v. W. & H. Trade Marks, Ltd.*, 840 F.2d 72, 74 (D.C.Cir.1988) (finding legal sufficiency of a claim has bearing on legally protectable interest requirement); *Moss v. Stinnes Corp.*, No. 92 Civ. 3788(JFK), 1997 U.S. Dist. LEXIS 12783, at *2, 1997 WL 530113 (S.D.N.Y. Aug. 25, 1997), *aff'd* 169 F.3d 784, 785 (2d Cir.1999) (denying intervention when "proposed claims in intervention fail to state a valid claim for relief").

Here, the basis provided in the FHFA's motion for intervention is, quite transparently, primarily to challenge the preliminary injunction, which is patently improper for several reasons.

1. *The FHFA Cannot Challenge The Preliminary Injunction In This Court Because Jurisdiction Over The Order Is Vested In The Supreme Court.*

The FHFA represents that the purpose of its intervention is to assert "HERA's statutory protections as defenses to Defendants' counterclaims, including by challenging the November 2020 preliminary injunction." In other words, the FHFA seeks the challenge the preliminary injunction order at the district court level while simultaneously attacking the preliminary injunction in the Nevada Supreme Court through its pending Writ of Prohibition. The fundamental principles of jurisdiction dictate that the FHFA cannot litigate the validity of the same order on parallel tracks in this Court and the Supreme Court, which renders the FHFA's motion to intervene futile to the extent it seeks to dissolve or modify the preliminary injunction.

It is well-settled that "a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in [the Nevada Supreme Court]." *Kantor v. Kantor*, 116 Nev. 886, 894, 8 P.3d 825, 830 (2000). As a result, while the appeal of a preliminary injunction does not prohibit a district court from proceeding on the merits of the litigation, "[a] district court lacks jurisdiction to modify an injunction once it has been appealed except to maintain the status quo among the parties." *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th Cir. 2000) (listing multiple cases); *see also Coastal Corp. v. Texas E. Corp.*, 8698 F.2d 817, 819-820 (5th Cir. 1989) (observing "several circuits have held, or at least strongly implied, that the district court may not alter the injunction once an appeal has been filed except to maintain the status quo of the parties pending the appeal," and reaching the same result) (listing multiple cases); *c.f. Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) (a district court and appellate court "should not attempt to assert jurisdiction over a case simultaneously" because "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.").

Thus, the FHFA cannot intervene in this district court proceeding for the purpose of challenging the validity of the preliminary injunction. Rather, the FHFA's only recourse is to seek relief in the Nevada Supreme Court which it has already done by filing a Writ of Prohibition. His

Honor should reject the FHFA's motion to intervene to the extent it demands that this Court simultaneously consider issues that are pending before the Nevada Supreme Court and clarify that the FHFA is barred from mounting a collateral attack on the preliminary injunction order.

2. *Preserving and Conserving Fannie Mae Assets Or Property Is Not A Power Placed At Issue By The Preliminary Injunction, Because It Only Applied To The Release of Westland's Own Custodial Funds Held By Grandbridge*

Even assuming arguendo, that this Court retained jurisdiction to modify or dissolve aspects of the preliminary injunction, the only power that can even be argued to be potentially implicated in relation to Fannie Mae's refusal to release the funds addressed by the preliminary injunction is the assertion of 12 U.S.C. § 4617(b)(2), which provides the FHFA the power to conserve Fannie Mae's assets and property. While the FHFA asserts that according to 12 U.S.C. § 4617(b)(2) it is "statutorily empowered to 'preserve and conserve [Fannie Mae's] assets and property" and "to 'collect all obligations and money due' Fannie Mae" those powers are not applicable to the preliminary injunction. Here, the funds are reserves required to be held in custodial accounts for Westland's benefit. Those accounts are located at Grandbridge, and those funds are Westland's property, not Fannie Mae's "property" or "assets." Moreover, the preliminary injunction only provided that Fannie Mae was *prohibited from exercising control over* and *prohibited from failing to release Westland's own personal property*, such as the funds Fannie Mae was required to hold for Westland's benefit in custodial escrow accounts. (Order, at ¶¶ 5(b), 5(g), 5(h), and 5(j).)[36] Thus, intervention for that purpose would be futile and improper.

