

IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

Electronically Filed
Dec 27 2021 02:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 83695
Dist. Court Case No. A-20-819412-B

**RESPONDENTS' SUPPLEMENTAL APPENDIX IN SUPPORT OF
ANSWERING BRIEF**

VOLUME II

J. Colby Williams, Esq. (#5549)
Philip R. Erwin, Esq. (#11563)
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222

*Counsel for Respondents*¹

¹ Additional counsel for Respondents identified below.

<u>TAB</u>	<u>VOLUME</u>	<u>DOCUMENT²</u>	<u>DATE</u>	<u>PAGES</u>
2	1	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	August 31, 2020	SA025-SA033
3	1	Declaration of James Noakes In Support Of Plaintiff's Reply In Support Of Motion To Strike Defendants' Demand For Jury Trial	December 3, 2020	SA034-SA064
8	2	Declaration of Nathan Kanute In Support Of Plaintiff's Opposition To Application On Order Shortening Time For Court To Hear Defendants' Motion For (1) An Order For Immediate Plaintiff Compliance With Order Granting Defendants' Motion For Preliminary Injunction And Denying Application for Appointment Of Receiver and (2) An Accounting	May 5, 2021	SA281-SA297
10	2	Federal Housing Finance Agency's Motion For Clarification Of Minute Order And Revision Of The Proposed Order Denying Motion To Dissolve Preliminary Injunction	September 7, 2021	SA348-SA356

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.

<u>TAB</u>	<u>VOLUME</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>PAGES</u>
7	2	Grandbridge Real Estate Capital, LLC's Opposition To Defendant's Motion For (1) An Order For Immediate Plaintiff Compliance With Order Granting Defendants' Motion For Preliminary Injunction And Denying Application for Appointment Of Receiver and (2) An Accounting	May 5, 2021	SA261-SA280
5	1	Limited Opposition To Federal Housing Finance Agency's Motion To Intervene; Memorandum of Points And Authorities	April 9, 2021	SA124-SA172
6	2	Notice of Entry of Order Shortening Time For Court To Hear Defendants' Motion For (1) An Order For Immediate Plaintiff Compliance With Order Granting Defendants' Motion for Preliminary Injunction And Denying Application For Appointment of Receiver and (2) an Accounting.	April 29, 2021	SA173-SA260
9	2	Opposition To Application On Order Shortening Time For Court To Hear Defendants' Motion For (1) An Order For Immediate Plaintiff Compliance With Order Granting Defendants' Motion For Preliminary Injunction And Denying Application for Appointment of Receiver And (2) An Accounting	May 5, 2021	SA298-SA347

<u>TAB</u>	<u>VOLUME</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>PAGES</u>
4	1	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	December 16, 2020	SA065-SA123
12	2	Order Denying Federal Housing Finance Agency's Motion For Clarification Of Minute Order And Revision Of The Proposed Order Denying Motion To Dissolve Preliminary Injunction, And Federal National Mortgage Association's Joinder Thereto	November 3, 2021	SA360-SA367
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
11	2	Westland's Notice of Mootness and Reservation of Rights	September 21, 2021	SA357-SA359

Respectfully submitted,

Dated: December 27, 2021

CAMPBELL & WILLIAMS

By /s/ J. Colby Williams

J. COLBY WILLIAMS, ESQ. (5549)

PHILIP R. ERWIN, ESQ. (11563)

JOHN BENEDICT, ESQ. (5581)

The Law Offices of John Benedict

JOHN W. HOFSAESS, ESQ.
(pro hac vice)
Westland Real Estate Group

BRIAN BARNES, ESQ.
(admitted *pro hac vice*)
Cooper & Kirk

Attorneys for Respondents

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 II)** to be delivered to the following counsel and parties:

VIA ELECTRONIC AND U.S. MAIL:

Kelly H. Dove, Esq.
Nathan G. Kanute, Esq.
Bob L. Olson, Esq.
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 110
Las Vegas, Nevada 89169

Leslie Bryan Hart, Esq.
John D. Tennert, Esq.
Fennemore Craig, P.C.
7800 Rancharrah Parkway
Reno, Nevada 89511

Joseph G. Went, Esq.
Lars K. Evensen, Esq.
Sydney R. Gambia, Esq.
Holland & Hart L.L.P.
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

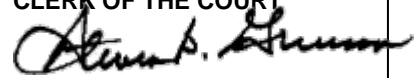
VIA U.S. MAIL:

The Honorable Mark Denton
District Court Judge, Dept. XIII
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ **John Y Chong**

An Employee of Campbell & Williams

6



NEO

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

JOHN W. HOFSAESS, ESQ.

Pro Hac Vice

WESTLAND REAL ESTATE GROUP

520 W. Willow Street

Long Beach, CA 90806

Telephone: (310) 438-5147

E-Mail: John.H@WestlandREG.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-B

DEPT NO. XIII

NOTICE OF ENTRY OF ORDER

AND ALL RELATED ACTIONS

//

//

1 PLEASE TAKE NOTICE that an **ORDER SHORTENING TIME FOR COURT TO**
2 **HEAR DEFENDANTS' MOTION FOR (1) AN ORDER FOR IMMEDIATE PLAINTIFF**
3 **COMPLIANCE WITH ORDER GRANTING DEFENDANTS' MOTION FOR**
4 **PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR APPOINTMENT OF**
5 **RECEIVER AND (2) AN ACCOUNTING** was entered in the above-entitled matter on April 29,
6 2021. A true and correct copy is attached hereto as **Attachment "1"**.

7 DATED this 29th day of April 2021.

8 **LAW OFFICES OF JOHN BENEDICT**

9 By: /s/ John Benedict

10 John Benedict, Esq. (SBN 5581)
11 2190 E. Pebble Road, Suite 260
12 Las Vegas, Nevada 89123
E-mail: John@Benedictlaw.com

13 **WESTLAND REAL ESTATE GROUP**

14 By: /s/ John W. Hofsaess

15 JOHN HOFSAESS, ESQ.
16 Pro Hac Vice
17 520 W. Willow Street
Long Beach, CA 90806
Telephone: (310) 438-5147
E-mail: John.H@WestlandREG.com

18 *Attorneys for Defendants/Counterclaimants/Third*
19 *Party Plaintiffs Westland Liberty Village, LLC &*
20 *Westland Village Square LLC*
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 29, 2021, a copy of the foregoing Notice of Entry of Order was
3 served on the parties listed below via electronic service through Odyssey to the following:

4 Robert Olson, Esq., Nathan G. Kanute, Esq. and/or David L. Edelblute, Esq.
5 Snell & Wilmer L.L.P.
6 3883 Howard Hughes Parkway, Suite 110
7 Las Vegas, Nevada 89169
8 E-mail: nkanute@swlaw.com; dedelblute@swlaw.com
9 *Attorneys for Plaintiff Federal National Mortgage Association*

10 Joseph G. Went, Esq., Lars K. Evensen, Esq., and/or Sydney R. Gambee, Esq.
11 Holland & Hart LLP
12 9555 Hillwood Drive, 2nd Floor
13 Las Vegas, Nevada 89134
14 *Attorneys for Third Party Defendant Grandbridge Real Estate Capital, LLC*

15 Leslie Bryan Hart, Esq., and/or John D. Tennert, Esq.
16 FENNEMORE CRAIG, P.C.
17 7800 Rancharrah Parkway
18 Reno, Nevada 89511
19 Email: lhart@fennemorelaw.com; jtennert@fennemorelaw.com
20 *Attorneys for Federal Housing Finance Agency*

21 /s/ Angelyn Cayton

22 An Employee of the Law Offices of John Benedict
23
24
25
26
27
28

ATTACHMENT “1”

ATTACHMENT “1”

MOT

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

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

*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.

AND ALL RELATED ACTIONS.

CASE NO. A-20-819412-B

DEPT NO. 13

**APPLICATION ON ORDER
SHORTENING TIME FOR COURT TO
HEAR DEFENDANTS' MOTION FOR (1)
AN ORDER FOR IMMEDIATE
PLAINTIFF COMPLIANCE WITH
ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION AND DENYING
APPLICATION FOR APPOINTMENT
OF RECEIVER AND (2) AN
ACCOUNTING; DECLARATION OF
JOHN BENEDICT IN SUPPORT;
PROPOSED ORDER**

For months now, Plaintiff has, unapologetically, violated this Court's Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver, dated November 22, 2020 (the "Order"). While Plaintiff has found the time to file motion

1 after motion – many of which seek the same relief over and over despite the Court’s repeated denials
2 – and to submit numerous filings with the Nevada Supreme Court seeking similar relief, Plaintiff has
3 not in the interim complied with this Court’s Order, nor has Fannie Mae met its most basic
4 contractual obligations. Instead, Plaintiff has granted itself a continuous stay of its obligations,
5 despite that this Court and the Nevada Supreme Court expressly denied Plaintiff’s multiple requests
6 for a stay and various other repeated requests for the same relief. The time for Plaintiff to decide
7 what rules and court orders it will follow, or those which it will not while it incessantly challenges
8 and rechallenges them must end. Instead, this Court should enter an order requiring Plaintiff to
9 immediately comply with the Order or to appear and show cause why it should not be held in
10 contempt for its refusal to do so.

11 Accordingly, Defendants/Counterclaimants/Third-Party Plaintiffs, Westland Liberty Village,
12 LLC (“Liberty LLC”) and Westland Village Square, LLC (“Square LLC” and in combination with
13 Liberty LLC, “Westland”), by and through its counsel of record, the Law Offices of John Benedict
14 and John Hofsaess, Esq. pro hac vice, submit this Motion for (1) an Order for Immediate Plaintiff
15 Compliance with Order Granting Defendants’ Motion for Preliminary Injunction and Denying
16 Application for Appointment of Receiver and (2) an Accounting (the “Motion”). Failing immediate
17 compliance with the Order, Fannie Mae should be ordered to show cause why it should not be held
18 in contempt for refusing to comply with the Order.

19 By Fannie Mae and Grandbridge’s own calculation, it is undisputed that Westland is due
20 disbursements of *at least* \$1,456,348.46, and because hearing this Motion with other pending
21 motions will increase the efficiency and lessen the fees incurred by the Parties, it is respectfully
22 requested that the Motion be heard on order shortening time and be set for hearing on **May 6, 2021,**
23 **at 9:00 a.m.** - the time set for the hearing on Federal Housing Finance Agency’s (the “FHFA”) Motion to Associate Counsel, and the continued hearing for the Court to consider what, if any,
24 conditions will be placed on FHFA’s intervening into this case.
25
26
27
28

1 This Motion is made under NRS 1.210, NRS 7.085, NRS 22.010(3), and EDCR 7.60(b) and
2 is further based on the pleadings on file herein, the attached Memorandum of Points and Authorities,
3 and any arguments of counsel that this Court may allow at the time of the hearing.

4 DATED this 28th day of April 2021.

5 **LAW OFFICES OF JOHN BENEDICT**

6
7 By: /s/ John Benedict
8 JOHN BENEDICT, ESQ. (SBN 5581)
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123

9 **WESTLAND REAL ESTATE GROUP**

10
11 By: /s/ John W. Hofsaess
12 JOHN HOFSAESS, ESQ. (Pro Hac Vice)
520 W. Willow Street
Long Beach, CA 90806

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

15 //
16 //

ORDER SHORTENING TIME

Upon review of the Application for an Order Shortening Time and the Declaration of counsel in support thereof, and good cause appearing therefore:

IT IS HEREBY ORDERED that the time for hearing this Motion for (1) an Order for Immediate Plaintiff Compliance with Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver and (2) an Accounting, is hereby shortened to the 6th day of May, 2021, at the hour of 9:00 a.m..

IT IS SO ORDERED.

Dated this 29th day of April, 2021



**D5A 141 D43F CB30
Mark R. Denton
District Court Judge**

Respectfully submitted by:

LAW OFFICES OF JOHN BENEDICT

By: /s/ John Benedict
John Benedict, Esq. (SBN 005581)
John@Benedictlaw.com
2190 East Pebble Road, Suite 260
Las Vegas, Nevada 89123
*Attorneys for Defendants/Counterclaimants/
Third Party Plaintiffs Westland Liberty Village,
LLC & Westland Village Square LLC*

//
//

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Motion's requested relief is straightforward. First, the Order entered on November 20,
4 2020, is currently in effect because this Court's temporary (forty-five [45] day) stay of some of the
5 Order expired when the Nevada Supreme Court denied any further stay relief on February 11, 2021.
6 Thus, with no stay or bond in place (although Plaintiff has, in both courts, tried a half dozen times to
7 get either relief but lost each time), the Order should immediately be enforced. Since Fannie Mae and
8 Grandbridge will not do so voluntarily despite multiple requests and a couple of demands, they must
9 be compelled to comply with all ordered injunctive relief, and it should be made clear that to the extent
10 they do not do so, they will be held in contempt for continued refusal to comply with the Order.

11 Specifically, Fannie Mae, Grandbridge, and all of those acting for or with them should be
12 compelled to stop interfering with Westland and its Properties. Fannie Mae (and Grandbridge to the
13 extent they claim it holds such finds), should also be compelled immediately to disburse all the
14 Westland's proceeds (including from the fire insurance proceeds, overpayment by Westland [made
15 when Fannie Mae and Grandbridge refused to provide even a monthly loan statement] and
16 overpayment made to reserves) that they have been holding for months after they declared an improper
17 Default against Westland.

18 This Court has already ordered all the relief requested in this Motion. Fannie Mae challenged
19 that relief multiple times, including in the Nevada Supreme Court, and lost. But it still refuses to
20 comply with the Order. Thus, without any further delay, Fannie Mae and/or Grandbridge should be
21 ordered to provide comply with the Order.

22 Additionally, based on their claimed ignorance as to the full amounts they are holding in trust
23 for the benefit of Westland, Fannie Mae and Grandbridge should be further ordered to provide an
24 updated accounting of all funds they hold from the underlying loans.

25 Accordingly, this Motion respectfully should be granted, and this Court should enter an order
26 consistent with the proposed order attached hereto as Exhibit C.

1 **II. RELEVANT FACTS AND PROCEDURAL HISTORY TO THIS MOTION**

2 The Court is undoubtedly familiar with the underlying facts and what has become almost
3 weekly hearings on Plaintiff’s repeatedly rejected arguments. In short, this case arises from Fannie
4 Mae and its servicing agent, Grandbridge, filing an improper Notice of Default and Acceleration of
5 Note (the “NOD”), and causing improper non-judicial foreclosure proceedings to be commenced
6 against Westland’s two multifamily housing communities located at 4870 Nellis Oasis Lane, Las
7 Vegas, Nevada 89115, and 5025 Nellis Oasis Lane, Las Vegas, Nevada 89115. The NOD was based
8 on insupportable non-financial defaults, which have never been substantiated despite multiple requests
9 by Westland. On the contrary, and rather simply, those claims were manufactured by Fannie Mae and
10 its servicer.

11 Based on the false and repeatedly rejected premises of alleged defaults by Westland and
12 claiming itself to be undersecured, Fannie Mae filed this action only alleging two causes of action - for
13 appointment of a receiver and for an assignment of rents. Fannie Mae also immediately filed an
14 Application for Appointment of Receiver, which not only was denied, but the Court granted
15 Westland’s Countermotion for a Preliminary Injunction. More specifically, in the resulting 11-page
16 Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for
17 Appointment of Receiver and for the Imposition of Monetary Sanctions, the Court generally enjoined
18 Fannie Mae from (1) taking any further actions in furtherance of foreclosure, including any Notices of
19 Default, Notices of demand, and other similar notices; (2) interfering with Westland’s management,
20 operation and quiet enjoyment of the Properties; (3) failing to provide monthly debt service invoices;
21 (4) failing to process Westland’s loan payments; (5) retain possession of any excess funds paid by
22 Westland; (6) failing to disburse or turn over any funds held by Fannie Mae in the Restoration Reserve
23 Account; (7) failing to disburse or turn over any funds held by Fannie Mae in the Replacement
24 Reserve Account; (8) failing to respond to Reserve Disbursement Requests; and (9) taking any other
25 adverse action against any Westland entity in relation to other loans or applications.

26 //

1 Fannie Mae filed a Notice of Appeal challenging the Order. That appeal remains pending. In
2 conjunction with its appeal, Fannie Mae filed a Motion to Stay Pending Appeal on OST with this
3 Court. In that Motion to Stay, Fannie Mae made many of the same arguments during the
4 Receivership/Preliminary Injunction briefing and oral arguments. The Court rejected most of Fannie
5 Mae's requests and instead granted partial relief in the form of a temporary 45-day stay to permit
6 Fannie Mae to raise the issue of a stay with the Nevada Supreme Court.

7 Fannie Mae also filed an Expedited Motion to Stay Pending Appeal before the Nevada
8 Supreme Court, again advancing most of the same arguments. After full briefing on that motion, on
9 February 11, 2021, the Nevada Supreme Court denied all relief requested by Fannie Mae, except it
10 stayed the removal of the Notices of Default from the Clark County Recorder records.

11 On February 12, 2021, one day after the Nevada Supreme Court rejected Fannie Mae's
12 expedited motion for a stay, Fannie Mae and Grandbridge completely disregarded the High Court's
13 order. They sent Westland a "Notification of Past Due Amounts" for each loan. *See* Exhibit A. In
14 direct violation of the Order, those notices claimed past due amounts were owed, huge past due
15 interest was owed, and assessed Westland for substantial past due reserves, as well as other amounts,
16 such as late charges. Those amounts were all stated to be immediately due, even though Fannie Mae
17 had been ordered to reimburse Westland almost \$1,500,000 by its own calculations.