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[36] Specifically, the Order only applied to possession of Westland's Property (Paragraph 5(b)), funds held by Grandbridge in a custodial account related to the fire-damaged buildings that Westland has already paid to fully restore (Paragraph 5(h)); and funds held by Grandbridge in a custodial account for Repair and Replacement (Paragraph 5(j).) As such, the preliminary injunction's terms do not implicate 12 U.S.C. § 4617(b)(2), because it relates to Westland's assets and property. Further, the reason for the limitation of the FHFA's powers seems clear, because to the extent that the statute permitted the FHFA to assume control over Westland's assets it would amount to an unconstitutional improper governmental taking of Westland's property without due process. *See e.g.*, *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998) ("A procedural due process claim has two distinct elements: (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections.") Here, if such funds were removed from the custodial accounts at the FHFA's bequest, Westland's funds have been taken through a transfer from a custodial account without any legal process.

Further, unlike other cases where the FHFA has intervened, because Westland has *fully paid any agreed upon monthly debt service payments,* there is no obligation or money due Fannie Mae. Therefore, the preliminary injunction's terms left Fannie Mae's loan interests and mortgage assets unimpaired because the preliminary injunction did not attempt to obtain any Fannie Mae asset either through foreclosure or an additional investment of Fannie Mae funds. *Cf. Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 236, 445 P.3d 846, 851 (2019) (finding the Enterprise "owned the loan on the date of the foreclosure sale" so application of the Federal Foreclosure Bar prevented a sale to the detriment of Fannie Mae's deed of trust); *Las Vegas Dev. Group, LLC v. 2014-IH Borrower, LP*, 2020 WL 1066307, at *3 (D. Nev. Mar. 4, 2020) (finding "Fannie Mae purchased the loan"); *County of Sonoma*, 710 F.3d at 993 (9th Cir. 2013) (finding "the Enterprises' business is to purchase and securitize mortgages, and FHFA carries on that business when it weighs the relative risks and benefits of purchasing classes of mortgages for investment"). Moreover, the Order specifically found "the lack of evidence of . . . substantial loss to collateral to Fannie Mae" (Order, Conclusions of Law, at ¶ 11), and on that basis provided that Fannie Mae may not take control of any Westland Property or continue to fail to disburse Westland's funds that were held in custodial accounts at Grandbridge. On that basis, the ruling on FHFA's motion to intervene should provide that the FHFA is unable to intervene to challenge the preliminary injunction.

Based on the foregoing, this Court should limit any intervention ruling by providing that the FHFA may not challenge, and the right to intervene does not permit the FHFA an additional challenge before this Court of the preliminary injunction ruling, and that portion of the intervention motion should be denied.

///

///

IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Honorable Court **DENY** the FHFA's Motion to Intervene as set forth above.

Dated this 9th day of April 2021

Respectfully submitted,

LAW OFFICES OF JOHN BENEDICT

By: ***/s/ John Benedict***

JOHN BENEDICT, ESQ.
Nevada Bar No. 005581
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Telephone: (702) 333-3770
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WESTLAND REAL ESTATE GROUP

By: ***/s/ John W. Hofsaess***

JOHN HOFSAESS, ESQ.
Pro Hac Vice
520 W. Willow Street
Long Beach, CA 90806
Telephone: (310) 438-5147
Email: John.H@WestlandREG.com

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

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021, a copy of the foregoing Motion was served on the parties listed below via electronic service through Odyssey to the following:

Robert 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
E-mail: nkanute@swlaw.com; dedelblute@swlaw.com
Attorneys for Plaintiff Federal National Mortgage Association

Joseph G. Went, Esq., Lars K. Evensen, Esq., and/or Sydney R. Gambee, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
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
Email: lhart@fennemorelaw.com; jtennert@fennemorelaw.com
Attorneys for Federal Housing Finance Agency

/s/ Angelyn Cayton
An Employee of the Law Offices of John Benedict

EXHIBIT “1”

EXHIBIT “1”

Assignment of Insurance Proceeds

THIS ASSIGNMENT OF INSURANCE PROCEEDS (the "Assignment") dated as of August 29, 2018 ("Effective Date"), is between **SHAMROCK PROPERTIES VI LLC**, a Delaware limited liability company ("Assignor"), and **WESTLAND LIBERTY VILLAGE LLC**, a Nevada limited liability company ("Assignee").

A. Assignor owns certain real property and certain improvements thereon known as Liberty Village Apartments located at 4870 Nellis Oasis Lane, Las Vegas, Nevada 89115, and more particularly described in Exhibit "A" attached hereto (the "Property").

B. Assignor and Assignee are parties to that certain Agreement of Purchase and Sale and Escrow Instructions dated as of June 22, 2018, by and between the Assignor and Amusement Industry, Inc., a California corporation (the "Original Assignee"), as assigned to the Assignee pursuant to an assignment and assumption agreement between the Original Assignee and the Assignee (as amended, the "Purchase Agreement"), pursuant to which Assignee agreed to purchase the Property from Assignor and Assignor agreed to sell the Property to Assignee, on the terms and conditions contained in the Purchase Agreement. Unless otherwise defined herein, initial capitalized terms used herein shall have the meanings ascribed to such terms in the Purchase Agreement.

C. On each of April 15, 2018 ("April 15 Casualty Event") and May 10, 2018 ("May 10 Casualty Event", and together with the April 15 Casualty Event, the "Casualty Events"), a casualty event occurred at the Property damaging several units.

D. The Casualty Events were reported to Assignor's property insurance company, Philadelphia Indemnity Insurance Company ("Insurance Company"), under Policy No. PHPK1742943 ("Policy"). The April 15 Casualty Event was assigned Claim No. 18041166993 by the Insurance Company and the May 10 Casualty Event was assigned Claim No. 18051174064 by the Insurance Company (collectively, "Claims").

E. The loss (other than business interruption, if any) from the April 15 Casualty Event has been evaluated by the Insurance Company which has provided a statement of loss in the amount of 571,704.85 ("April 15 Casualty Event Statement of Loss") and, in connection therewith, insurance proceeds of $285,622.09 have been received by the Assignor as of the Effective Date and forwarded to the Lender, together with $5,000 in funds from Assignor to cover the $5,000 deductible applicable to Claim No. 18041166993, such that the Lender holds as of the Effective Date $263,104.31 in the Loss Draft Proceeds Reserve (April 15, 2018 Fire), after having made $27,267.78 in payments to contractors for mitigation and security and disbursing $250.00 to Lender as an administrative fee in respect of the April 15 Casualty Event.

F. The loss (other than business interruption, if any) from the May 10 Casualty Event has been evaluated by the Insurance Company which has provided a statement of loss in the amount of $412,106.27 ("May 10 Casualty Event") and, in connection therewith, insurance proceeds of $305,665.63 have been received by the Assignor as of the Effective Date and forwarded to the Lender, together with $5,000 in funds from Assignor to cover the $5,000 deductible applicable to Claim No. 18051174064, such that the Lender holds as of the Effective

Date $$281,735.83 in the Loss Draft Proceeds Reserve (May 10, 2018 Fire), after having made $28,679.70 in payments to contractors from mitigation, demolition and security and disbursing $250.00 to Lender as an administrative fee in respect of the May 10 Casualty Event.

G. Concurrently herewith, Assignor has assigned Assignee all of its right, title and interest in the Loss Draft Proceeds Reserve (April 15, 2018 Fire) and the Loss Draft Proceeds Reserve (May 10, 2018 Fire) held by the Lender and by this Assignment desires to assign to Assignee all of its future right to receive from and after the Effective Date insurance proceeds from the Insurance Company in respect of the Claims ("Proceeds") in accordance with provisions of Sections 3.6.4 and 3.6.5 of the Purchase Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignor hereby assigns to Assignee all of Assignor's right, title, and interest in and to the Proceeds and its rights under the Policy solely in respect of the Claims. In accordance with said assignment, Assignee shall have exclusive authority from and after the Effective Date to communicate with the Insurance Company in respect of the Claims. In further accordance therewith and only to the extent necessary to carry out the stated purpose of this Assignment, Assignor irrevocably constitutes and appoints the Assignee as the Assignor's true and lawful attorney-in-fact, with full power and authority for the Assignor, and in the Assignor's name, place and stead, to communicate, negotiate, settle and adjust the Claims.

This limited power of attorney is a special power of attorney and is coupled with an interest in favor of the Assignee and as such shall be irrevocable and continue in full force and effect until both Claims have been settled, including in respect of any supplemental proofs of loss that Assignee determines to process with the Insurance Company in respect of the Claims.