18 Undaunted by its loss in the Nevada Supreme Court, Fannie Mae filed a Motion to Reconsider
19 in that forum to challenge our state's High Court's decision denying almost all of Fannie Mae's
20 requested stay relief. Critically, the Supreme Court did not stay that portion of the Order enjoining
21 Fannie Mae from taking any adverse action against Westland or any other Westland entity concerning
22 other loans.

23 Still undeterred, Fannie Mae then filed a motion to (1) Estimate Amount of Mandatory
24 Payment Obligations Contained in Preliminary Injunction; (2) Determine Amount of Supersedeas
25 Bond or Alternative Security; (3) Issue Stay Pending Appeal upon Posting Bond or Alternative
26 Security; and (4) Require Defendants to Post an Adequate Bond. In what was quite an alarming
27
28

1 request, Fannie Mae primarily asked the Court in that Motion to accept its “best estimate” as to the
2 amount required to comply with the Order, while simultaneously refusing to comply with the Order
3 and seeking permission to file a bond in place of actual compliance. After hearing, the Court denied
4 that motion.

5 And despite all the foregoing, the denial after denial of Fannie Mae’s requested relief, and
6 Westland’s repetitive demands to remind Fannie Mae of its obligation to comply, Fannie Mae still has
7 failed to release to Westland the undisputed amount the lender and servicer deem is their “best
8 estimate” of the funds needed to comply with the Order, which is \$1,456,348.46, while also refusing to
9 provide a full accounting of the funds they otherwise hold. This Motion accordingly follows.

10 **III. FANNIE MAE SHOULD BE ORDERED TO COMPLY WITH ALL OBLIGATIONS**
11 **IN THE ORDER BASED ON NRS 1.210(3) & NRS 22.010.**

12 This Court’s temporary stay of the Order ended weeks ago, on February 11, 2021. Westland
13 provided an additional time for Fannie Mae to comply, but showing its continued recalcitrance, Fannie
14 Mae still refuses to comply with the Order and instead continues to violate it, including, without
15 limitation:

- 16 1. Sending Westland two “Notifications of Past Due Amounts” – one day after the Nevada
17 Supreme Court rejected its Expedited Motion for Stay – falsely asserting past due
18 amounts of \$2,044,969.33 on one loan and \$810,385.92 on the second loan, despite the
19 Court ordering it to credit, restore and otherwise reconcile the relevant accounts, and
20 more importantly, to disburse funds as designated in the Order;¹
- 21 2. Continuing to retain funds in the amount of at least \$550,000 (based on Fannie Mae’s
22 “estimate” and subject to its proper accounting to its borrower) constituting Westland’s
23 funds paid in excess of the non-Default monthly service payments between February
24 2020 and the present – and simply refusing to provide an accounting for its calculation
25 of those funds;
- 26 3. Failing “to disburse or turn over fail to disburse or turn over to Westland any funds
27 currently held or initially held in the Restoration Reserve Account, which funds were
28 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;” and

¹ Fannie Mae did claim in its most recent motion for relief from the Order that the \$2.85M demand (which not
coincidentally tied almost exactly to the demand it made from Westland before declaring a Default) was a “mistake.”

- 1 4. Continuing “to improperly maintain the funds designated to be held in the interest
2 bearing Replacement Reserve Account for each of the Properties in the non-interest
3 bearing Repair Reserve Account for each of the Properties, to restore any balance that
 has already been transferred, and to credit the Replacement Reserve Account for the
 interest that Westland would have earned”

4 As detailed above, Fannie Mae has repeatedly and brazenly refused to comply with the Order.
5 It filed a Motion for Stay, a Motion to Dismiss, an appeal, two motions before the Nevada Supreme
6 Court to stop the Order, and running out of bullets, the Motion to Estimate. Each reviewing court has
7 denied Fannie Mae’s requested relief, but Fannie Mae still acts as it is above the law and refuses to
8 comply with the Order. The time has finally come for Fannie Mae to comply with this Court’s Order.²

9 Notwithstanding its clear and unambiguous legal obligation, Fannie Mae has failed and refused
10 to adhere to the terms of the Order.

11 NRS 1.210 provides in pertinent part that: “Every court shall have power: . . . 3. To compel
12 obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court
13 in an action or proceeding pending therein.” Similarly, NRS 22.010 provides in pertinent part that:
14 “The following acts or omissions shall be deemed contempts: . . . 3. Disobedience or resistance to any
15 lawful writ, order, rule or process issued by the court or judge at chambers.”

16 A district court may enforce a preliminary injunction by subsequent proceedings, including to
17 the extent necessary contempt proceedings. *City Council of City of Reno v. Reno Newspapers, Inc.*,
18 105 Nev. 886, 784 P.2d 974 (1989). A court has the inherent power to protect the “dignity and
19 decency in its proceedings, and to enforce its decrees.” *In re Determination of the Relative Rights of*
20 *the Claimants and Appropriators of the Waters of the Humboldt River Stream System & Tributaries*,
21 118 Nev. 901, 909 (2002). As such, this Court may enter an order compelling Fannie Mae to comply
22 with the Order and may impose a fine or imprisonment as a sanction if Fannie Mae fails to abide by
23 the Order. NRS § 22.100. The Court also has inherent authority to “take other measures to insure that
24 the parties obey the court’s order.” *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 784 P.2d 2 (1989);
25 *see also, Noble v. Noble*, 86 Nev. 459, 470 P.2d 430 (1970). That inherent power goes beyond the

26
27 ² And now the Conservator for Fannie Mae, the FHFA, has attempted to intervene in the Case with the announced plan
28 of challenging the Order – yet again.

1 power that the legislature may grant. *All Minerals Corp. v. Kunkle*, 105 Nev. at 837, 784 P.2d at 4.

2 Here, Fannie Mae is already in contempt of court because it has refused to comply with a
3 lawful order of this Court. Westland continues to suffer harm from Fannie Mae's actions. Every day
4 that goes by that Fannie Mae refuses to service the loans properly and refuses to release Westland's
5 funds, Fannie Mae unlawfully substitutes a unilaterally modified loan agreement while completely
6 ignoring Westland's rights under the actual loan agreements that the parties signed.³ This Court
7 should enter an order requiring Fannie Mae to appear and show cause why it should not be held in
8 contempt for failure to comply with this Court's Order within seven (7) days of the Order on this
9 Motion.

10 Accordingly, under the Court's inherent authority to enforce its order, NRS 1.210, NRS
11 22.010, as well as EDCR 7.60(b)(5), Westland respectfully requests that this Court enforce the Order
12 by requiring Fannie Mae to comply with all provisions thereof (except for the one ordered stay on the
13 Notices of Defaults by the Nevada Supreme Court)) within seven (7) days of the hearing of this
14 Motion, including the payment of Fannie Mae's best estimate of the undisputed minimum amount
15 immediately due to Westland under the Order of \$1,456,348.46, without prejudice to a further
16 accounting of the true amount to be reimbursed by Fannie Mae. On that basis, Westland requests that
17 this Court grant this Motion consistent with the proposed order attached hereto as Exhibit C.

18 **IV. FANNIE MAE SHOULD ALSO BE ORDERED TO PROVIDE AN ACCOUNTING.**

19 Likewise, Fannie Mae should also be ordered to provide an accounting, especially based on
20 its past claimed lack of knowledge of what funds it is holding.

21 An accounting is proper when a party fails to provide full information related to the
22 calculation of funds in its possession that are held for the benefit of another party, and the holding
23 party has only offered a total without the full supporting basis to show that calculation was proper.

25 ³ Westland incorporates by reference pages 24 to 26 of its Opposition to the Motion for Stay detailing the harm Westland
26 is incurring due to Fannie Mae's contempt of this Court's Judgment. See Exhibit A attached hereto. Notably, even at
27 the time of the Motion for a Stay, in its opposition filed on December 16, 2020, Westland requested this Court to require
28 Fannie Mae to comply with this Court's Order. See Page 27-28. Nonetheless, months later Fannie Mae still refuses to
do so.

1 *See Golconda Fire Prot. Dist. v. County of Humboldt*, 112 Nev. 770, 774, 918 P.2d 710, 712 (1996);
2 *Teselle v. McLoughlin*, 92 Cal. Rptr. 3d 696, 716 (2009) (holding “[t]he right to an accounting can
3 arise from the possession by the defendant of money or property which, because of the defendant’s
4 relationship with the plaintiff, the defendant is obliged to surrender.”)

5 Here, Fannie Mae was responsible for holding Westland’s funds in escrow accounts that
6 were solely under Fannie Mae’s and its agent’s control. Fannie Mae has been ordered to surrender
7 those funds, all of which belong to Westland. Fannie Mae refused to identify any amount received as
8 excess payments, claiming with a straight place that neither it as lender or Grandbridge as its
9 servicer can figure out the calculation because it involves a complex multi-faceted calculation of
10 interest based on a variable rate that requires the incorporation of outside indexed rates, which rate is
11 required to determine the amount of the overpayment. From January 2020 to January 2021, Fannie
12 Mae refused to even provide a copy of those statements, which left Westland to guess the amount of
13 interest that Fannie Mae would calculate. Now, when Fannie Mae has been ordered to produce those
14 overpayments that it improperly caused to occur, Fannie Mae refuses to do anything other than
15 provide an estimated total amount for those overpayments and the restoration reserve account
16 balance that it refuses to return. The Court should not countenance such poor behavior. Fannie Mae
17 has a contractual obligation to account for the funds it received and be ordered to do so via a formal
18 accounting.

19 //

20 //

1
2 **V. CONCLUSION**

3 Based on the foregoing, Fannie Mae should be ordered (1) to comply with the Order, including
4 immediately disbursing the money it is holding in trust for Westland – the overpayments, the
5 additional reserves, and the insurance proceeds which Fannie Mae “estimates” amounts to at least
6 \$1,456,348.46, which represents the undisputed amount due under the Order; and (2) that Fannie Mae
7 immediately provide an accounting of all amounts paid and applied, held in custodial accounts, or
8 transferred from custodial accounts for both loans from August 2018 through the present which relief
9 should be granted consistent with the proposed order attached hereto.

10 DATED this 28th day of April 2021.

11 **LAW OFFICES OF JOHN BENEDICT**

12
13 By: /s/ John Benedict
14 JOHN BENEDICT, ESQ. (SBN 5581)
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123

15 **WESTLAND REAL ESTATE GROUP**

16
17 By: /s/ John W. Hofsaess
18 JOHN HOFSAESS, ESQ. (Pro Hac Vice)
520 W. Willow Street
Long Beach, CA 90806

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2

3
4

5
6
7
8
9

- 0
- 1
- 2
- 3
- 4

5
6
7

8
9
10
11

23

4

6

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 28th day of April 2021, I served a true and correct copy of
3 the foregoing **APPLICATION ON ORDER SHORTENING TIME FOR COURT TO HEAR**
4 **DEFENDANTS' MOTION FOR (1) AN ORDER FOR IMMEDIATE PLAINTIFF**
5 **COMPLIANCE WITH ORDER GRANTING DEFENDANTS' MOTION FOR**
6 **PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR APPOINTMENT OF**
7 **RECEIVER AND (2) AN ACCOUNTING; DECLARATION OF JOHN BENEDICT IN**
8 **SUPPORT, and PROPOSED ORDER** through electronic service through the Court's Electronic
9 Filing System to:

10 Nathan G. Kanute, Esq., Bob L. Olson, Esq. and/or David L. Edelblute, Esq.
11 Snell & Wilmer L.L.P.
12 3883 Howard Hughes Parkway, Suite 1100
13 Las Vegas, Nevada 89169
Attorneys for Plaintiff Federal National Mortgage Association

14 Joseph G. Went, Esq., Lars K. Evensen, Esq., and/or Sydney R. Gambee, Esq.
15 Holland & Hart LLP
16 9555 Hillwood Drive, 2nd Floor
17 Las Vegas, Nevada 89134
Attorneys for Third Party Defendant Grandbridge Real Estate Capital, LLC

18 Leslie Bryan Hart, Esq., and/or John D. Tennert, Esq.
19 FENNEMORE CRAIG, P.C.
20 7800 Rancharra Parkway
21 Reno, Nevada 89511
Attorneys for Federal Housing Finance Agency

22 /s/ Angelyn Cayton
23 On behalf of the Law Offices of John Benedict
24
25
26
27
28

EXHIBIT “A”

EXHIBIT “A”



Grandbridge Real Estate Capital, LLC
214 North Tryon Street, Suite 2000
Charlotte, NC 28202

February 12, 2021

Westland Liberty Village LLC
520 West Willow Street
Suite 110
Long Beach, CA 90806

Re: Notification of Past Due Amounts – Loan #330455178 – Liberty Village Apartments

Please let this letter serve as notice that as of 2/11/2021, the above referenced loan has past due amounts outstanding of **\$2,044,969.33**.

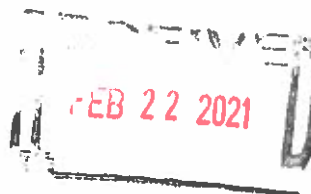
The past due amounts may include interest, principal, escrow, reserves or assessed late charges that are still outstanding and are as follows:

PAYMENT INFORMATION

Past Due Principal	\$	124,332.78
Past Due Interest	\$	1,000,879.76
Past Due T/I, FHA/MIP or Reserve Escrows	\$	863,496.16
Past Due Other	\$	0.00
Past Due Late Charge	\$	56,260.63
Total Past Due**	\$	2,044,969.33

Please contact your asset manager listed below to discuss these outstanding amounts. We appreciate your prompt attention to this matter.

Michael Woolf
(312) 322-1218
michael.woolf@grandbridge.com



**** Please note that this notice is provided as a courtesy and does not modify your loan documents. The above listed amounts are reflective of our records as of the print date of this notice. Subsequent account activity may change the amounts due. Late charges are assessed in accordance with the terms of your Note.**

DEFT 0001

SA192



Grandbridge Real Estate Capital, LLC
214 North Tryon Street, Suite 2000
Charlotte, NC 28202

February 12, 2021

Westland Village Square LLC
520 West Willow Street
Long Beach, CA 90806

Re: Notification of Past Due Amounts – Loan #330455177 – Village Square Apartments

Please let this letter serve as notice that as of 2/11/2021, the above referenced loan has past due amounts outstanding of **\$810,385.92**.

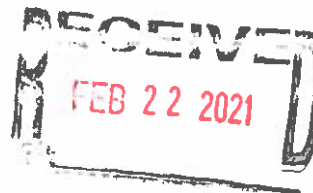
The past due amounts may include interest, principal, escrow, reserves or assessed late charges that are still outstanding and are as follows:

PAYMENT INFORMATION

Past Due Principal	\$	39,230.63
Past Due Interest	\$	338,837.43
Past Due T/I, FHA/MIP or Reserve Escrows	\$	413,414.45
Past Due Other	\$	0.00
Past Due Late Charge	\$	18,903.41
Total Past Due**	\$	810,385.92

Please contact your asset manager listed below to discuss these outstanding amounts. We appreciate your prompt attention to this matter.

Michael Woolf
(312) 322-1218
michael.woolf@grandbridge.com



**** Please note that this notice is provided as a courtesy and does not modify your loan documents. The above listed amounts are reflective of our records as of the print date of this notice. Subsequent account activity may change the amounts due. Late charges are assessed in accordance with the terms of your Note.**

DEFT 0002

SA193



PO Box 890817
Charlotte NC 28289-0817

Statement Date January 15, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Liberty Village LLC
520 West Willow Street
Suite 110
Long Beach, California 90806

LOAN INFORMATION

Loan Number	330455178
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	28,937,859.64
Interest Rate		2.37200%
Tax Escrow Balance	\$	0.00
Insurance and/or FHA/MIP Escrow Balance	\$	0.00
Reserve and/or Misc. Fee Escrow Balance	\$	0.00
Other Escrow Balance	\$	0.00

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	62,192.42
Current Interest Due	\$	59,107.19
Current Tax Due	\$	15,040.83
Current Insurance and/or FHA/MIP Due	\$	21,729.05
Current Reserve	\$	18,600.00
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	176,669.49

Total Amount Due	\$	176,669.49
-------------------------	-----------	-------------------

Payment Due Date	2/1/2021
-------------------------	-----------------

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455178
Due Date	2/1/2021
Total Amount Due	\$176,669.49

Westland Liberty Village LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.
This billing statement is for
information only.
Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC

DEFT 0003

SA194



PO Box 890817
Charlotte NC 28289-0817

Statement Date January 15, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Village Square LLC
520 West Willow Street
Long Beach, California 90806

LOAN INFORMATION

Loan Number	330455177
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	9,346,394.09
Interest Rate		2.51200%
Tax Escrow Balance	\$	0.00
Insurance and/or FHA/MIP Escrow Balance	\$	0.00
Reserve and/or Misc. Fee Escrow Balance	\$	0.00
Other Escrow Balance	\$	0.00

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	19,624.72
Current Interest Due	\$	20,217.29
Current Tax Due	\$	5,462.12
Current Insurance and/or FHA/MIP Due	\$	9,594.03
Current Reserve	\$	10,259.08
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	65,157.24

Total Amount Due	\$	65,157.24
-------------------------	-----------	------------------

Payment Due Date	2/1/2021
-------------------------	-----------------

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455177
Due Date	2/1/2021
Total Amount Due	\$65,157.24

Westland Village Square LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.
This billing statement is for
information only.
Your payment is paid by bank draft.