Promptly after Close of Escrow, Assignor and Assignee shall (i) notify the Insurance Company in writing that the Proceeds have been assigned by Assignor to Assignee in connection with Assignee's acquisition of the Property from Assignor and (ii) direct the Insurance Company that the Proceeds are to be paid as directed by Assignee. If for any reason Assignor receives all or any portion of the Proceeds from the Insurance Company, Assignor shall promptly pay over the Proceeds so received by endorsing the check for any Proceeds so received as directed by Assignee or wiring the Proceeds as directed by Assignee if they have been received by wire or by any other appropriate means as directed by Assignee.

2. In connection with the foregoing assignment, Assignee assumes the obligation to pay $36,135.62 to Copper Creek Construction (Invoice No. 8940) in respect of demolition costs that have been incurred but not yet paid for in connection with the April 15 Casualty Event.

3. At the request of Assignee, Assignor agrees to reasonably cooperate and take reasonable efforts (including, without limitation, executing reasonable documentation) to cause the Insurance Company to pay the Proceeds to Assignee to the extent required by the Policy but Assignee shall not be required to incur any non-de-minimis expense in connection with such efforts.

4. In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the sole prevailing party's costs and expenses of such dispute, including, without limitation, reasonable attorneys' fees and costs.

5. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. This Assignment shall be governed and construed in accordance with the laws of the State of Nevada.

7. Nothing in this Assignment is intended to affect, shall affect or shall be deemed to affect, the coverage available under the Policy, which shall remain in full force and effect.

8. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption as of the Effective Date.

ASSIGNOR:

SHAMROCK PROPERTIES VI LLC, a Delaware limited liability company

By: ND MANAGER LLC, a Delaware limited liability company, its Manager

By:______________________________
Name: Ellen Weinstein
Title: Manager

ASSIGNEE:

WESTLAND LIBERTY VILLAGE LLC, a Nevada limited liability company

By: Alevy Descendants Trust Number 1
Its Manager

By:______________________________
Name: Yaakov Greenspan
Title: Co- Trustee

[*Signature Page to Assignment of Insurance Proceeds (Liberty Village)*]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption as of the Effective Date.

ASSIGNOR:

SHAMROCK PROPERTIES VI LLC, a Delaware limited liability company

By: ND MANAGER LLC, a Delaware limited liability company, its Manager

By:______________________________
Name: Ellen Weinstein
Title: Manager

ASSIGNEE:

WESTLAND LIBERTY VILLAGE LLC, a Nevada limited liability company

By: Alevy Descendants Trust Number 1
Its Manager

By:______________________________
Name: Yaakov Greenspan
Title: Co-Trustee

[*Signature Page to Assignment of Insurance Proceeds (Liberty Village)*]

Exhibit "A" to Assignment of Insurance Proceeds

Description of Real Property

PARCEL 1:

ALL THAT PORTION LYING WITHIN THE EXTERIOR BOUNDARY LINES OF NELLIS OASIS - PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 34 OF PLATS, PAGE 8, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 2:

ALL THAT PORTION LYING WITHIN THE EXTERIOR BOUNDARY LINES OF NELLIS OASIS - PHASE 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 34 OF PLATS, PAGE 54, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 3:

ALL THAT PORTION LYING WITHIN THE EXTERIOR BOUNDARY LINES OF NELLIS OASIS - PHASE 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 38 OF PLATS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT “2”

EXHIBIT “2”

ASSUMPTION AND ASSIGNMENT OF ESCROW, COLLATERAL AND RESERVE AGREEMENTS

This Assumption and Assignment of Escrow, Collateral and Reserve Agreements ("Agreements") is made by and between **SHAMROCK PROPERTIES VI LLC**, a Delaware limited liability company (the "Assignor") and **WESTLAND LIBERTY VILLAGE LLC**, a Nevada limited liability company ("Assignee") as of August 29, 2018.

RECITALS:

A. Assignor is transferring certain property to the Assignee and the Assignee is assuming the obligations of the Assignor for a loan (the "Loan") evidenced by that certain Multifamily Note (the "Note"), dated as of November 2, 2017, made by Assignor in the original principal amount of **$29,000,000.00** and secured by that certain Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"), dated as of November 2, 2017, executed by the Assignor, and certain other documents executed in connection with the Loan. The Loan is secured by the premises known as Liberty Village Apartments located at 4870 Nellis Oasis Lane, Las Vegas, Nevada (the "Property").

B. Various escrow, collateral and reserve accounts were established in connection with the Loan (the "Accounts").

C. In connection with the transfer of the property to Assignee and the assumption of the Loan by Assignee, Assignor desires to assign all of its right, title, and interest in the Accounts to Assignee.

D. Fannie Mae is the holder of the Note and the Mortgage after assignment from Greystone Servicing Corporation, Inc., a Georgia corporation, and the assignee of all of the rest of the documents executed in connection with the Loan.

NOW, THEREFORE, in consideration of Fannie Mae's consent and assumption described above, to the transfer of the Property, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties incorporate the above recitals herein and agree as follows:

1. Assignment. Assignor assigns, transfer, sells, sets over, and delivers unto Assignee all of Assignor's right, title, and interest in and to the Accounts held by **SUNTRUST BANK**, a Georgia banking corporation on behalf of Fannie Mae, which Accounts and a description therefor are set forth on Exhibit A, attached to and incorporated by reference into this Agreement. Assignor warrants that Exhibit A contains the complete and correct list of all of the Accounts.

2. Assumption. Assignee accepts the assignment of Assignor's right, title and interest to the Accounts, and assumes all of the obligations of the Assignor under the applicable escrow, collateral and reserve provisions (pursuant to which such Accounts are maintained) contained in the document(s) listed below:

(a) Multifamily Loan and Security Agreement dated as of November 2, 2017 by and between **SHAMROCK PROPERTIES VI LLC**, a Nevada limited liability company and **SUNTRUST BANK**, a Georgia banking corporation.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

ASSIGNOR:

SHAMROCK PROPERTIES VI LLC, a
Delaware limited liability company

By: **ND MANAGER LLC**, a
Delaware limited liability company, its
Manager

By:______________________________(SEAL)
Name: Ellen Weinstein
Title: Manager

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

ASSIGNEE:

WESTLAND LIBERTY VILLAGE LLC, a
Nevada limited liability company

By: **ALEVY DESCENDANTS TRUST NUMBER 1**, its
Manager

By:____________________________(SEAL)
Name: Yaakov Greenspan
Title: Co-Trustee

EXHIBIT "A"
(List of Accounts)

- Real Estate Tax Escrow Account: **$131,667.48**
- Insurance Escrow Account **$100,334.61**
- Replacement Reserve Escrow Account: **$65,657.03**
- Immediate Repairs balance: **$9,375.00**
- Loss Draft Proceeds Reserve (April 15, 2018 Fire): **$263,104.31**
- Loss Draft Proceeds Reserve (May 10, 2018 Fire): **$281,735.83**

EXHIBIT “3”

EXHIBIT “3”

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

November 25, 2020

VIA EMAIL & FIRST CLASS MAIL

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

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

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

Dear Mr. Woolf and Mr. Kanute:

Please accept this letter as Westland Liberty Village LLC's ("Westland") reiteration of the request for disbursement of the insurance reserves, which was submitted on September 4, 2020, related to the Liberty Village property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.[1]

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

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

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

Very truly yours,

John W. Hofsaess

Enclosures

Date: ______7/22/2020___________ Page:___1___of __1____

Type of Reserve: ________________insurance Claim______________

Project Name: ______________Liberty Village Apartments __________________

Loan Number: ______________330455178__________________

Cohen Financial
Fannie Mae Reserve
Request

Unit Number	Description of Item	Invoice #	Invoice Date	Supplier	Qty. Purchased	Total Priced paid (Not including tax or labor)	Labor Cost If other than vendor	Tax	Total Paid	Check Amount	Check Number
3426	Rehab Deposit	3426-INSEST	8/13/2019	Juve Gonzalez & Son's Inc					187,419.75	187,419.75	1667
3426	Rehab Progress Pymt #1	3426-INSEST Prog #1	10/6/2019	Juve Gonzalez & Son's Inc					61,589.16	61,589.16	1818
3426	Rehab Progress Pymt #2	3426-INSEST Prog #2	11/26/2019	Juve Gonzalez & Son's Inc					85,577.04	85,577.04	2003
3426	Rehab Progress Pymt #3	3426-INSEST Prog #3	1/9/2020	Juve Gonzalez & Son's Inc					53,569.62	53,569.62	2145
3426	Rehab Final	LV-3426FINAL	3/17/2020	Juve Gonzalez & Son's Inc					147,329.43	147,329.43	2528
3426	Bldg 3426 Permit fees Reimb	LV-3426-BD19-37881	2/21/2020	Juve Gonzalez & Son's Inc					3,808.49	7,228.98	2301
3426	Asbestos Testing	2287	3/11/2019	Certified Property Restoration					650.00	1,300.00	1412
3426	Truss/Coordination Reimb	19-4-22 Bldg 3426	4/22/2019	Oscar O'keefe Architect					875.00	875.00	1405
3426	Appliances	H3318-299951	5/7/2020	Home depot credit Services					11,449.94	62,031.67	2838
3426	Demolition	8940	8/16/2018	Copper Creek Construction					36,135.62	36,135.62	16604
3426	Plans Deposit	18-9-20 Bldg 3426	9/20/2018	Oscar O'keefe Architect					8,900.00	8,900.00	1008
3426	Plans Final	19-1-7 Bldg 3426	1/7/2019	Oscar O'keefe Architect					8,900.00	8,900.00	1226
Borrower Certification:					Totals	0	0	0	606,204.05		