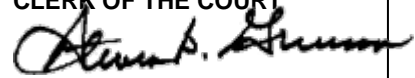
- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC

DEFT 0004

SA195

EXHIBIT “B”

EXHIBIT “B”



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 Nevada
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,

1 hereby files this Opposition to Plaintiff's Motion for Stay Pending Appeal on Order Shortening Time,
2 Opposition to Grandbridge Real Estate Capital, LLC's Joinder to Federal National Mortgage
3 Association's Motion to Stay Pending Appeal on an Order Shortening Time, and Counter-Motion to
4 Compel Compliance By Counter-Defendant Federal National Mortgage Association ("Fannie Mae")
5 with Court's November 20, 2020 Order.

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

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

17 Dated: December 16, 2020

LAW OFFICES OF JOHN BENEDICT

18
19 /s/ John Benedict
20 John Benedict (NV Bar No. 5581)
21 2190 E. Pebble Road, Suite 260
22 Las Vegas, NV 89123
23 Telephone: (702) 333-3770
24 *Attorneys for Defendants/Counterclaimants/Third Party*
25 *Plaintiffs Westland Liberty Village, LLC & Westland*
26 *Village Square LLC*
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITY**

2 **I. INTRODUCTION**

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

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

22 A few months later Fannie Mae began the foreclosure process, and sought to have a receiver
23 appointed. Westland responded with a Countercomplaint and Cross-Motion for a Preliminary Injunction.
24 Ultimately, on October 13, 2020, having already reviewed a voluminous record that she said made her
25 "felt like she did a trial," and after investing "hours and hours" reviewing all the documents and
26 considering all of the legal arguments, the Honorable Kerry Earley heard those motions, denied Fannie
27 Mae's Application for a Receiver and granted Westland's Preliminary Injunction. At that hearing, Judge
28 Earley made clear that she was deciding the motion in Westland's favor, and found that Westland had a

1 reasonable likelihood of success on the merits and would be irreparably harmed if Westland’s requested
2 relief was not granted. At that point, both Westland and the Court believed Westland would be returned
3 to its pre-default status. But instead, Grandbridge made a request to transfer the matter to this Court, and
4 along with Fannie Mae, filed an appeal.

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

22 Notably, in making this Motion, Fannie Mae insidiously buries within its “factual background”
23 the ultimate legal conclusion it requests from the Court, namely that: Westland “failed to meet their
24 obligations under the Loan Documents by failing to make adequate repairs and refusing to fund the repair
25 and replacement accounts.” (Motion, at 9.) However, such a finding is not warranted, because Fannie
26

27 ¹ For its part, Fannie Mae’s loan servicing agent, Grandbridge, joins in Fannie Mae’s motion to argue enforcing the order
28 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.

1 Mae has repeatedly failed to, and cannot, show any deterioration of the physical condition of the
2 Properties, as required by the loan documents. As such, the facts support, as the Court found, that “*you*
3 *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*
4 *you look at the invoices and everything they did, Mr. Olson, they did a lot. . . It may not have been enough*
5 *. . . to Fannie Mae, but they did.*” (Transcript, at 45:22-47:1.) To be blunt, the Court’s ruling, as shown
6 by the comment that Westland “did a lot” was based on the facts that: Westland has invested millions in
7 increased security, repairs, and renovation; Westland has spent countless hours and efforts on-site and
8 with the local community to remove a notorious criminal element from the properties; Westland has
9 improved neighborhood conditions; Westland has fostered community-based services and other critically
10 needed resources in an underserved low-income area. Ultimately, Fannie Mae requests a second time
11 that this Court rely on a specious “default,” and if successful this Court would necessarily be finding that
12 Fannie Mae may validly use this Motion for a “Stay” to continue to service the loan agreements in the
13 same manner a loan is serviced for borrowers in default. On that basis, this Motion for a Stay is directly
14 contrary not only to the Court’s determination but the law, because returning parties to the status quo
15 after an injunction means the parties should be returned to their “*last uncontested status* which preceded
16 the pending controversy.”

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

1 Preliminary Injunction.

2 **II. STATEMENT OF FACTS & PROCEDURAL HISTORY**

3 **A. Statement of Underlying Facts²**

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

12 Liberty LLC and Square LLC assumed two loan agreements from the prior owners for
13 \$29,000,000 and \$9,366,000, respectively (the “Loans”), which were loans issued by Grandbridge (the
14 successor to SunTrust Bank) through a joint loan program with Fannie Mae.⁵ Westland paid the
15 remainder of the combined \$60.3 million purchase price in cash, which resulted in Westland establishing
16 over \$20 million in equity in the Properties.⁶ Pursuant to the Loan Agreements, Westland was
17 responsible for a monthly debt service obligation of approximately \$162,000 for the Liberty Property and
18 \$52,000 for the Village Property; and at all relevant times, Westland has been and remains current on all
19 payments required under the Loan Agreements, including overpaying those payments by approximately
20 10% since February 2020.⁷

21 The Loans also provided that the borrower would fund two types of reserve escrow accounts,
22 namely the Required Repair and Required Replacement reserve accounts. A specific, agreed-upon
23

24 ² Due to the shortened time prior to the scheduled hearing, Westland has included an abridged statement of facts, and has
25 not included the voluminous exhibits attached to the Countermotion for a Preliminary Injunction. Westland believes that
26 full statement of facts, and complete set of exhibits was instrumental to show the Court the extraordinary actions taken
27 by Westland to maintain the referenced Properties. Upon request, Westland will provide a full set of those motion
28 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.

1 amount was set for those accounts at the time of the initial loan closing, and those specific amounts were
2 later reduced at the time the Loans were assumed by Westland.⁸ Specifically, Lenders reduced the repair
3 and replacement reserves for both Properties to a combined total of \$143,319.30.⁹ The Loan Agreements
4 also provided Westland would make a monthly deposit into a Replacement Reserve Escrow account of
5 approximately \$18,800.80 per month for Liberty LLC and approximately \$10,259.06 per month for
6 Square LLC, to provide Lenders with additional security for completing estimated repairs that may be
7 necessary at the Properties in the future, which amounts are included as part of Westland's monthly debt
8 service payments listed above.¹⁰ It is undisputed that the initial funding of the repair and replacement
9 reserves was timely made and that all monthly debt service payments specifically identified in the Loan
10 Agreements have been paid.¹¹

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

21 Still, by mid-2019, without a valid basis, Lenders approached Westland and demanded a property
22 condition assessment at the Properties.¹⁴ As there was no basis for such an inspection, Westland would
23 not agree to permit such an inspection at its own cost, but acting in good faith, Westland provided access
24

25 ⁸ Counterclaim, ¶¶ 55-61, 71-72.

26 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.

27 ¹⁰ Counterclaim, ¶ 72; Counterclaim, Exhibits H & I

28 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.

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

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

22
23

24 ¹⁵ Counterclaim, ¶¶ 138-140.

25 ¹⁶ Motion for a Stay, at 7-8.

26 ¹⁷ The meaning of the term “Condition of the Mortgaged Property” is explicitly addressed in Section 6.01(d) of the Loan,
27 and Section 6.03(c) only permits a PCA after it is found that the condition of the Mortgaged Property has deteriorated.
28 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.

1 The alleged maintenance issues cited were based on the use of a varying standard between the
2 initial PCA conducted at the time of the initial loan and the PCA conducted in September 2019.²⁰ The
3 September 2019 version included increased monthly deferred maintenance charges for capital
4 improvements, but by far the highest immediate cost at each Property was purportedly for the repair of
5 vacant units, which was estimated at a value of \$1.9 million for both Properties. Notably, even though
6 f3 inspected vacant units, and the Lenders included those amounts in their calculus to raise reserves by
7 twenty times, the cost to “turn” those units was not even a type of cost included in the earlier 2017 Loan
8 Agreements’ schedules derived from the CBRE PCA report.²¹ Ultimately, despite the passage of over a
9 year, Lenders never sought a further PCA prior to filing their foreclosure papers or requesting a receiver.

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

24 Instead, on December 17, 2019, Lender’s counsel forwarded a boilerplate Notice of Default and
25

26 ²⁰ Counterclaim, Exhibit D & E, at 7-9; *cf.* Plaintiff’s Complaint, Exhibit 11 & 12, at 24 & 332.

27 ²¹ *Id.*

28 ²² Counterclaim, Exhibit Q.

²³ *Id.*

²⁴ Counterclaim, ¶¶ 189-199; Counterclaim, Exhibits N, R, S.

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

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

13 Notably, that was not the first time that Lenders had engaged in unsavory servicing of the Loans,
14 as Westland had previously made several reserve disbursement requests, but Lenders took disingenuous
15 actions to delay and thereafter simply failed to respond to those requests.²⁹ Such requests included a
16 request for the release of funds that Lenders had no good faith basis to hold after repairs had been
17 performed, including but not limited to nearly \$1 million that Lenders obtained from insurance payments
18 earmarked for reconstruction of two buildings at the Liberty Property that Westland has already
19 completed at its sole cost.³⁰ As Westland has met all conditions for the release of its funds from escrow,
20 and requested the release of a substantial portion of those funds even prior to the assertion of the phantom
21
22

23 ²⁵ Plaintiff's Complaint, Exhibit 13. Notably, in the Strategic Business Plan, Westland disclosed the preferable rates that
24 it could achieve with its pre-approved preferred vendors for the items listed in the f3 PCA, as opposed to the inflated
25 rates that f3 cited. However, providing such an assessment did not mean that Fannie Mae could demand that Westland
26 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.

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

28 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.*

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

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

11 **a. Fannie Mae's Application for a Receiver**

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

24 **b. Westland's Countermotion for a Preliminary Injunction**

25 Westland's Opposition and Countermotion provided that appointment of a receiver was improper,
26

27 ³¹ As is addressed below, Judge Earley has already ordered to those funds be released, but Fannie Mae continues its
28 refusal after a demand by the owner of those escrowed funds, which amounts to a conversion.

³² Plaintiffs' Complaint, Exhibits 15 & 16.

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

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

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

11 **c. The October 13, 2020 Hearing**

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

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

22 Second, during the hearing, Fannie Mae’s counsel admitted that “Fannie Mae has initiated
23 foreclosure proceedings . . . It’s about time that we can file and serve the Notice of Sale. . . . Is there a
24 foreclosure proceeding pending? And the answer is: Yeah.”³⁴

25 Third, the Court specifically noted that it disagreed with Fannie Mae’s continuing to retain the
26

27
28 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.

1 Restoration Reserve funds, which is clearly evident by the Court's exchange with Fannie Mae's
2 counsel.^{35, 36}

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

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

9 Fifth, the Court opined that Westland appeared to be meeting its obligations related to maintaining
10 the Properties, by stating: "No. I don't think they're disputing that the property shouldn't be maintained.
11

12 ³⁵ [THE COURT:] What is this \$1 million insurance policy? . . . Oh, fire damage. . . .

13 [MR. OLSON:] and the insurance company delivered to Fannie . . . Mae approximately a million dollars to put into a reserve
14 account for the repair of those units.

15 [THE COURT:] Okay. So, then did Fannie Mae give it for those repairs, give it to defendant so that those repairs can be
16 done?

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

18 [THE COURT:] Oh goodness.

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

21 [THE COURT:] Okay. That makes no sense. Motion to Stay, Exhibit 1, at 47:23-48:21.

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

26 ³⁷ As seen in the quote above, the Court specifically asked about the \$1 million reserve based on both the motion papers and
27 counsel argument, and held that Westland's funds should be released based on the fact that Fannie Mae's continued holding
28 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).

1 I think they're showing -- they gave us many, many exhibits showing me what they're doing besides their
2 initial 20 million investment.”⁴⁰

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

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

13 **d. The Resulting November 20, 2020 Order**

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

20 _____
⁴⁰ Motion, Exhibit 1, at 46:7-47:1.

21 ⁴¹ THE COURT: As far as the Defendant's Countermotion for a Preliminary Injunction Regarding the Notice of the
22 Foreclosure, I applied the 65 standard as well as the NRS . . . 33.010 standard. I do find that, at this point, there is irreparable
23 harm and that standard is met because it is property. I also find that *there is a reasonable probability of success on the merits*
24 *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. . . .

25 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.

26 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).

27 ⁴² Fannie Mae's assertion that the Court ordered “Defendants' counsel to prepare the order granting the Countermotion is
28 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.

1 were prohibitory relief that tracked the powers Fannie Mae sought for a receiver in its own 17 page
2 proposed Order that was submitted *prior to* the Motion hearing when Fannie Mae believed it had an
3 opportunity for relief.⁴³ When Fannie Mae lost the application to appoint a receiver, negating specific
4 powers that Fannie Mae had been denied should not have been controversial, because Westland simply
5 sought to foreclose Fannie Mae from attempting to backdoor such powers through another agent.
6 Interestingly, *after* the Court ruled against Fannie Mae's receiver application, Fannie Mae proposed a
7 limited 2 page proposed order that impermissibly attempted to remove necessary factual findings, legal
8 conclusions and specificity required by NRCP 65(d), which if not included would likely render the Order
9 legally insufficient.⁴⁴

11 As such, Westland provides the information below for the convenience of this Court in matching
12 the basis for each requested restraint with the motion papers⁴⁵ 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.

1	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
2				
3	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
4				
5	“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
6				
7				
8	“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
9				
10				
11				
12				
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
14				
15				
16				
17	“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
18				
19				
20				
21				
22				
23	““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
24				
25				
26				
27				

1	““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
2				
3				
4				
5	““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
6				
7				
8				
9	““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
10				
11				
12				
13				
14	““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
15				
16				
17				
18				
19	““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
20				
21				
22				
23	““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
24				
25				
26	““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
27				
28				

		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

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

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

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

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

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

26 ⁴⁶ While Fannie Mae now seeks to interpret the two terms narrowly to only prevent conducting a foreclosure sale, during the
27 hearing, Fannie Mae’s counsel admitted that “foreclosure proceedings” had already begun with the filing of the Notice of
28 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.

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

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

11 Moreover, “[p]oints or contentions not raised in the original hearing cannot be maintained or
12 considered on rehearing.” *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562-63 (1995). “This rule is
13 equivalent to holding that matters so waived cannot be entertained later,” *Brandon v. West*, 29 Nev. 135,
14 141-42 (1906). For example, in *Edward J. Achrem, Chtd. v. Expressway Plaza Ltd. Pshp.*, the Nevada
15 Supreme Court upheld a district court’s refusal to consider evidence presented in a motion for
16 reconsideration because it had not been submitted as evidence prior to the court’s decision. 112 Nev. 737,
17 742 (1996).

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

26 //

27 //

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

4 “A preliminary injunction can take two forms. A prohibitory injunction prohibits a party from
5 taking action and ‘preserve[s] the status quo pending a determination of the action on the merits.’ *Marlyn*
6 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009) (*quoting*
7 *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir.1988); *see also Heckler v. Lopez*, 463 U.S. 1328,
8 1333, 104 S.Ct. 10, 77 L.Ed.2d 1431 (1983) (a prohibitory injunction “freezes the positions of the parties
9 until the court can hear the case on the merits”). Injunctive relief should be granted in order to protect a
10 party from irreparable injury and to preserve the status quo until such time as the underlying action is
11 resolved. *Pickett v. Commanche Construction, Inc.*, 108 Nev. 422, 426 (1992).

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

24 Here, contrary to every paper that Fannie Mae has filed in this case, each of which assumes the
25 existence of a default, relief has been tailored to place the parties in the “last uncontested status” pending
26 a determination in this matter. That point is at the latest December 2019 before Fannie Mae declared that
27 any default occurred, and likely by October 2019 before Fannie Mae sent its demand. Looking from that
28 point, all of the relief requested by Westland was prohibitory, because prior to the default Westland was

1 entitled to have its payments auto-debited, receive loan statements, maintain clean title to property, and
2 submit reserve reimbursement requests to obtain its funds out of escrow.⁴⁸

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

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

25 NRAP 8(a)(1)(c) addresses stays pending appeal when seeking relief in the form of “an order
26 suspending, modifying, restoring or granting an injunction while an appeal . . . is pending.” A reviewing
27

28 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.

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

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

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

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

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

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

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

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

18 Therefore, as the Court recognized, Fannie Mae is not at any real risk of loss, because there is no
19 risk of the underlying mortgaged Properties being insufficient to discharge any obligation, as Westland
20 had over \$20 million of equity in the Properties at the time of purchase, and it is independently verifiable
21 that the condition of the Properties has improved with the additional \$3.5 million of capital improvements
22 that Westland has performed, plus the \$1.5 million in security it has implemented and employed there.
23 Likewise, Fannie Mae’s recognition of the excess funds payments, and citation to the “voluntary”
24 payment doctrine means that Fannie Mae admits *it has not only received every rental payment on a timely*
25 *basis, but has even been overpaid by at least \$200,000.* Simply stated, Fannie Mae has received *more*
26 *than* Lenders are entitled to receive based on the Parties’ contract. As such there is no realistic risk of
27

28 ⁴⁹ Motion, Exhibit 1, at 49:21-24.

1 even serious injury absent a stay.

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

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

7 The Nevada Supreme Court has recognized that real property implicates a broad range of potential
8 rights, including "all rights inherent in ownership, including the right to possess, use, and enjoy the
9 property," *as well as security in and title to the property. Hamm v. Arrowcreek Homeowners' Ass'n*, 124
10 Nev. 290, 298-99 (2008); *see also McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 658 (2006). Thus,
11 not only real property, but also its attributes are considered unique, and the loss of real property rights
12 generally results in irreparable harm, even absent a foreclosure. *See Dixon v. Thatcher*, 103 Nev. 414,
13 416 (1987).

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

25 Likewise, a loss of business and credit rating caused by the impairment of the Properties also
26 constitutes irreparable harm, and Westland has a significant commercial interest in ensuring that its
27 contracts are implemented correctly. The Nevada Supreme Court recognized such reputational and
28 business harms are immeasurable and cannot be adequately remedied later through a monetary judgment

1 in *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446 (1986) (acts that “interfere with a business
2 or destroy its credit or profits, may do an irreparable injury”); *Guion v. Terra Mktg. of Nevada, Inc.*, 90
3 Nev. 237, 240 (1974).

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

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

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

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

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

25 The Order validly provides that the “Enjoined Parties may not interfere with Westland’s
26 enjoyment of the Properties pending a final determination” of this matter, because Westland argued that
27 the loss of real property, the associated benefits of owning real property, and the curtailment of the
28 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

1 implicates a broad range of potential rights, including ‘all rights inherent in ownership, including *the*
2 *right to possess, use, and enjoy* the property,’ as well as security in and title to the property.” (Opposition,
3 at 20 [citations omitted].) Further, Westland argued not only that Fannie Mae should be enjoined from
4 foreclosing on the Properties, but also that “Defendants’ recorded documents pertaining to the
5 extinguished Deed of Trust are impeding the marketability and transferability of Plaintiff’s interests in
6 the Property, or of re-financing the Properties, free of defects in title” consistent with NRS 11.860. (*Id.*
7 at 21.) Moreover, Westland argued that aside from impairing the title to the Properties, Fannie Mae’s
8 wrongful foreclosure was not only costing “Westland two unique, irreplaceable assets, but also the
9 permanent loss of business opportunities stemming from their ownership, and damaging Westland’s
10 credit, standing in the real estate investment community, and ability to obtain financing to invest in future
11 real estate ventures.” (*Id.*) Westland also specifically cited *Sobol v. Capital Mgmt. Consultants, Inc.*,
12 102 Nev. 444, 446 (1986), which stated that acts “which unreasonably interfere with a business or destroy
13 its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction . . .
14 [including acts that] clearly interferes with the operation of a legitimate business by creating public
15 confusion, infringing on goodwill, and damaging reputation in the eyes of creditors.” Thus, while Fannie
16 Mae’s Motion argues that “no allegations or evidence in the record shows that Fannie Mae has interfered
17 with Defendant’s enjoyment of the Properties, or threatened to do so” (Motion, at 27), it is clear that
18 Westland alleged such interference with Westland’s enjoyment of its Properties.

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

1 Further, while Fannie Mae argues that the particular injunctive term is impermissibly “unclear,”
2 in light of the foregoing, the reasons in support of the injunction and prohibited conduct is sufficiently
3 definite. *See e.g., Dangberg Holdings Nevada, L.L.C. v. Douglas County & its Bd. of County Com’rs*,
4 115 Nev. 129, 143–44 (1999) (*discussing Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119 (1990)).
5 In *Dangberg*, the Court reiterated that injunctions are enforceable unless “the reasons for the injunction
6 are not readily apparent elsewhere in the record, or appellate review is otherwise significantly impeded
7 due to lack of a statement of reasons” and then found that when the record supported that injunctive relief
8 was ordered “to prevent [the parties] from finalizing their settlement agreement” to be sufficient. (*Id.* at
9 144.) Further, the restrained conduct was “any further action on the purported settlement agreement
10 between [the parties] until further order of the Court.” (*Id.*) As such, the restraint here against interfering
11 with enjoyment of the Properties, is clearly meant to prohibit conduct that would impair Westland’s
12 ability to *possess, use, and enjoy* the property, including by impairing Westland’s security in and title to
13 the property, curtailing Westland’s business opportunities stemming from ownership, or damaging
14 Westland’s credit and standing in the real estate investment community based on the unproven purported
15 default at these Properties.

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

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

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

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

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

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

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

25
26 ⁵⁰ Complaint, Exhibit 12.

27 ⁵¹ (Motion, Exhibit 1, at 47:23-48:21; 50:24-25; Order, at 6, ¶ 10 ["Westland has made a substantial investment in the
28 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].)

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

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

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

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

24 //

25 //

27 ⁵² Fannie Mae’s counsel has asserted that Fannie Mae will forward the requested loan statements and process the auto-debits,
28 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.

1 **IV. CONCLUSION**

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

5 Dated this 16th day of December 2020 Respectfully submitted,

6 **LAW OFFICES OF JOHN BENEDICT**

7
8 By: /s/ John Benedict
9 JOHN BENEDICT, ESQ.
10 Nevada Bar No. 005581
11 2190 E. Pebble Road, Suite 260
12 Las Vegas, NV 89123
13 Telephone: (702) 333-3770
14 Facsimile: (702) 361-3685
15 E-Mail: John@BenedictLaw.com

16
17
18
19
20
21
22
23
24
25
26
27
28
*Attorneys for Defendants/Counterclaimants/ Third
Party Plaintiffs Westland Liberty Village, LLC &
Westland Village Square LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 16, 2020, a copy of the foregoing Motion was served on the
3 parties listed below via electronic service through Odyssey to the following:
4

5 Robert Olson, Esq., Nathan G. Kanute, Esq. and/or David L. Edelblute, Esq.
6 Snell & Wilmer L.L.P.
7 3883 Howard Hughes Parkway, Suite 110
8 Las Vegas, Nevada 89169
9 nkanute@swlaw.com;
10 dedelblute@swlaw.com
11 *Attorneys for Plaintiff*

12 Joseph G. Went, Esq.
13 Lars K. Evensen, Esq.
14 Sydney R. Gambia, Esq.
15 Holland & Hart L.L.P.
16 9555 Hillwood Drive, 2nd Floor
17 Las Vegas, Nevada 89134
18 JGWent@hollandhart.com
19 LKEvensen@hollandhart.com
20 SRGambia@hollandhart.com
21 *Attorneys for Third Party Defendant*
22 *Grandbridge Real Estate Capital, LLC*

23
24
25
26
27
28
_____/s/ Igor Makarov_____
An Employee of the Law Offices of John Benedict

EXHIBIT “1”

EXHIBIT “1”

LAW OFFICES OF JOHN BENEDICT

2190 East Pebble Road, Suite 260
Las Vegas, Nevada 89123
Telephone: (702) 333-3770
Facsimile: (702) 361-3685
Email: John@Benedictlaw.com

November 6, 2020

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

Robert L. Olson, Esq.
Snell & Wilmer
3883 Howard Hughes Pkwy, Suite 1100
Las Vegas, NV 89169

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

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,

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 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.**

Counter-motion, 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”

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

Attorneys for Plaintiff Federal National Mortgage Association

DISTRICT COURT
CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

Case No.

Dept No.

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

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

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

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

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

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

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

- 4 a. To enter on and take possession of the Property;
- 5 b. To give notice of the appointment of the Receiver to all known creditors of the
6 Defendants in the manner described in NRS 32.335 (the “Receivership
7 Notice”). The Receivership Notice must advise creditors of their right to file
8 creditors’ claims within ninety (90) days following the date of the
9 Receivership Notice. The Receiver is excused from publishing the
10 Receivership Notice pursuant to NRS 32.335(1)(b);
- 11 c. Pursuant to NRS 32.295(3)(c), to immediately record a copy of this Order in
12 the Office of the Recorder of Records for Clark County, Nevada and in any
13 other jurisdiction where any portion of the Property is located;
- 14 d. To care for, preserve, and maintain the Property pending this Court’s
15 determination of any issues relating to the ownership or title to such Property
16 and for the duration of this receivership;
- 17 e. To incur all expenses necessary for the care, preservation, maintenance of the
18 Property;
- 19 f. To lease the Property, or portions thereof;
- 20 g. To, with the consent of Plaintiff and pursuant to NRS 32.295(c) and 32.315(2),
21 to market the Property for sale and pursue a private sale, and incur the
22 reasonable expenses related thereto; provided, however, the closing of any sale
23 of the Property requires prior Court approval;
- 24 h. To employ or terminate the employment of any Nevada licensed person or
25 firm to perform maintenance and repairs on the improvements and buildings
26 on or with respect to the Property and to manage such work with respect to the
27 Property;
- 28

- 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

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

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;

- 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,

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

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

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

12 ff. Pursuant to *Commodities Futures Trading Commission v. Weintraub*, 471 U.S.
13 343 (1985), and *United States v. Plache*, 913 F.2d 1375, 1381 (9th Cir. 1990)
14 (holding a receiver may waive the attorney-client privilege), to waive the
15 attorney-client privilege and other privileges held by Defendants;

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

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

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

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

- 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

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

- 1 remaining upon the Property, including, without limitation, all reports, surveys,
2 inspections, checklists, proposals, orders, citations, fines, warnings and notices;
3 g. Turn over to the Receiver all rents derived from the Property (including, without
4 limitation, all security deposits, advances, prepaid rents, storage fees, and
5 parking fees) wherever and whatsoever mode maintained;
6 h. Turn over to the Receiver all mail relating to the Property. The Receiver is
7 further authorized and empowered to take any and all steps necessary to receive,
8 collect and review all mail addressed to Defendants including, but not limited
9 to, mail addressed to any post office boxes held in the name of Defendants, and
10 the Receiver is authorized to instruct the U.S. Postmaster to reroute, hold, and
11 or release said mail to said Receiver. Mail reviewed by the Receiver in the
12 performance of his or her duties will promptly be forwarded to Defendants after
13 review by the Receiver; and
14 i. Use commercially reasonable efforts to effectuate the turnover of the Property
15 to the Receiver.

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

23 10. RECEIVERSHIP REPORTS.

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

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

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

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

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

8 11. RECEIVER COMPENSATION AND FUNDING FOR THE RECEIVERSHIP:

9 The Receiver shall be compensated, and the receivership shall be entitled to funding as follows:

- 10 a. The Receiver shall charge the rates and/or fees: (1) a one-time “Setup Fee” of
11 \$8,000.00; plus (2) a “Monthly Property Management Fee” of the greater of
12 (i) 3.5% of monthly revenues or (ii) \$15/unit. The Receiver, her management
13 company, her consultants, agents, employees, legal counsel, and professionals
14 shall be paid on a monthly basis. To be paid on a monthly basis, the Receiver
15 must file the Interim Reports with the Court and serve a copy on all parties
16 each month for the time and expenses incurred in the preceding calendar
17 month. If no objection thereto is filed and served on or within ten (10) days
18 following service thereof, such fees and expenses set out in the Interim Reports
19 may be paid. If an objection is timely filed and served, such fees set out in the
20 Interim Reports shall not be paid absent further order of the Court. In the event
21 objections are timely made to fees and expenses, those specific fees and
22 expenses objected to will be paid within ten (10) days of an agreement among
23 the parties or the entry of an order by this Court adjudicating the matter. In
24 the event there are any additional fees, expenses, or claims for compensation
25 claimed by the Receiver which are not set forth herein, then the Receiver shall
26 request approval for such amounts by filing a motion with this Court;
- 27 b. At Plaintiff’s request or upon order of the Court, the Receiver shall prepare
28 and deliver to Plaintiff a comprehensive monthly budget (the “Budget”)

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

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

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

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

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

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

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

1 Respectfully submitted,

2 SNELL & WILMER L.L.P.

3 

4
5 Nathan G. Kanute, Esq.
6 David L. Edelblute, Esq.
7 3883 Howard Hughes Parkway, Suite 1100
8 Las Vegas, NV 89169
9 Telephone: (702) 784-5200
10 Facsimile: (702) 784-5252

11 *Attorneys for Plaintiff Federal National Mortgage Association*

EXHIBIT “C”

EXHIBIT “C”

ORDR

JOHN BENEDICT, ESQ.

Nevada Bar No. 005581

LAW OFFICES OF JOHN BENEDICT

2190 E. Pebble Road, Suite 260

Las Vegas, NV 89123

Telephone: (702) 333-3770

Facsimile: (702) 361-3685

E-Mail: John@BenedictLaw.com

JOHN W. HOFSAESS, ESQ.

Pro Hac Vice

WESTLAND REAL ESTATE GROUP

520 W. Willow Street

Long Beach, CA 90806

Telephone: (310) 438-5147

E-Mail: John.H@WestlandREG.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 13

**[PROPOSED] ORDER FOR AN
ACCOUNTING AND ORDER TO SHOW
CAUSE FOR COMPLIANCE WITH
ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION AND DENYING
APPLICATION FOR APPOINTMENT
OF RECEIVER**

AND ALL RELATED ACTIONS.

Pursuant to the Motion for (1) an Order for Immediate Plaintiff Compliance with Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver and (2) an Accounting (the "Motion"), the Declaration of John Benedict in support

thereof, the pleadings on file, the supporting Memorandum, and the oral any arguments of counsel at the hearing scheduled for this matter, and good cause appearing therefore:

IT IS HEREBY ORDERED that Plaintiff Federal National Mortgage Association will provide an accounting of all amounts paid and applied, held in custodial accounts, or transferred from custodial accounts for both loans from August 2018 through the present within seven (7) days;

IT IS HEREBY FURTHER ORDERED that Plaintiff Federal National Mortgage Association will fully comply with Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver, dated November 22, 2020 (the "Order"), including by releasing the undisputed amount of \$1,456,348.46 needed to comply with the Order (without prejudice to a further review of the true amount due after receipt of the above-referenced accounting) within seven (7) days;

IT IS HEREBY FURTHER ORDERED that Plaintiff Federal National Mortgage Association shall appear on the ____ day of May, 2021, at the hour of _____ before the Eighth Judicial District Court, Department 13, to show cause, if any, why the party should not be held in contempt of this Court for: 1) failure to obey this Court's Order entered on November 22, 2020, by failing to release \$1,456,348.46 to Defendants within seven (7) days; and/or 2) failure to obey this Court's Order entered on May ___, 2021, by failing to provide an accounting within seven (7) days.

IT IS SO ORDERED.

Respectfully submitted by:

LAW OFFICES OF JOHN BENEDICT

By: /s/ John Benedict
John Benedict, Esq. (SBN 005581)
John@Benedictlaw.com
2190 East Pebble Road, Suite 260
Las Vegas, Nevada 89123
Attorneys for Defendants/Counterclaimants/ Third Party Plaintiffs

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Federal National Mortgage,
Plaintiff(s)

CASE NO: A-20-819412-B

7 vs.

DEPT. NO. Department 13

8
9 Westland Liberty Village, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

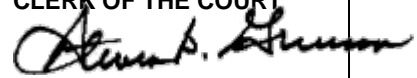
15 Service Date: 4/29/2021

16 Joseph Went	jgwent@hollandhart.com
17 Sydney Gambee	srgambee@hollandhart.com
18 Brian Dziminski	brian@dziminskilaw.com
19 John Benedict	john@benedictlaw.com
20 Leslie Hart	lhart@fclaw.com
21 Lara Taylor	ljtaylor@swlaw.com
22 Nathan Kanute	nkanute@swlaw.com
23 Mary Full	mfull@swlaw.com
24 Docket Docket	docket_las@swlaw.com
25 Bob Olson	bolson@swlaw.com

26
27
28

1	Jacqueline Gaudie	jacqueline@benedictlaw.com
2	Joyce Heilich	jeheilich@hollandhart.com
3	Patricia Matney	pmatney@swlaw.com
4	D'Andrea Dunn	ddunn@swlaw.com
5	Charlie Bowman	cabowman@hollandhart.com
6	Angelyn Cayton	Angelyn@benedictlaw.com
7	Office Admin	office.admin@benedictlaw.com
8	Kristina Cole	krcole@hollandhart.com
9	David Edelblute	dedelblute@swlaw.com
10	John Hofsaess	john.h@westlandreg.com
11	Igor Makarov	igor@benedictlaw.com
12	Pamela Carmon	pcarmon@fennemorelaw.com
13	Sara D'Amico	sara.damico@arnoldporter.com
14	Michael Johnson	michael.johnson@arnoldporter.com
15	Elliott Mogul	elliott.mogul@arnoldporter.com
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

7



OPPS

Joseph G. Went, Esq.
Nevada Bar No. 9220
Lars K. Evensen, Esq.
Nevada Bar No. 8061
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: 702.669.4600
Fax: 702.669.4650
JGWent@hollandhart.com
LKEvensen@hollandhart.com
SRGambee@hollandhart.com

*Attorneys for Third Party Defendant
Grandbridge Real Estate Capital, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

WESTLAND LIBERTY VILLAGE, LLC and
WESTLAND VILLAGE SQUIARE, LLC

Defendants.

Case No. A-20-819412-C
Dept. No. 13

**GRANDBRIDGE REAL ESTATE
CAPITAL, LLC'S OPPOSITION TO
DEFENDANTS' MOTION FOR (1) AN
ORDER FOR IMMEDIATE PLAINTIFF
COMPLIANCE WITH ORDER
GRANTING DEFENDANTS' MOTION
FOR PRELIMINARY INJUNCTION AND
DENYING APPLICATION FOR
APPOINTMENT OF RECEIVER AND (2)
AN ACCOUNTING**

AND ALL RELATED ACTIONS

Third Party Defendant Grandbridge Real Estate Capital LLC ("Grandbridge" or "Third Party Defendant"), by and through its attorneys of record, Holland & Hart LLP, hereby submits its opposition (the "Opposition") to Defendant Westland Liberty Village, LLC ("Liberty Village") and Defendant Westland Village Square, LLC's ("Village Square") (together with Liberty Village, the "Defendants" or "Westland") *Motion for (1) an Order for Immediate Plaintiff*

1 *Compliance with Order Granting Defendants’ Motion for Preliminary Injunction and Denying*
2 *Application for Appointment of Receiver and (2) an Accounting* (the “Motion”).