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

Total Amount Invoiced: 606,204.05

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

Please provide instructions for the disbursement: Wire ☑ ACH ☐

Bank Name	ABA Number
City National Bank	122016066

Account Number	Account Name
363567800	Westland Liberty Village

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

BY: Ruth Garcia

Ruth Garcia/ Residential Asset Manager

Date: ______7/22/2020___________ Page:___1___of __2____

Type of Reserve: ________________insurance Claim______________

Project Name: ______________Liberty Village Apartments __________________

Loan Number: ______________330455178__________________

Cohen Financial
Fannie Mae Reserve
Request

Cohen Financial

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

Borrower Certification:

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

Total Amount Invoiced: 505,329.72

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

Please provide instructions for the disbursement: Wire ☑ ACH ☐

Bank Name	ABA Number
City National Bank	122016066
Account Number	**Account Name**
363567800	Westland Liberty Village
Contact for Wire Confirmation (Name)	**Wire Confirmation Call (Telephone Number)**
Marilu Garcia	(310) 639-7130 X:201

BY: Ruth Garcia

Ruth Garcia/ Residential Asset Manager

Date: ______7/22/2020___________ Page:___2___of __2____

Type of Reserve: ________________insurance Claim______________

Project Name: ______________Liberty Village Apartments _________________

Loan Number: ______________330455178__________________

Cohen Financial
Fannie Mae Reserve
Request

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

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

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363567800	Westland Liberty Village
Contact for Wire Confirmation (Name)	**Wire Confirmation Call (Telephone Number)**
Marilu Garcia	(310) 639-7130 X:201

BY: Ruth Garcia

Ruth Garcia/ Residential Asset Manager

Westland Liberty Village

Insurance Claim Disbursement Request

Summary Page

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

EXHIBIT "4"

EXHIBIT "4"

Electronically Filed
8/31/2020 5:25 PM
Steven D. Grierson
CLERK OF THE COURT

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

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

Counterclaimants,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation,

Counter-Defendant.

CASE NO. A-20-819412-C

DEPT NO. 4

AFFIDAVIT OF YAKOOV GREENSPAN IN OPPOSITION TO APPLICATION TO APPOINT RECEIVER AND IN SUPPORT OF DEFENDANT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

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

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

Third Party Plaintiffs,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation,

Counter-Defendant.

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

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

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

3. I am familiar with Westland's records regarding the two Multifamily Loan and Security Agreements entered into on August 29, 2018, (the "Loan Agreements") by and between Westland as the assuming borrower, Federal National Mortgage Association ("Fannie Mae") as lender, and Grandbridge Capital Real Estate LLC (who was known as Cohen Financial and SunTrust Bank at the time the loan was signed, and hereinafter referred to as "Grandbridge" and together with Fannie Mae, "Lenders") as lender/loan servicer, as well as the facts and circumstances giving rise to this lawsuit. As such, I am knowledgeable of the facts contained herein and am competent to testify thereto.

Background

4. Liberty LLC and Square LLC are single-purpose entities that each hold title to one of the two Properties owned at 4870 Nellis Oasis Lane and 5025 Nellis Oasis Lane, which are adjoining multi-family apartment communities, located in Las Vegas, Nevada.

5. Liberty LLC and Square LLC are entities affiliated with Westland Real Estate Group, which has 50 years of multi-family housing experience and is one of the most experienced housing providers in Nevada, with over 10,000 apartment units in 38 apartment communities the Las Vegas area, and more than 500 employees. To my knowledge, during its 50-year history, Westland Real Estate Group has never had a Notice of Default and Election to Sell filed against one of the properties in its portfolio.

The Purchase/Loan Assumption

6. On August 29, 2018, Liberty LLC and Square LLC purchased the two Properties located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-710-161, 140-08-711-273 and 140-08-712-289] and 5025 Nellis Oasis Lane, Las Vegas, NV 89115 [Assessor's Parcel Nos. 140-08-702-002 and 140-08-702-003] (the "Properties") from sellers Shamrock Properties VI LLV and Shamrock Properties VII LLC (collectively the "Shamrock Entities").

7. To purchase the Properties, Liberty LLC and Square LLC assumed the two Loan Agreements from the Shamrock Entities in the amount of $29,000,000 and $9,366,000, respectively (the "Loans") that were issued by Grandbridge (the successor to SunTrust Bank) in August 2018. Westland paid the remainder of the combined $60.3 million purchase price in cash, which resulted in Westland establishing over $20 million in equity in the Properties.

8. Pursuant to the Loan Agreements, Westland was responsible for a monthly debt service obligation of approximately $162,000 for the Liberty Property, and $52,000 for the Village Property, which includes taxes, insurance, and a replacement reserve escrow deposit.

9. As of the date of this Affidavit, and at all prior points in time, Liberty LLC and Square LLC have been current in the payment of its monthly debt service obligations related to the Liberty Property and the Square Property.

10. Even when Lenders stopped withdrawing the automatic ACH payments and refused payment from Westland, Westland began overnighting check payments each and every month. I have seen correspondence showing that Lenders admit to receiving those payments.

11. Since February 2020, out of an abundance of caution, rather than the base amount due of approximately $162,000, Liberty LLC has forwarded $180,621.79 each month for its Property, and rather than the base amount of approximately $52,000, Square LLC has forwarded $58,471.94 each month for its Property.

The Notice of Demand and Purported Default

12. Upon taking over the two Properties, Westland almost immediately began to repair and remediate them. In September 2019, f3 Inc., I believe at Grandbridge's request, prepared a property condition assessment. Grandbridge relied upon this report to issue Westland a Notice of Demand ostensibly based on the September 2019 property condition assessment of f3, Inc. Thereafter, just as Westland had done prior to that assessment, it continued to engage in ongoing repair and remediation of the Properties, including, but not limited to, the issues identified in the f3 report. Presently, Westland has made most, if not all, of these repairs.

13. Westland continued making repairs despite Lenders' refusal to honor its contractual obligations to release money from the Reserve Accounts to fund the work. Instead, the repairs were funded out of an additional infusion of Westland's own cash. Thus, all the Replacement Reserve Account funds have been preserved as further security for Lenders.

14. Despite the passage of over a year since the September 2019 property condition assessment was performed, Lenders never re-inspected the Properties.

15. After Lenders declared a default under the Loan Agreements in October 2019, I sought to have that default addressed with the Lenders. However, when Westland contacted Grandbridge, the Lenders refused to engage in any discussions by stating the matter had already been assigned to counsel.

16. I received a letter in December 2019, by which Lenders stated they were accelerating Westland's loan balance and wanted to deprive Westland of the ability to collect rents.

17. By mid-February 2020, it came to my attention that Lenders stopped withdrawing the monthly ACH payments, even though I had not received any notice that they would no longer be withdrawing those payments consistent with their practice from the time Westland assumed the Loans. Lenders seemingly tried to manufacture a financial loan default, where none had previously existed.

18. Notwithstanding Lender's unilateral change in payment method, Westland kept making its monthly debt payments. Next, Lenders failed to provide Westland any loan payment billing statements. So, to be conservative and to ensure there was no financial default under the Loans, Westland's management required the accounting department to forward an additional 10% on top of the monthly payment. Due to those overpayments, Westland has paid Lenders at least an extra $150,000 more than what is required by the Loan Agreements.

19. It is my understanding that Fannie Mae, through its counsel, has agreed to meet with Westland, but several conditions were placed on that meeting, including that Westland pay all the costs associated with the non-existent defaults Grandbridge had created, such as the f3 PCA report, which it was previously represented Westland would not need to pay for as long as Westland provided Lenders access to the Properties, and all attorney's fees. The Lenders demanding those costs just to talk about resolution, we believed was not good faith, so Westland advised Fannie Mae that it was unable to participate in settlement discussions until those unreasonable conditions were eliminated. Westland continues to be ready, willing, and able to engage in good faith settlement discussions without unreasonable preconditions.