3 This Opposition is based on the attached memorandum of points and authorities, the
4 declaration of Joe E. Greenhaw, Jr. (“Greenhaw Decl.”) attached hereto as **Exhibit 1** and
5 incorporated herein by reference, the exhibits included in the Appendix of Exhibits to Verified
6 Complaint (the “Appendix”) filed in connection with the complaint on file herein (the
7 “Complaint”) and incorporated herein by reference, the papers and pleadings on file herein, and
8 any oral argument that this Court may consider at the hearing on this matter.

9 DATED this 5th day of May, 2021

10 HOLLAND & HART LLP

11
12 /s/ Joseph G. Went, Esq.

13 Joseph G. Went, Esq.

14 Nevada Bar No. 9220

15 Lars K. Evensen, Esq.

16 Nevada Bar No. 8061

17 Sydney R. Gambia, Esq.

18 Nevada Bar No. 14201

19 9555 Hillwood Drive, 2nd Floor

20 Las Vegas, NV 89134

21 *Attorneys for Third Party Defendant*
22 *Grandbridge Real Estate Capital, LLC*

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I.**

25 **INTRODUCTION**

26 On November 24, 2020, the Court entered an *Order Granting Defendants’ Motion for*
27 *Preliminary Injunction and Denying Application for Appointment of Receiver* (the “Injunction
28 Order”). Westland has received the information required by the Injunction Order, as well as
payment of the mandatory payment obligations set forth in the Injunction Order has been
tendered. This Motion evidences Westland’s posture that no act in compliance with Injunction
Order will ever be deemed satisfactory by Westland. Westland contends that it is exclusively

1 entitled to determine whether there has been compliance with the terms of the Injunction Order,
2 that it can unilaterally dictate the form and content of that compliance, and that Grandbridge is
3 obligated to bend to Westland's every whim or face the threat of sanctions.

4 Injunctions are about preserving the *status quo*, but Westland wields the Injunction Order
5 like a club to force mandatory action by Grandbridge and Plaintiff Federal National Mortgage
6 Association ("Plaintiff" or "Fannie Mae"). The breadth and scope of Westland's overreaching
7 even extends to Westland's position that borrowers that are not even parties to this case can
8 compel Grandbridge and Fannie Mae to extend loan proceeds. Westland's overreaching does not
9 end there, as Westland contends that non-party borrowers affiliated with Westland are entitled to
10 use the Injunction Order as a shield to disregard and ignore contractual obligations without
11 consequence. Westland believes that non-party borrowers or loan applicants, simply by alleging
12 an undefined "affiliation" with Westland, are entitled to the benefit of the Injunction Order to
13 force the approval of loans and the extension of loan proceeds, while simultaneously handcuffing
14 and depriving Grandbridge and Fannie Mae of related rights. The nature of the affiliation
15 Westland seeks to enforce is so vague and ambiguous as to potentially include non-party entities
16 owned by the same principals as the Defendants, entities with "Westland" in the name, cousins
17 of the principals of Defendants, or even more tenuous affiliations.

18 The instant Motion is not about preserving the *status quo* or returning the parties to the
19 *status quo*. Instead, it is an example of Defendants' belief that they have prevailed on their claims
20 for relief and are entitled to remedies only available once a judgment is entered after trial.
21 Contrary to their belief, Defendants have not prevailed on their claims for relief. The Motion
22 should be denied.

23 II.

24 STATEMENT OF RELEVANT FACTS

25 1. Liberty Village is the borrower under the terms of certain loan documents (the
26 "Liberty Village Loan Documents") between Liberty Village and Fannie Mae (the "Liberty
27 Village Loan").

28 ///

2. Village Square is the borrower under the terms of certain loan documents (the “Village Square Loan Documents”) (together with the Liberty Village Loan Documents, the “Loan Documents”) between Village Square and Fannie Mae (the “Village Square Loan”). True and correct copies of the Loan Documents are attached as Exhibits 1 – 10 to the *Appendix of Exhibits to Verified Complaint* (the “Appendix”) filed in connection with the complaint on file herein (the “Complaint”) and are incorporated herein by reference.

3. Grandbridge is the “Servicer” under the terms of the Loan Documents.

4. On December 17, 2019, Plaintiff Federal National Mortgage Association (“Plaintiff” or “Fannie Mae”) declared defaults under the terms of the Liberty Village Loan Documents and the Village Square Loan Documents. True and correct copies of the Notices of Default are attached as Exhibits 13-14 to the Appendix and are incorporated herein by reference.

5. A history of the flow of funds received in connection with the Liberty Village Loan from August 30, 2018 to April 25, 2021 is attached hereto as **Exhibit 2** and incorporated herein by reference.¹ See Ex. 1 at ¶ 9.

6. A history of the flow of funds received in connection with the Village Square Loan from August 30, 2018 to April 25, 2021 is attached to the Opposition as **Exhibit 3** and incorporated herein by reference.² See Ex. 1 at ¶ 10.

7. All funds received by Grandbridge from Westland in connection with the Loan Documents have been promptly remitted to Fannie Mae. *Id.* at ¶ 11.

8. Grandbridge is not in possession of any funds received from Westland in connection with the Loan Documents. *Id.* at ¶ 12.

9. Grandbridge has taken no action to interfere with Defendants and the real property securing the repayment of the Liberty Village Loan and the Village Square Loan (the “Properties”). *Id.* at ¶ 13.

///

¹ Subject to adjustment following the posting of all funds into the loan accounting system of record and an accompanying internal analysis.

² Subject to adjustment following the posting of all funds into the loan accounting system of record and an accompanying internal analysis.

10. Grandbridge has never commingled or otherwise improperly maintained funds designated to be held in a reserve account. *Id.* at ¶ 14.

11. The automated correspondence attached as Exhibit A to the Motion was sent in error, was unintentional, and was the result of a software process setting that was inadvertently changed. Upon discovery, the software setting was corrected. *Id.* at ¶ 15.

III.

LEGAL ARGUMENT

A. Injunctions Concern The *Status Quo*.

Injunctions are issued to preserve the *status quo* while litigation on the merits continues in the normal course. *See, e.g., Pickett v. Comanche Constr.*, 108 Nev. 422, 426, 836 P.2d 42 (1992). Even mandatory injunctions are used to restore the *status quo*. *See, e.g., Leonard v. Stoebling*, 102 Nev. 542, 550-51, 728 P.2d 1358, 1363 (1986). But the *status quo* is not the focus of Westland's Motion or its overreaching. By the Motion, Westland seeks to compel Grandbridge to take action that goes above and beyond the *status quo*, up to and including approving and extending loan proceeds to non-party borrowers on terms that only Westland and those non-party borrowers deem as beneficial. NRCP 65(d) limits the binding power of an injunction to the parties and their agents. *See, e.g., Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 729 (9th Cir. 1983) (reviewing FRCP 65(d) and refusing to apply an injunction to benefit non-parties). Here, nothing about approving loans for non-party borrowers on terms on Westland and its ambiguous "affiliates" deems beneficial is not necessary to preserve the *status quo*.

Westland also demands that Grandbridge provide an accounting in a form that only Westland may deem satisfactory. Nothing in the Injunction Order grants Westland the unilateral power to compel Grandbridge to provide Westland with an accounting in a form that Westland exclusively controls and subject to Westland's exclusive approval authority. Westland's demand for an accounting in a form that only Westland has the power to approve and deem satisfactory is not necessary for the preservation of the *status quo*.

///

1 **B. Westland Is Not Entitled To The Remedy Of Accounting.**

2 Westland does not have a contractual right to demand an accounting from Grandbridge at
3 any time of Westland's choosing, in a form that only Westland can approve, and containing such
4 information as only Westland can deem satisfactory. The Loan Documents provide Westland
5 with no such right. *See* Appendix at Exs. 1-10.

6 Courts have frequently recognized that an accounting "is not an independent cause of
7 action but merely a type of remedy and an equitable remedy at that." *Batt v. City & County of San*
8 *Francisco*, 155 Cal.App.4th 65, 82, 65 Cal.Rptr.3d 716 (2007). In the rare cases in which an
9 accounting may be a separate cause of action, a relationship in the form of a partnership is a
10 prerequisite. "Before a claim for accounting can be pursued, Nevada law requires that the parties
11 to such a claim must first and foremost be partners." *G.K. Las Vegas Limited P'ship v. Simon*
12 *Prop. Grp., Inc.*, 460 F. Supp.2d 1246, 1262 (D. Nev. 2006). It is undisputed that Grandbridge is
13 not in a partnership with Westland. Moreover, Westland has not prevailed on any of its claims
14 for relief that would entitle it to a remedy of an accounting. Disputed issues of material fact exist,
15 discovery has not yet concluded, and trial has not taken place.

16 Despite no right to demand an accounting from Grandbridge as a matter of law in a form
17 that only Westland may deem satisfactory, Grandbridge has consistently provided relevant
18 information. In connection with this Opposition, Grandbridge again provides current information
19 pertaining to each loan. *See* Exs. 2-3.

20 **IV.**

21 **CONCLUSION**

22 For the foregoing reasons, this Court should deny the Motion. No order should enter that
23 permits Westland to demand that Grandbridge approve and extend loan proceeds to vague and
24 undefined non-party "Westland affiliates" on terms that only Westland and the non-parties may
25 deem beneficial. Disputed issues of material fact exist with respect to Westland's claims.
26 Westland is not entitled to force Grandbridge to deliver an accounting in a form that only
27 Westland deems satisfactory as a matter of law. Nevertheless, Grandbridge has provided all
28

1 relevant information related to the Loans. Based on the foregoing, Grandbridge respectfully
2 requests that this Court deny the Motion.

3 DATED this 5th day of May, 2021

4 HOLLAND & HART LLP

5
6 /s/ Joseph G. Went, Esq

7 Joseph G. Went, Esq.

8 Nevada Bar No. 9220

9 Lars K. Evensen, Esq.

10 Nevada Bar No. 8061

11 Sydney R. Gambia, Esq.

12 Nevada Bar No. 14201

13 9555 Hillwood Drive, 2nd Floor

14 Las Vegas, NV 89134

15 *Attorneys for Third Party Defendant*

16 *Grandbridge Real Estate Capital, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of May, 2021, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **GRANDBRIDGE REAL ESTATE CAPITAL, LLC'S OPPOSITION TO DEFENDANTS' MOTION FOR (1) AN ORDER FOR IMMEDIATE PLAINTIFF COMPLIANCE WITH ORDER GRANTING DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR APPOINTMENT OF RECEIVER AND (2) AN ACCOUNTING** was served on the following parties in the manner set forth below:

[XX] VIA THE COURT'S ELECTRONIC SERVICE SYSTEM:

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

*Attorney for Westland Liberty Village, LLC &
Westland Village Square LLC*

Nathan G. Kanute, Esq.
David L. Edelbute, Esq.
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

Attorneys for Plaintiff

/s/ C.B.

An employee of HOLLAND & HART LLP

16672882_v1

EXHIBIT 1

DECL

Joseph G. Went, Esq.
Nevada Bar No. 9220
Lars K. Evensen, Esq.
Nevada Bar No. 8061
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: 702.669.4600
Fax: 702.669.4650
JGWent@hollandhart.com
LKEvensen@hollandhart.com
SRGambee@hollandhart.com

*Attorneys for Third Party Defendant
Grandbridge Real Estate Capital, LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

WESTLAND LIBERTY VILLAGE, LLC and
WESTLAND VILLAGE SQUIARE, LLC

Defendants.

Case No. A-20-819412-C
Dept. No. 13

**DECLARATION OF JOE E.
GREENHAW, JR.**

AND ALL RELATED ACTIONS

I, **JOE E. GREENHAW, JR.**, do hereby declare:

1. I am employed by Third Party Defendant Grandbridge Real Estate Capital, LLC
("Grandbridge") as Senior Vice President.

2. I make this declaration in support of Grandbridge's opposition (the "Opposition")
to Defendants' Motion for (1) an Order for Immediate Plaintiff Compliance with Order Granting

1 *Defendants’ Motion for Preliminary Injunction and Denying Application for Appointment of*
2 *Receiver and (2) an Accounting* (the “Motion”).

3 3. I have personal knowledge of all matters set forth in this declaration, and if
4 called upon to testify, could and would competently testify thereto.

5 4. Defendant Westland Liberty Village, LLC (“Liberty Village”) is the borrower
6 under the terms of certain loan documents (the “Liberty Village Loan Documents”) between
7 Liberty Village and Fannie Mae (the “Liberty Village Loan”).

8 5. Defendant Westland Village Square, LLC (“Village Square”) (together with
9 Liberty Village, the “Defendants”) is the borrower under the terms of certain loan documents (the
10 “Village Square Loan Documents”) (together with the Liberty Village Loan Documents, the
11 “Loan Documents”) between Village Square and Fannie Mae (the “Village Square Loan”). True
12 and correct copies of the Loan Documents are attached as Exhibits 1 – 10 to the *Appendix of*
13 *Exhibits to Verified Complaint* (the “Appendix”) filed in connection with the complaint on file
14 herein (the “Complaint”) and are incorporated herein by reference.

15 6. Grandbridge is the “Servicer” under the terms of the Loan Documents.

16 7. I am a custodian of records concerning the accounts of Liberty Village and
17 Village Square with Grandbridge, which records have been kept in the regular and ordinary
18 course of Grandbridge’s business. I can state that the originals of those records prepared by
19 Grandbridge, including the documents attached to the Opposition, were made at or near the time
20 of the act, event, condition, or opinion recited therein by or from information transmitted by a
21 person with knowledge, in the course of a regularly conducted activity of Grandbridge.

22 8. On December 17, 2019, Plaintiff Federal National Mortgage Association
23 (“Plaintiff” or “Fannie Mae”) declared defaults under the terms of the Liberty Village Loan
24 Documents and the Village Square Loan Documents. True and correct copies of the Notices of
25 Default are attached as Exhibits 13-14 to the Appendix and are incorporated herein by reference.

26 ///

9. A history of the flow of funds received in connection with the Liberty Village Loan from August 30, 2018 to April 25, 2021 is attached to the Opposition as **Exhibit 2** and incorporated herein by reference.¹

10. A history of the flow of funds received in connection with the Village Square Loan from August 30, 2018 to April 25, 2021 is attached to the Opposition as **Exhibit 3** and incorporated herein by reference.²

11. All funds received by Grandbridge from Defendants in connection with the Loan Documents have been promptly remitted to Fannie Mae.

12. Grandbridge is not in possession of any funds received from Defendants in connection with the Loan Documents.

13. Grandbridge has taken no action to interfere with Defendants and the real property securing the repayment of the Liberty Village Loan and the Village Square Loan (the "Properties").

14. Grandbridge has never commingled or otherwise improperly maintained funds designated to be held in a reserve account.

15. The automated correspondence attached as Exhibit A to the Motion was sent in error, was unintentional, and was the result of a software process setting that was inadvertently changed. Upon discovery, the software setting was corrected.

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

EXECUTED this 5th day of May, 2021 in Tarrant County, Texas.

/s/ Joe E. Greenhaw, Jr.

JOE E. GREENHAW, JR.
Senior Vice President
Grandbridge Real Estate Capital, LLC

¹ Subject to adjustment following the posting of all funds into the loan accounting system of record and an accompanying internal analysis.

² Subject to adjustment following the posting of all funds into the loan accounting system of record and an accompanying internal analysis.

EXHIBIT 2

Flow of Funds

Loan Number:		330455178									
Borrower Name:		Westland Liberty Village LLC		Collateral Name:		Liberty Village Apartments		Next Payment Due Date:		01/01/2020	
Transaction Date	Transaction Description	Transaction Amount	Principal Amount	Interest Amount	Escrow - Tax	Escrow - Insurance / MIP	Total Reserves (excl Prin Res)	Late Charge Amount	Unapplied Amount	Total Remaining Amounts	Principal Balance
Beginning Balance as of: 8/29/2018					131,667.48	100,334.61	619,872.17	0.00	0.00		29,000,000.00
08/30/2018	Regular Payment	158,043.98	0.00	107,430.50	20,865.19	11,148.29	18,600.00	0.00	-158,043.98	0.00	29,000,000.00
08/31/2018	Interest Earned on Escrows	47.25	0.00	0.00	0.00	0.00	47.25	0.00	0.00	0.00	29,000,000.00
09/07/2018	Reserve Credit	30,695.65	0.00	0.00	0.00	0.00	30,695.65	0.00	-30,695.65	0.00	29,000,000.00
09/07/2018	Reserve Credit	142,263.84	0.00	0.00	0.00	0.00	142,263.84	0.00	-142,263.84	0.00	29,000,000.00
09/13/2018	Disbursement - Tax	13,787.39	0.00	0.00	-13,787.39	0.00	0.00	0.00	0.00	0.00	29,000,000.00
09/13/2018	Disbursement - Tax	22,730.14	0.00	0.00	-22,730.14	0.00	0.00	0.00	0.00	0.00	29,000,000.00
09/13/2018	Disbursement - Tax	25,586.31	0.00	0.00	-25,586.31	0.00	0.00	0.00	0.00	0.00	29,000,000.00
09/30/2018	Interest Earned on Escrows	58.64	0.00	0.00	0.00	0.00	58.64	0.00	0.00	0.00	29,000,000.00
10/09/2018	Regular Payment	154,264.31	0.00	103,650.83	20,865.19	11,148.29	18,600.00	0.00	0.00	0.00	29,000,000.00
10/31/2018	Interest Earned on Escrows	74.58	0.00	0.00	0.00	0.00	74.58	0.00	0.00	0.00	29,000,000.00
11/07/2018	Regular Payment	160,116.67	0.00	109,503.19	20,865.19	11,148.29	18,600.00	0.00	0.00	0.00	29,000,000.00
11/09/2018	Disbursement	36,135.62	0.00	0.00	0.00	0.00	-36,135.62	0.00	0.00	0.00	29,000,000.00
11/30/2018	Interest Earned on Escrows	89.04	0.00	0.00	0.00	0.00	89.04	0.00	0.00	0.00	29,000,000.00
12/05/2018	Late Charge Waived	5,439.92	0.00	0.00	0.00	0.00	0.00	-5,439.92	0.00	0.00	29,000,000.00
12/10/2018	System Generated Late Charge	5,439.92	0.00	0.00	0.00	0.00	0.00	5,439.92	0.00	0.00	29,000,000.00
12/13/2018	Regular Payment	159,411.81	0.00	108,798.33	20,865.19	11,148.29	18,600.00	0.00	0.00	0.00	29,000,000.00
12/14/2018	Unapplied Payment	159,411.81	0.00	0.00	0.00	0.00	0.00	0.00	159,411.81	0.00	29,000,000.00
12/14/2018	Unapplied Payment Reversal - NSF	-159,411.81	0.00	0.00	0.00	0.00	0.00	0.00	-159,411.81	0.00	29,000,000.00
12/20/2018	Disbursement - Tax	13,787.39	0.00	0.00	-13,787.39	0.00	0.00	0.00	0.00	0.00	29,000,000.00
12/20/2018	Disbursement - Tax	22,730.14	0.00	0.00	-22,730.14	0.00	0.00	0.00	0.00	0.00	29,000,000.00
12/20/2018	Disbursement - Tax	25,586.31	0.00	0.00	-25,586.31	0.00	0.00	0.00	0.00	0.00	29,000,000.00
12/31/2018	Interest Earned on Escrows	108.12	0.00	0.00	0.00	0.00	108.12	0.00	0.00	0.00	29,000,000.00
01/07/2019	Regular Payment	168,136.16	0.00	112,899.42	20,893.05	15,243.69	18,600.00	0.00	0.00	500.00	29,000,000.00
01/31/2019	Interest Earned on Escrows	131.19	0.00	0.00	0.00	0.00	131.19	0.00	0.00	0.00	29,000,000.00
02/07/2019	Regular Payment	171,916.46	0.00	117,119.72	20,893.05	15,243.69	18,600.00	0.00	0.00	60.00	29,000,000.00
02/15/2019	Disbursement - Tax	13,787.39	0.00	0.00	-13,787.39	0.00	0.00	0.00	0.00	0.00	29,000,000.00
02/15/2019	Disbursement - Tax	22,730.14	0.00	0.00	-22,730.14	0.00	0.00	0.00	0.00	0.00	29,000,000.00
02/15/2019	Disbursement - Tax	25,586.31	0.00	0.00	-25,586.31	0.00	0.00	0.00	0.00	0.00	29,000,000.00
02/28/2019	Interest Earned on Escrows	133.07	0.00	0.00	0.00	0.00	133.07	0.00	0.00	0.00	29,000,000.00
03/07/2019	Regular Payment	161,266.63	0.00	106,529.89	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
03/31/2019	Interest Earned on Escrows	162.69	0.00	0.00	0.00	0.00	162.69	0.00	0.00	0.00	29,000,000.00
04/08/2019	Regular Payment	172,131.16	0.00	117,394.42	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
04/30/2019	Interest Earned on Escrows	171.80	0.00	0.00	0.00	0.00	171.80	0.00	0.00	0.00	29,000,000.00

Flow of Funds

<div><div>Loan Number:330455178</div><div>Borrower Name:Westland Liberty Village LLC</div><div>Collateral Name:Liberty Village Apartments</div><div>Next Payment Due Date:01/01/2020</div></div>											
Transaction Date	Transaction Description	Transaction Amount	Principal Amount	Interest Amount	Escrow - Tax	Escrow - Insurance / MIP	Total Reserves (excl Prin Res)	Late Charge Amount	Unapplied Amount	Total Remaining Amounts	Principal Balance
05/07/2019	Regular Payment	168,368.41	0.00	113,631.67	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
05/31/2019	Escrow Credit	62,103.84	0.00	0.00	62,103.84	0.00	0.00	0.00	0.00	0.00	29,000,000.00
05/31/2019	Interest Earned on Escrows	191.86	0.00	0.00	0.00	0.00	191.86	0.00	0.00	0.00	29,000,000.00
06/07/2019	Regular Payment	172,106.18	0.00	117,369.44	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
06/30/2019	Interest Earned on Escrows	196.96	0.00	0.00	0.00	0.00	196.96	0.00	0.00	0.00	29,000,000.00
07/08/2019	Regular Payment	167,401.74	0.00	112,665.00	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
07/22/2019	Borrower Fees - Receipt	2,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,500.00	29,000,000.00
07/22/2019	Disbursement - Insurance	3,569.00	0.00	0.00	0.00	-3,569.00	0.00	0.00	0.00	0.00	29,000,000.00
07/25/2019	Disbursement - Tax	14,450.94	0.00	0.00	-14,450.94	0.00	0.00	0.00	0.00	0.00	29,000,000.00
07/25/2019	Disbursement - Tax	23,822.95	0.00	0.00	-23,822.95	0.00	0.00	0.00	0.00	0.00	29,000,000.00
07/25/2019	Disbursement - Tax	26,816.20	0.00	0.00	-26,816.20	0.00	0.00	0.00	0.00	0.00	29,000,000.00
07/31/2019	Interest Earned on Escrows	212.96	0.00	0.00	0.00	0.00	212.96	0.00	0.00	0.00	29,000,000.00
08/07/2019	Regular Payment	169,658.91	0.00	114,922.17	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
08/31/2019	Interest Earned on Escrows	218.35	0.00	0.00	0.00	0.00	218.35	0.00	0.00	0.00	29,000,000.00
09/09/2019	Regular Payment	167,561.24	0.00	112,824.50	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
09/19/2019	Disbursement - Insurance	102,595.00	0.00	0.00	0.00	-102,595.00	0.00	0.00	0.00	0.00	29,000,000.00
09/23/2019	Disbursement - Tax	14,449.19	0.00	0.00	-14,449.19	0.00	0.00	0.00	0.00	0.00	29,000,000.00
09/23/2019	Disbursement - Tax	23,821.18	0.00	0.00	-23,821.18	0.00	0.00	0.00	0.00	0.00	29,000,000.00
09/23/2019	Disbursement - Tax	26,814.45	0.00	0.00	-26,814.45	0.00	0.00	0.00	0.00	0.00	29,000,000.00
09/30/2019	Interest Earned on Escrows	209.76	0.00	0.00	0.00	0.00	209.76	0.00	0.00	0.00	29,000,000.00
10/07/2019	Regular Payment	160,876.74	0.00	106,140.00	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
10/07/2019	Reserve Credit	40,426.50	0.00	0.00	0.00	0.00	40,426.50	0.00	-40,426.50	0.00	29,000,000.00
10/07/2019	Reserve Credit	103,500.66	0.00	0.00	0.00	0.00	103,500.66	0.00	-103,500.66	0.00	29,000,000.00
10/31/2019	Interest Earned on Escrows	214.90	0.00	0.00	0.00	0.00	214.90	0.00	0.00	0.00	29,000,000.00
11/07/2019	Regular Payment	161,143.38	0.00	106,406.64	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
11/18/2019	Disbursement - Insurance	145,737.00	0.00	0.00	0.00	-145,737.00	0.00	0.00	0.00	0.00	29,000,000.00
11/30/2019	Interest Earned on Escrows	203.65	0.00	0.00	0.00	0.00	203.65	0.00	0.00	0.00	29,000,000.00
12/09/2019	Regular Payment	152,998.41	0.00	98,261.67	20,893.05	15,243.69	18,600.00	0.00	0.00	0.00	29,000,000.00
12/26/2019	Disbursement - Tax	14,449.19	0.00	0.00	-14,449.19	0.00	0.00	0.00	0.00	0.00	29,000,000.00
12/26/2019	Disbursement - Tax	23,821.18	0.00	0.00	-23,821.18	0.00	0.00	0.00	0.00	0.00	29,000,000.00
12/26/2019	Disbursement - Tax	26,814.45	0.00	0.00	-26,814.45	0.00	0.00	0.00	0.00	0.00	29,000,000.00
12/31/2019	Interest Earned on Escrows	212.78	0.00	0.00	0.00	0.00	212.78	0.00	0.00	0.00	29,000,000.00
Ending Balance as of: 12/31/2019					146,377.43	75,951.05	1,200,610.80	0.00	0.00		29,000,000.00

Flow of Funds

CF Loan No. 330455178Investor Loan No. 1717473617

Borrower: Westland Liberty Village LLCAs Of: 4/25/2021

Flow of Funds																	
Payment Due Date	Interest Start Date	Through Interest End Date	Days Interest	Scheduled Interest Receivable	Annual Replacement Admin. Fee	Principal Receivable	Tax Escrow Receivable	Insurance Escrow Rec.	Replacement Reserve Rec.	Scheduled Amount Due From Borrower	Amount Received From Borrower	Payment Surplus/ (Shortage) Received From Borrower	Immediate Repairs Reserve	Insurance Loss Proceeds Reserve Fire 4/15/2018	Insurance Loss Proceeds Reserve Fire 5/10/2018	Funds Sent To FNMA	Date Sent
1/1/2020	12/1/2019	12/31/2019	31	\$ 98,715.19	\$ 500.00	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 161,378.75	\$ 161,378.75	\$ -					
Prior Period Escrows and Reserve Balances as of Date of Acceleration:																	
2/1/2020	1/1/2020	1/31/2020	31	\$ 99,489.33	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 161,652.89	\$ 180,621.79	\$ 18,968.90					
3/1/2020	2/1/2020	2/29/2020	29	\$ 90,500.94	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 152,664.50	\$ 180,621.79	\$ 27,957.29					
4/1/2020	3/1/2020	3/31/2020	31	\$ 96,842.28	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 159,005.84	\$ 180,621.79	\$ 21,615.95					
5/1/2020	4/1/2020	4/30/2020	30	\$ 71,775.00	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 133,938.56	\$ 180,621.79	\$ 46,683.23					
6/1/2020	5/1/2020	5/31/2020	31	\$ 73,368.39	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 135,531.95	\$ 180,621.79	\$ 45,089.84					
7/1/2020	6/1/2020	6/30/2020	30	\$ 57,806.67	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 119,970.23	\$ 180,621.79	\$ 60,651.56					
8/1/2020	7/1/2020	7/31/2020	31	\$ 60,282.94	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 122,446.50	\$ 180,621.79	\$ 58,175.29					
9/1/2020	8/1/2020	8/31/2020	31	\$ 59,933.33	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 122,096.89	\$ 180,621.79	\$ 58,524.90					
10/1/2020	9/1/2020	9/30/2020	30	\$ 57,540.83	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 119,704.39	\$ 180,621.79	\$ 60,917.40					
11/1/2020	10/1/2020	10/31/2020	31	\$ 59,184.17	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 121,347.73	\$ 180,621.79	\$ 59,274.06					
12/1/2020	11/1/2020	11/30/2020	30	\$ 57,299.17	\$ -	\$ -	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 119,462.73	\$ 180,621.79	\$ 61,159.06					
1/1/2021	12/1/2020	12/31/2020	31	\$ 59,034.33	\$ -	\$ 62,140.36	\$ 21,834.51	\$ 21,729.05	\$ 18,600.00	\$ 183,338.25	\$ 183,338.25	\$ -					
2/1/2021	1/1/2021	1/31/2021	31	\$ 59,107.19	\$ -	\$ 62,192.42	\$ 15,040.83	\$ 21,729.05	\$ 18,600.00	\$ 176,669.49	\$ 176,669.49	\$ -					
3/1/2021	2/1/2021	2/28/2021	28	\$ 52,778.30	\$ -	\$ 68,354.39	\$ 15,040.83	\$ 21,729.05	\$ 18,600.00	\$ 176,502.57	\$ 176,502.57	\$ -					
Loss Proceeds for 05/10/2018 Insurance Claim Received:																	
4/1/2021	3/1/2021	3/31/2021	31	\$ 57,724.55	\$ -	\$ 62,912.97	\$ 15,040.83	\$ 21,729.05	\$ 18,600.00	\$ 176,007.40	\$ 176,007.40	\$ -			\$ 80,258.51		
Total				\$ 1,111,382.61		\$255,600.14	\$ 475,348.55	\$ 423,615.85	\$ 663,494.63	\$ 2,341,718.67	\$ 2,860,736.15	\$ 519,017.48	\$ 9,375.00	\$ 472,483.19	\$ 433,116.49	\$ 4,363,933.94	

Assumed Replacement Reserve Activity				
Date	Item	Monthly Constant	Assumed Interest Earned	Balance
12/31/2019	Beginning Balance	\$ 365,894.63		\$ 365,894.63
1/8/2021	Monthly Constant	\$ 18,600.00		\$ 384,494.63
1/31/2020	Interest on Reserve		\$ 219.56	\$ 384,714.19
2/13/2020	Monthly Constant	\$ 18,600.00		\$ 403,314.19
2/29/2020	Interest on Reserve		\$ 209.80	\$ 403,523.99
3/4/2020	Monthly Constant	\$ 18,600.00		\$ 422,123.99
3/31/2020	Interest on Reserve		\$ 236.79	\$ 422,360.78
4/3/2020	Monthly Constant	\$ 18,600.00		\$ 440,960.78
4/30/2020	Interest on Reserve		\$ 115.67	\$ 441,076.45
5/5/2020	Monthly Constant	\$ 18,600.00		\$ 459,676.45
5/31/2020	Interest on Reserve		\$ 116.63	\$ 459,793.08
6/3/2020	Monthly Constant	\$ 18,600.00		\$ 478,393.08
6/30/2020	Interest on Reserve		\$ 27.04	\$ 478,420.12
7/3/2020	Monthly Constant	\$ 18,600.00		\$ 497,020.12
7/25/2020	Interest on Reserve		\$ 58.82	\$ 497,078.94
8/5/2020	Monthly Constant	\$ 18,600.00		\$ 515,678.94
8/25/2020	Interest on Reserve		\$ 65.75	\$ 515,744.69
9/4/2020	Monthly Constant	\$ 18,600.00		\$ 534,344.69
9/25/2020	Interest on Reserve		\$ 67.39	\$ 534,412.08
10/7/2020	Monthly Constant	\$ 18,600.00		\$ 553,012.08
10/25/2020	Interest on Reserve		\$ 63.58	\$ 553,075.66
11/3/2020	Monthly Constant	\$ 18,600.00		\$ 571,675.66
11/25/2020	Interest on Reserve		\$ 63.50	\$ 571,739.16
12/2/2020	Monthly Constant	\$ 18,600.00		\$ 590,339.16
12/25/2020	Interest on Reserve		\$ 62.68	\$ 590,401.84
1/6/2021	Monthly Constant	\$ 18,600.00		\$ 609,001.84
1/25/2021	Interest on Reserve		\$ 62.37	\$ 609,064.21
2/9/2021	Monthly Constant	\$ 18,600.00		\$ 627,664.21
2/25/2021	Interest on Reserve		\$ 63.11	\$ 627,727.32
3/9/2021	Monthly Constant	\$ 18,600.00		\$ 646,327.32
3/25/2021	Interest on Reserve		\$ 54.61	\$ 646,381.93
4/9/2021	Monthly Constant	\$ 18,600.00		\$ 664,981.93
4/25/2021	Interest on Reserve		\$ 56.83	\$ 665,038.76
Total			\$ 1,544.13	