20. Westland has continued to make efforts to resolve this dispute with Fannie Mae, because it was disruptive to our business, as Westland's entities were no longer able to easily refinance our loans_due to having these two significant loans, we believe, improperly placed into default status, and due to the Notice of Default that was filed against our Properties.

21. Westland does not dispute it has obligations under the Loan Agreements, but Westland has met those obligations, improved the conditions at the Properties, and continues to timely pay its loan obligation never missing a single payment to date, so I am at a complete loss as to what Westland could have done to prevent Lenders from asserting this default, other than

just let Grandbridge hold $2.7 million of Westland's cash just because they thought they could force that demand on us.

The Current Status of the Properties

22. In November 2019, Westland provided Lenders a strategic report, which outlined Westland's plan for continuing to make improvements at the Properties.

23. In the nine (9) months since the November 2019 strategic report, Westland has met its benchmarks, including that Westland has:

- improved the physical condition of the Properties,
- repaired virtually all of the vacant units in need of repairs,
- maintained crime at a small fraction of the amount of the prior owner,
- increased occupancy from 52% to over 80% consistent with Westland's strategic estimates (which in itself means that many of the previously vacant units have been renovated),
- achieved an occupancy rate exceeding the real occupancy rate at the Properties at the time the loans were assumed from Westland's predecessor,
- implemented its more stringent rental criteria, and
- improved the profitability of the Properties through sustainable rent increases while continuing to serve local hardworking families.

24. Westland has only been able to achieve those results because Westland employs leasing, management, maintenance, accounting and administrative staff in Las Vegas, including 32 employees onsite at the Properties. These employees have been trained for these Properties, and more importantly, have invested in relationships with tenants and local officials to create communities at the Properties. These 32 employees, who we are proud to say we were able to keep employed during the Pandemic, would be needlessly terminated if the Court appoints a receiver. I do not believe that any offsite property manager, including a bank-appointed receiver, who would cause the Properties much higher costs, including related to paying subcontractors, would be able to duplicate the positive momentum we have built up at the Properties for at least several months, if ever. Based on my experience, and prior proposals to purchase the Properties,

I know that they were previously listed at an REO sale in 2014, and were dilapidated with a major criminal presence at that time.

25. During Westland's ownership of the Properties, it invested $1.8 million in the Properties prior to the f3, Inc. PCA, and we invested $3.5 million in capital expenditures in the Properties to date and have spent an additional $1,573,000 in security costs.

26. Westland has not obtained reimbursement from Lenders for reserve funds Lenders obtained from joint checks of approximately one million dollars ($1,000,000.00) that Lenders deposited related to fire insurance claims. Lenders refuse to give that money over to Westland even though the funds were earmarked for the construction of two buildings at the Liberty Property. Those two buildings have been completely rebuilt, with substantial upgrades, all of which was completed with cash fronted by Westland. I am aware that the loan's servicer, Grandbridge, has failed to respond to Westland's reimbursement requests for release of its funds.

27. As opposed to most property management companies, it should also be noted that Westland makes a concerted effort to stabilize the local community. At the Liberty Village and Village Square properties, the need for local community services, such as a closer law enforcement presence and family support services, was apparent. Such resources are important to attract the working class families that serve as backbones of the communities that Westland owns and manages.

28. As such, Westland's efforts to build a positive community for the residents of Liberty Village and Village Square did not stop at the boundaries of the Properties. On that basis, when onsite management reported that a liquor store and bar located on a largely undeveloped parcel adjacent to the Square Property, at 3435 North Nellis Boulevard, Las Vegas (the "Parcel"), were attracting a criminal element to the neighborhood, Westland contacted the prior owners of that Parcel and purchased it. By doing so, Westland was able to more actively manage the Parcel then the prior owners had done, and is presently working with the Office of the County Commissioner to develop community based services in the open areas of the Parcel.

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

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

Executed this 31st day of August 2020 at Long Beach, California.

By: ______________________________

Yakoov Greenspan, Trustee of
Manager to Westland Liberty Village, LLC and
Westland Village Square LLC

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On August 31, 2020 before me, Jerry Don King Jr, Notary Public
(insert name and title of the officer)

personally appeared Yaakov Greenspan,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JERRY DON KING JR.
Notary Public – California
Los Angeles County
Commission # 2199394
My Comm. Expires Jun 24, 2021

Signature ______________ (Seal)