EXHIBIT 3

Flow of Funds

Loan Number:		330455177											
Borrower Name:		Westland Village Square LLC		Collateral Name:		Village Square Apartments		Next Payment Due Date:		01/01/2020			
Transaction Date	Transaction Description	Transaction Amount	Principal Amount	Interest Amount	Escrow - Tax	Escrow - Insurance / MIP	Total Reserves (excl Prin Res)	Late Charge Amount	Unapplied Amount	Total Remaining Amounts	Principal Balance		
Beginning Balance as of: 8/29/2018					48,754.72	39,701.40	38,287.25	0.00	0.00		9,366,000.00		
08/30/2018	Regular Payment	57,783.37	0.00	35,825.47	7,728.68	3,970.14	10,259.08	0.00	-57,783.37	0.00	9,366,000.00		
08/31/2018	Interest Earned on Escrows	25.70	0.00	0.00	0.00	0.00	25.70	0.00	0.00	0.00	9,366,000.00		
09/13/2018	Disbursement - Tax	11,393.00	0.00	0.00	-11,393.00	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
09/13/2018	Disbursement - Tax	11,615.93	0.00	0.00	-11,615.93	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
09/30/2018	Interest Earned on Escrows	33.79	0.00	0.00	0.00	0.00	33.79	0.00	0.00	0.00	9,366,000.00		
10/09/2018	Regular Payment	56,526.24	0.00	34,568.34	7,728.68	3,970.14	10,259.08	0.00	0.00	0.00	9,366,000.00		
10/31/2018	Interest Earned on Escrows	42.71	0.00	0.00	0.00	0.00	42.71	0.00	0.00	0.00	9,366,000.00		
11/07/2018	Regular Payment	58,452.78	0.00	36,494.88	7,728.68	3,970.14	10,259.08	0.00	0.00	0.00	9,366,000.00		
11/30/2018	Interest Earned on Escrows	50.68	0.00	0.00	0.00	0.00	50.68	0.00	0.00	0.00	9,366,000.00		
12/10/2018	Late Charge Waived	1,811.54	0.00	0.00	0.00	0.00	0.00	-1,811.54	0.00	0.00	9,366,000.00		
12/10/2018	System Generated Late Charge	1,811.54	0.00	0.00	0.00	0.00	0.00	1,811.54	0.00	0.00	9,366,000.00		
12/13/2018	Regular Payment	58,188.71	0.00	36,230.81	7,728.68	3,970.14	10,259.08	0.00	0.00	0.00	9,366,000.00		
12/14/2018	Miscellaneous Fees - Accrual	60.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	60.00	9,366,000.00		
12/14/2018	Unapplied Payment	58,188.71	0.00	0.00	0.00	0.00	0.00	0.00	58,188.71	0.00	9,366,000.00		
12/14/2018	Unapplied Payment Reversal - NSF	-58,188.71	0.00	0.00	0.00	0.00	0.00	0.00	-58,188.71	0.00	9,366,000.00		
12/20/2018	Disbursement - Tax	11,393.00	0.00	0.00	-11,393.00	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
12/20/2018	Disbursement - Tax	11,615.93	0.00	0.00	-11,615.93	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
12/31/2018	Interest Earned on Escrows	61.32	0.00	0.00	0.00	0.00	61.32	0.00	0.00	0.00	9,366,000.00		
01/07/2019	Regular Payment	56,950.80	0.00	37,591.74	7,740.83	859.15	10,259.08	0.00	0.00	500.00	9,366,000.00		
01/31/2019	Interest Earned on Escrows	74.11	0.00	0.00	0.00	0.00	74.11	0.00	0.00	0.00	9,366,000.00		
02/07/2019	Regular Payment	57,873.82	0.00	38,954.76	7,740.83	859.15	10,259.08	0.00	0.00	60.00	9,366,000.00		
02/15/2019	Disbursement - Tax	11,393.00	0.00	0.00	-11,393.00	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
02/15/2019	Disbursement - Tax	11,615.93	0.00	0.00	-11,615.93	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
02/28/2019	Interest Earned on Escrows	74.99	0.00	0.00	0.00	0.00	74.99	0.00	0.00	0.00	9,366,000.00		
03/07/2019	Regular Payment	54,284.39	0.00	35,425.33	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00		
03/31/2019	Interest Earned on Escrows	91.49	0.00	0.00	0.00	0.00	91.49	0.00	0.00	0.00	9,366,000.00		
04/08/2019	Regular Payment	57,902.53	0.00	39,043.47	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00		
04/30/2019	Interest Earned on Escrows	96.46	0.00	0.00	0.00	0.00	96.46	0.00	0.00	0.00	9,366,000.00		
05/07/2019	Regular Payment	56,650.87	0.00	37,791.81	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00		
05/08/2019	Disbursement	41,267.54	0.00	0.00	0.00	0.00	-41,267.54	0.00	0.00	0.00	9,366,000.00		
05/31/2019	Escrow Credit	23,008.93	0.00	0.00	23,008.93	0.00	0.00	0.00	0.00	0.00	9,366,000.00		
05/31/2019	Interest Earned on Escrows	81.02	0.00	0.00	0.00	0.00	81.02	0.00	0.00	0.00	9,366,000.00		
06/07/2019	Regular Payment	57,894.47	0.00	39,035.41	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00		
06/30/2019	Interest Earned on Escrows	77.64	0.00	0.00	0.00	0.00	77.64	0.00	0.00	0.00	9,366,000.00		
07/02/2019	Credit Unapplied	10,000.00	0.00	0.00	0.00	0.00	0.00	0.00	10,000.00	0.00	9,366,000.00		
07/08/2019	Regular Payment	56,338.67	0.00	37,479.61	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00		

Flow of Funds

<div><div><div>Loan Number:330455177</div><div>Borrower Name:Westland Village Square LLC</div><div>Collateral Name:Village Square Apartments</div><div>Next Payment Due Date:01/01/2020</div></div></div>												
Transaction Date	Transaction Description	Transaction Amount	Principal Amount	Interest Amount	Escrow - Tax	Escrow - Insurance / MIP	Total Reserves (excl Prin Res)	Late Charge Amount	Unapplied Amount	Total Remaining Amounts	Principal Balance	
07/22/2019	Borrower Fees - Receipt	2,500.00	0.00	0.00	0.00	0.00	0.00	0.00	-2,500.00	0.00	9,366,000.00	
07/22/2019	Borrower Fees - Receipt	2,500.00	0.00	0.00	0.00	0.00	0.00	0.00	-2,500.00	0.00	9,366,000.00	
07/22/2019	Disbursement - Insurance	2,027.00	0.00	0.00	0.00	-2,027.00	0.00	0.00	0.00	0.00	9,366,000.00	
07/22/2019	Disbursement - Unapplied	5,000.00	0.00	0.00	0.00	0.00	0.00	0.00	-5,000.00	0.00	9,366,000.00	
07/25/2019	Disbursement - Tax	11,941.61	0.00	0.00	-11,941.61	0.00	0.00	0.00	0.00	0.00	9,366,000.00	
07/25/2019	Disbursement - Tax	12,175.26	0.00	0.00	-12,175.26	0.00	0.00	0.00	0.00	0.00	9,366,000.00	
07/31/2019	Interest Earned on Escrows	86.20	0.00	0.00	0.00	0.00	86.20	0.00	0.00	0.00	9,366,000.00	
08/07/2019	Regular Payment	57,104.08	0.00	38,245.02	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00	
08/15/2019	Disbursement - Suspense	750.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	750.00	9,366,000.00	
08/31/2019	Interest Earned on Escrows	90.53	0.00	0.00	0.00	0.00	90.53	0.00	0.00	0.00	9,366,000.00	
09/04/2019	Disbursement - Insurance	26,857.00	0.00	0.00	0.00	-26,857.00	0.00	0.00	0.00	0.00	9,366,000.00	
09/09/2019	Regular Payment	56,426.61	0.00	37,567.55	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00	
09/23/2019	Disbursement - Tax	11,939.87	0.00	0.00	-11,939.87	0.00	0.00	0.00	0.00	0.00	9,366,000.00	
09/23/2019	Disbursement - Tax	12,173.49	0.00	0.00	-12,173.49	0.00	0.00	0.00	0.00	0.00	9,366,000.00	
09/30/2019	Interest Earned on Escrows	88.59	0.00	0.00	0.00	0.00	88.59	0.00	0.00	0.00	9,366,000.00	
10/07/2019	Regular Payment	54,231.32	0.00	35,372.26	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00	
10/08/2019	Reclassification	46,640.39	0.00	0.00	-46,640.39	46,640.39	0.00	0.00	0.00	0.00	9,366,000.00	
10/31/2019	Interest Earned on Escrows	92.47	0.00	0.00	0.00	0.00	92.47	0.00	0.00	0.00	9,366,000.00	
11/07/2019	Regular Payment	54,353.86	0.00	35,494.80	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00	
11/18/2019	Disbursement - Insurance	82,789.00	0.00	0.00	0.00	-82,789.00	0.00	0.00	0.00	0.00	9,366,000.00	
11/26/2019	Reclassification	451.78	0.00	0.00	-451.78	451.78	0.00	0.00	0.00	0.00	9,366,000.00	
11/30/2019	Interest Earned on Escrows	88.97	0.00	0.00	0.00	0.00	88.97	0.00	0.00	0.00	9,366,000.00	
12/09/2019	Regular Payment	51,686.89	0.00	32,827.83	7,740.83	859.15	10,259.08	0.00	0.00	0.00	9,366,000.00	
12/26/2019	Disbursement - Tax	11,939.87	0.00	0.00	-11,939.87	0.00	0.00	0.00	0.00	0.00	9,366,000.00	
12/26/2019	Disbursement - Tax	12,173.49	0.00	0.00	-12,173.49	0.00	0.00	0.00	0.00	0.00	9,366,000.00	
12/31/2019	Interest Earned on Escrows	94.14	0.00	0.00	0.00	0.00	94.14	0.00	0.00	0.00	9,366,000.00	
Ending Balance as of: 12/31/2019					7,105.78	1,310.93	162,415.80	0.00	0.00		9,366,000.00	

Flow of Funds

CF Loan No.330455177Investor Loan No.1717473618

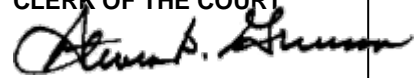
Borrower:Westland Village Square LLC

As Of:4/25/2021

Flow of Funds														
Payment Due Date	Interest Start Date	Through Interest End Date	Days Interest	Scheduled Interest Receivable	Annual Replacement Admin. Fee	Principal Receivable	Tax Escrow Receivable	Insurance Escrow Rec.	Replacement Reserve Rec.	Scheduled Amount Due From Borrower	Amount Received From Borrower	Payment Surplus/ (Shortage) Received From Borrower	Funds Sent To FNMA	Date Sent
1/1/2020	12/1/2019	12/31/2019	31	\$ 33,010.73	\$ 500.00	\$ -	\$ 7,740.83	\$ 859.15	\$ 10,259.08	\$ 52,369.79	\$ 52,369.79	\$ -	\$ 52,369.79	1/16/2020
Prior Period Escrows and Reserves as of Date of Acceleration:							\$ 7,105.78	\$ 1,310.93	\$ 162,415.80	\$ -	\$ -	\$ -	\$ 170,832.51	1/16/2020
2/1/2020	1/1/2020	1/31/2020	31	\$ 33,260.75	\$ -	\$ -	\$ 8,205.90	\$ 21,662.69	\$ 10,259.08	\$ 73,388.42	\$ 58,471.94	\$ (14,916.48)	\$ 58,471.94	2/14/2020
3/1/2020	2/1/2020	2/29/2020	29	\$ 30,284.96	\$ -	\$ -	\$ 8,205.90	\$ 21,662.69	\$ 10,259.08	\$ 70,412.63	\$ 58,471.94	\$ (11,940.69)	\$ 58,471.94	3/5/2020
4/1/2020	3/1/2020	3/31/2020	31	\$ 32,405.84	\$ -	\$ -	\$ 8,205.90	\$ 21,662.69	\$ 10,259.08	\$ 72,533.51	\$ 58,471.94	\$ (14,061.57)	\$ 58,471.94	4/7/2020
5/1/2020	4/1/2020	4/30/2020	30	\$ 24,273.55	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 52,216.29	\$ 58,471.94	\$ 6,255.65	\$ 58,471.94	5/6/2020
6/1/2020	5/1/2020	5/31/2020	31	\$ 24,824.58	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 52,767.32	\$ 58,471.94	\$ 5,704.62	\$ 58,471.94	6/4/2020
7/1/2020	6/1/2020	6/30/2020	30	\$ 19,762.26	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 47,705.00	\$ 58,471.94	\$ 10,766.94	\$ 58,471.94	7/7/2020
8/1/2020	7/1/2020	7/31/2020	31	\$ 20,598.44	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 48,541.18	\$ 58,471.94	\$ 9,930.76	\$ 58,471.94	8/7/2020
9/1/2020	8/1/2020	8/31/2020	31	\$ 20,485.52	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 48,428.26	\$ 58,471.94	\$ 10,043.68	\$ 58,471.94	9/15/2020
10/1/2020	9/1/2020	9/30/2020	30	\$ 19,676.40	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 47,619.14	\$ 58,471.94	\$ 10,852.80	\$ 58,471.94	10/8/2020
11/1/2020	10/1/2020	10/31/2020	31	\$ 20,243.57	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 48,186.31	\$ 58,471.94	\$ 10,285.63	\$ 58,471.94	11/19/2020
12/1/2020	11/1/2020	11/30/2020	30	\$ 19,598.36	\$ -	\$ -	\$ 8,089.63	\$ 9,594.03	\$ 10,259.08	\$ 47,541.10	\$ 58,471.94	\$ 10,930.84	\$ 58,471.94	12/8/2020
1/1/2021	12/1/2020	12/31/2020	31	\$ 20,195.18	\$ -	\$ 19,605.91	\$ 5,462.12	\$ 9,594.03	\$ 10,259.08	\$ 65,116.32	\$ 65,116.32	\$ -	\$ 65,116.32	1/13/2021
2/1/2021	1/1/2021	1/31/2021	31	\$ 20,217.29	\$ -	\$ 19,624.72	\$ 5,462.12	\$ 9,594.03	\$ 10,259.08	\$ 65,157.24	\$ 65,157.24	\$ -	\$ 65,157.24	2/10/2021
3/1/2021	2/1/2021	2/28/2021	28	\$ 18,062.84	\$ -	\$ 21,677.38	\$ 5,462.12	\$ 9,594.03	\$ 10,259.08	\$ 65,055.45	\$ 65,055.45	\$ -	\$ 65,055.45	3/10/2021
4/1/2021	3/1/2021	3/31/2021	31	\$ 19,767.38	\$ -	\$ 19,858.49	\$ 5,462.12	\$ 23,438.75	\$ 10,259.08	\$ 78,785.82	\$ 78,785.82	\$ -	\$ 78,785.82	4/12/2021
Total				\$ 376,667.65		\$ 80,766.50	\$ 126,029.83	\$ 196,131.23	\$ 326,561.08	\$ 935,823.78	\$ 969,675.96	\$ 33,852.18	\$ 1,140,508.47	

Assumed Replacement Reserve Activity				
Date	Item	Monthly Constant	Assumed Interest Earned	Balance
12/31/2019	Beginning Balance	\$ 162,415.80		\$ 162,415.80
1/7/2020	Monthly Constant	\$ 10,259.08		\$ 172,674.88
1/31/2020	Interest on Reserve		\$ 98.55	\$ 172,773.43
2/13/2020	Monthly Constant	\$ 10,259.08		\$ 183,032.51
2/29/2020	Interest on Reserve		\$ 94.81	\$ 183,127.32
3/4/2020	Monthly Constant	\$ 10,259.08		\$ 193,386.40
3/31/2020	Interest on Reserve		\$ 108.39	\$ 193,494.79
4/6/2020	Monthly Constant	\$ 10,259.08		\$ 203,753.87
4/30/2020	Interest on Reserve		\$ 53.15	\$ 203,807.02
5/5/2020	Monthly Constant	\$ 10,259.08		\$ 214,066.10
5/31/2020	Interest on Reserve		\$ 54.26	\$ 214,120.36
6/3/2020	Monthly Constant	\$ 10,259.08		\$ 224,379.44
6/30/2020	Interest on Reserve		\$ 12.68	\$ 224,392.12
7/3/2020	Monthly Constant	\$ 10,259.08		\$ 234,651.20
7/25/2020	Interest on Reserve		\$ 27.74	\$ 234,678.94
8/5/2020	Monthly Constant	\$ 10,259.08		\$ 244,938.02
8/25/2020	Interest on Reserve		\$ 31.17	\$ 244,969.19
9/4/2020	Monthly Constant	\$ 10,259.08		\$ 255,228.27
9/25/2020	Interest on Reserve		\$ 32.14	\$ 255,260.41
10/5/2020	Monthly Constant	\$ 10,259.08		\$ 265,519.49
10/25/2020	Interest on Reserve		\$ 30.55	\$ 265,550.04
11/3/2020	Monthly Constant	\$ 10,259.08		\$ 275,809.12
11/25/2020	Interest on Reserve		\$ 30.60	\$ 275,839.72
12/2/2020	Monthly Constant	\$ 10,259.08		\$ 286,098.80
12/25/2020	Interest on Reserve		\$ 30.35	\$ 286,129.15
1/6/2021	Monthly Constant	\$ 10,259.08		\$ 296,388.23
1/25/2021	Interest on Reserve		\$ 30.31	\$ 296,418.54
2/8/2021	Monthly Constant	\$ 10,259.08		\$ 306,677.62
2/25/2021	Interest on Reserve		\$ 30.82	\$ 306,708.44
3/8/2021	Monthly Constant	\$ 10,259.08		\$ 316,967.52
3/25/2021	Interest on Reserve		\$ 26.77	\$ 316,994.29
4/9/2021	Monthly Constant	\$ 10,259.08		\$ 327,253.37
4/25/2021	Interest on Reserve		\$ 27.89	\$ 327,281.26
Total			\$ 720.18	

8



Nathan G. Kanute, Esq.
Nevada Bar No. 12413
David L. Edelblute, Esq.
Nevada Bar No. 14049
Bob L. Olson, Esq.
Nevada Bar No. 3783
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
Email: nkanute@swlaw.com
dedelblute@swlaw.com
bolson@swlaw.com

Attorneys for Plaintiff Federal National Mortgage Association

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-819412-B

Dept No. 13

**DECLARATION OF NATHAN
KANUTE IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
APPLICATION ON ORDER
SHORTENING TIME FOR COURT TO
HEAR DEFENDANTS' MOTION FOR
(1) AN ORDER FOR IMMEDIATE
PLAINTIFF COMPLIANCE WITH
ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION AND DENYING
APPLICATION FOR APPOINTMENT
OF RECEIVER AND (2) AN
ACCOUNTING**

ALL RELATED ACTIONS

I, Nathan G. Kanute, Esq., declare as follows:

1. I am an attorney at the law firm of Snell & Wilmer L.L.P. and represent Fannie Mae in this matter. I have personal knowledge of the facts stated in this declaration, and I can competently testify to them and make this declaration under the penalty of perjury.

2. I make this declaration in support of Plaintiff's *Opposition To Application On Order*

1 *Shortening Time For Court To Hear Defendants' Motion For (1) An Order For Immediate Plaintiff*
2 *Compliance With Order Granting Defendants' Motion For Preliminary Injunction And Denying*
3 *Application For Appointment Of Receiver And (2) An Accounting (the "Opposition").*

4 3. I sent a letter to Defendants' in-house counsel, John Hofsaess, on February 19, 2021.
5 A true and correct copy of that letter is attached to the Opposition as Exhibit 2. The primary purpose
6 of that letter was to request Defendants to quantify the amounts they believed that Fannie Mae must
7 pay to satisfy the Mandatory Payment Obligations, since it was not clear in the *Order Granting*
8 *Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of*
9 *Receiver* (the "Injunction").

10 4. Mr. Hofsaess responded to my letter by email on February 19, 2021. His response
11 only discussed the insurance payment provision and claimed, without support, that Defendants were
12 entitled to roughly \$50,000 more than Fannie Mae had identified. He did not address any other
13 questions set out in the February 19 letter. A true and correct copy of that email is attached to the
14 Opposition as Exhibit 3.

15 5. On April 28, 2021, I sent an email to Defendants' counsel notifying them that Fannie
16 Mae was already processing the Monetary Payment Obligations prior to Defendants' filing of their
17 motion to compel and asked that the motion be withdrawn since the payments would be made
18 before the hearing on the motion. *See* April 28, 2021 email from N. Kanute to J. Benedict attached
19 hereto as **Exhibit 1**.

20 6. On April 30, 2021, Snell & Wilmer received a wire transfer of \$1,456,348.46 from
21 Fannie Mae.

22 7. Snell & Wilmer prepared three checks totaling \$1,456,348.46 made out to the
23 Defendants relating to the monetary obligations in the Injunction.

24 8. The checks were made available to Defendants for delivery the following business
25 day, May 3, 2021, and I sent Defendants' counsel a copy by email of the checks along with Fannie
26 Mae's reservation of rights letter on May 3, 2021. *See* May 3, 2021 email from N. Kanute to J.
27 Benedict attached hereto as **Exhibit 2**.

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 NATHAN KANUTE IN SUPPORT OF PLAINTIFF’S OPPOSITION TO APPLICATION ON ORDER SHORTENING TIME FOR COURT TO HEAR DEFENDANTS’ MOTION FOR (1) AN ORDER FOR IMMEDIATE PLAINTIFF COMPLIANCE WITH ORDER GRANTING DEFENDANTS’ MOTION FOR PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR APPOINTMENT OF RECEIVER AND (2) AN ACCOUNTING; DECLARATION OF JOHN BENEDICT IN SUPPORT; PROPOSED ORDER** by the method indicated:

 X Electronic Service

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*

Leslie Bryan Hart, Esq.
John D. Tennert, Esq.
Fennemore Craig, P.C.
7800 Rancharrah Pkwy
Reno NV 89511
lhart@fennemorelaw.com
jtennert@fennemorelaw.com

*Attorneys for Intervenor Federal Housing
Finance Agency*

DATED: May 5, 2021

Joseph G. Went, Esq.
Lars K. Evensen, Esq.
Sydney R. Gambia, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
JGWent@hollandhart.com
LKEvensen@hollandhart.com
SRGambia@hollandhart.com

*Attorneys for Third Party Defendant
Grandbridge Real Estate Capital, LLC*

Michael A.F. Johnson, Esq.
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave, NW
Washington DC 20001
michael.johnson@apks.com

*Attorneys for Intervenor Federal Housing
Finance Agency*

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

EXHIBIT 1 - April 28, 2021 Email from Kanute to Benedict

EXHIBIT 1 - April 28, 2021 Email from Kanute
to Benedict

Kanute, Nathan

From: Kanute, Nathan
Sent: Wednesday, April 28, 2021 5:38 PM
To: John Benedict
Cc: John Hofsaess; jgwent@hollandhart.com; lhart@fennemorelaw.com; Johnson, Michael A.F.
Subject: Fannie Mae v. Westland - OST Motion

John,

Fannie Mae has been processing the payments to Defendants relating to the insurance proceeds and claimed monthly overpayments. Our firm anticipates receiving a wire transfer this Friday, April 30th. If the wire is received on time, our firm anticipates delivering the payments along with a reservation of rights letter to you sometime next week. If you had reached out to us prior to submitting the motion to chambers with the OST request, you would have been told this information. Given this information, we request that you withdraw the Motion that was just submitted to the Court.

Thanks,
Nathan

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

Snell & Wilmer

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

EXHIBIT 2 - May 3, 2021 Email from Kanute to Benedict

EXHIBIT 2 - May 3, 2021 Email from Kanute to Benedict

Kanute, Nathan

From: Kanute, Nathan
Sent: Monday, May 3, 2021 10:49 AM
To: John Benedict
Cc: 'Angelyn'; John Hofsaess; 'Joseph Went'; lhart@fennemorelaw.com; 'Johnson, Michael A.F.'; Olson, Bob; Full, Mary; Taylor, Lara
Subject: Liberty Village/Village Square - Correspondence
Attachments: 2021 0503 Ltr N Kanute to J Benedict re checks 4851-1916-4904_1.pdf

John,

Please see the attached reservation of rights letters and checks that have been given to a runner today for delivery to your office. Based on Angelyn's email asking for these to be hand delivered tomorrow between 9:30 a.m. and 2:30 p.m., we will have our runner deliver them tomorrow during those times. As you can see, though, we were prepared to deliver them to your office today.

Sincerely,
Nathan

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



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

Snell & Wilmer

50 WEST LIBERTY STREET
SUITE 510
RENO, NV 89501
775.785.5440 P
775.785.5441 F

Nathan G. Kanute
(775) 785-5419
nkanute@swlaw.com

May 3, 2021

VIA HAND DELIVERY AND E-MAIL

Westland Village Square LLC
Westland Liberty Village LLC
c/o John Benedict, Esq.
Law Offices of John Benedict
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
Email: john@benedictlaw.com

Re: Payment of Monetary Obligations contained in Injunction

Dear Mr. Benedict and Mr. Hofsaess:

Enclosed are three checks from Fannie Mae. The first check is payable to Westland Liberty Village in the amount of \$519,017.48 for the amounts it voluntarily paid in excess of its monthly payment obligations. The second check is payable to Westland Village Square in the amount of \$31,731.30 for the payments it voluntarily paid in excess of its monthly payment obligations. The third check is payable to Westland Liberty Village in the amount of \$905,599.68 representing the amount of insurance proceeds associated with the repairs of the fire-damaged buildings (collectively the “Payments”). **These Payments are being made to Westland Liberty Village and Westland Village Square (collectively the “Defendants”) under protest and Fannie Mae reserves all of its rights and remedies in connection with the Payments, including the right to disgorge the Payments from Defendants. Fannie Mae is not waiving any rights it has against Defendants in connection with the Payments.** The rights being reserved by Fannie Mae include but are not limited to:

1. The right to assert that the Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for the Appointment of Receiver (the “Injunction”) was wrongly issued by the Court;
2. The right to continue prosecuting the appeal of the Injunction;
3. The right to assert that the bond posted by Defendants was woefully inadequate and obtained in bad faith;

Westland Village Square LLC
Westland Liberty Village LLC
c/o John Benedict, Esq.
May 3, 2021
Page 2

4. The right to assert that the loan agreements between Fannie Mae and Defendants excuse Fannie Mae from making the Payments to Defendants;

5. The right to assert that Defendants' breach of the terms of their contracts with Fannie Mae excused Fannie Mae from further performance, including the obligation to make the Payments;

6. The right to assert that the Payments are an advance to Defendants out of the loans, upon which interest may accrue, because Defendants' breach of the terms of their contracts with Fannie Mae was an event of default under the contracts and the amounts being paid with this letter as the Payments were already swept and applied to the amounts due and owing on the loans because the loans were accelerated based on the events of default;

7. The right to assert that Fannie Mae is not required to make the Payments under the doctrines of recoupment, set-off and off set; and

8. The right to assert that Fannie Mae is not required to return any over-payments made by Defendants under the "Voluntary Payment Doctrine."

Since Fannie Mae maintains that it is not obligated to make these payments at this time because the Injunction was wrongly issued, these payments are being delivered to you with express instructions that you hold these payments in trust pending the outcome of this litigation and if the Injunction is reversed, immediately return the payments to Fannie Mae.

Very truly yours,

SNELL & WILMER



Nathan G. Kanute

Enclosures (3)

Cc: John Hofsaess (via email)
Joseph Went (via email)
Leslie Bryan Hart (via email)
Michael A.F. Johnson (via email)

Snell & Wilmer L.L.P.

JPMorgan Chase Bank, N.A.

15994

Arizona Trust Account

One Arizona Center
Phoenix, AZ 85004-0001

91-2/1221

Date: April 30, 2021

Pay: Nine hundred five thousand five hundred ninety-nine and 68/100***** \$ ***905,599.68***

PAY TO THE ORDER OF:

Westland Liberty Village LLC



Void after 90 days

Payee: Westland Liberty Village LLC

Vendor ID: 57880.00084 - Westland Liberty Village LLC

Check #: 15994

Check Date: Apr 30/21

<u>Trust Number</u>	<u>Client</u>	<u>Matter</u>	<u>Transaction Amount</u>
107	57880	00084	\$905,599.68
Trust Total:			\$905,599.68

Snell & Wilmer L.L.P.

JPMorgan Chase Bank, N.A.

15993

Arizona Trust Account

One Arizona Center
Phoenix, AZ 85004-0001

91-2/1221

Date: April 30, 2021

Pay: Five hundred nineteen thousand seventeen and 48/100***** \$ ***519,017.48***

PAY TO THE ORDER OF:

Westland Liberty Village LLC



[Handwritten Signature]

Void after 90 days

Payee: Westland Liberty Village LLC

Vendor ID: 57880.00084 - Westland Liberty Village LLC

Check #: 15993

Check Date: Apr 30/21

<u>Trust Number</u>	<u>Client</u>	<u>Matter</u>	<u>Transaction Amount</u>
107	57880	00084	\$519,017.48
Trust Total:			\$519,017.48

Snell & Wilmer L.L.P.

JPMorgan Chase Bank, N.A.

15995

Arizona Trust Account

One Arizona Center
Phoenix, AZ 85004-0001

91-2/1221

Date: April 30, 2021

Pay: Thirty-one thousand seven hundred thirty-one and 30/100 ***** \$ ***31,731.30***

PAY TO THE ORDER OF:

Westland Village Square LLC



[Signature]

Void after 90 days

Payee: Westland Village Square LLC

Vendor ID: 57880.00084 - Westland Village Square LLC

Check #: 15995

Check Date: Apr 30/21

<u>Trust Number</u>	<u>Client</u>	<u>Matter</u>	<u>Transaction Amount</u>
107	57880	00084	\$31,731.30
Trust Total:			\$31,731.30

EXHIBIT 3 - May 3, 2021 Email from Benedict Law to Olson

EXHIBIT 3 - May 3, 2021 Email from
Benedict Law to Olson

Kanute, Nathan

From: Angelyn <Angelyn@benedictlaw.com>
Sent: Monday, May 3, 2021 10:32 AM
To: Olson, Bob
Cc: Kanute, Nathan; John Benedict; Office Admin
Subject: Re: Westland

[EXTERNAL] angelyn@benedictlaw.com

Hello Mr. Olson,

Unfortunately, Igor is no longer with our office. I will be in the office tomorrow from 9:30 a.m. to 2:30 p.m. Please drop off the payment then.

Thank you.

Respectfully,

Angelyn Cayton
Paralegal
Law Offices of John Benedict
2190 E. Pebble Road, Suite 260
Las Vegas, NV 89123
P: (702) 333-3770 | F: (702) 361-3685

Confidentiality Notice: This communication is CONFIDENTIAL and protected by the Attorney-Client Privilege and/or Attorney Work Product. It is intended solely for the addressees listed above. Anyone not listed above, or who is not an agent authorized to receive it for delivery to an addressee, is not authorized to read, disseminate, forward, copy, distribute, or discuss its contents, or any part thereof. Anyone else must immediately delete the message, and reply to the sender only, confirming you have done so.

From: Olson, Bob <bolson@swlaw.com>
Sent: Monday, May 3, 2021 10:18 AM
To: Angelyn <Angelyn@benedictlaw.com>; Igor Makarov <Igor@benedictlaw.com>
Cc: Kanute, Nathan <nkanute@swlaw.com>; John Benedict <John@benedictlaw.com>
Subject: FW: Westland

Angelyn and Igor,

I have reached out to John twice to let him know that we will be sending over the payments today and have not heard back from him. Can you make sure he has the emails, below, and confirm that someone will be available in your office to take delivery of the payments?

Thank you.

Bob L. Olson
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Main: 702.784.5200
Direct: 702.784.5295

Cell: 702-499-5471
Fax: 702.784.5252
bolson@swlaw.com www.swlaw.com

Snell & Wilmer

Denver, **Las Vegas**, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

From: Olson, Bob
Sent: Monday, May 3, 2021 9:20 AM
To: 'John Benedict' <John@benedictlaw.com>
Cc: Kanute, Nathan <nkanute@swlaw.com>; 'John Hofsaess' <john.h@westlandreg.com>
Subject: RE: Westland

Hi John,

I am just following up on the email I send to you on Friday. Will there be someone in your office today that can accept the payments from Fannie Mae?

Bob L. Olson
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Main: 702.784.5200
Direct: 702.784.5295
Cell: 702-499-5471
Fax: 702.784.5252
bolson@swlaw.com www.swlaw.com

Snell & Wilmer

Denver, **Las Vegas**, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

From: Olson, Bob
Sent: Friday, April 30, 2021 10:17 AM
To: 'John Benedict' <John@benedictlaw.com>
Cc: Kanute, Nathan <nkanute@swlaw.com>; John Hofsaess <john.h@westlandreg.com>
Subject: Westland

John,

Will someone be in your office on Monday to accept payment from Fannie Me?

Bob L. Olson
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

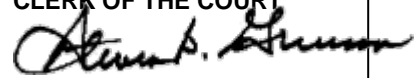
Main: 702.784.5200
Direct: 702.784.5295
Cell: 702-499-5471
Fax: 702.784.5252
bolson@swlaw.com www.swlaw.com



Denver, Las Vegas, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

The information contained in this electronic mail message is confidential information intended only for the use of the individual or entity named above, and may be privileged. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (702) 784-5200, and delete the original message. Thank you.

9



Nathan G. Kanute, Esq.
Nevada Bar No. 12413
Bob L. Olson, Esq.
Nevada Bar No. 3783
David L. Edelblute, Esq.
Nevada Bar No. 14049
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
Email: nkanute@swlaw.com
bolson@swlaw.com
dedelblute@swlaw.com

*Attorneys for Plaintiff Federal National
Mortgage Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED ACTIONS.

Case No. A-20-819412-B

Dept No. 13

**OPPOSITION TO APPLICATION ON
ORDER SHORTENING TIME FOR
COURT TO HEAR DEFENDANTS'
MOTION FOR (1) AN ORDER FOR
IMMEDIATE PLAINTIFF
COMPLIANCE WITH ORDER
GRANTING DEFENDANTS' MOTION
FOR PRELIMINARY INJUNCTION
AND DENYING APPLICATION FOR
APPOINTMENT OF RECEIVER AND
(2) AN ACCOUNTING**

Plaintiff Federal National Mortgage Association ("Fannie Mae"), by and through its counsel, Snell & Wilmer L.L.P., hereby submits its *Opposition to Application on Order Shortening Time for Court to Hear Defendants' Motion for (1) an Order for Immediate Plaintiff Compliance with Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver and (2) an Accounting* ("Opposition").

The Opposition is based on the following Memorandum of Points and Authorities, all pleadings and papers of record, the Declarations of James Noakes (the "Noakes Dec."), Joe E.

Greenhaw (the “Greenhaw Dec.”) and Nathan Kanute (the “Kanute Dec.”) and any evidence or oral argument the Court entertains at the hearing in this matter.

Dated: May 5, 2021.

SNELL & WILMER L.L.P.

By: /s/ Bob L. Olson

Nathan G. Kanute, Esq. (NV Bar No. 12413)
Bob L. Olson, Esq. (NV Bar No. 3783)
David L. Edelblute, Esq. (NV Bar No. 14049)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

*Attorneys for Plaintiff Federal National
Mortgage Association*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 4, 2021, Fannie Mae paid Defendants the total sum of \$1,456,348.46.¹ Kanute Dec., ¶¶ 7, 10. That is the same amount that Fannie Mae fully accounted for in its February 22, 2021 Motion to: (1) Estimate Amount of Mandatory Payment Obligations Contained in Preliminary Injunction; (2) Determine Amount of Supersedeas Bond or Alternative Security; (3) Issue Stay Pending Appeal Upon Posting Bond or Alternative Security; and (4) Require Defendants to Post an Adequate Bond (the “Motion to Estimate”). It is also the exact same amount sought in the Motion for (1) an Order for Immediate Plaintiff Compliance with Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for Appointment of Receiver and (2) an Accounting (“Motion”). Thus, the Motion is moot and should be denied as such.

The only issues that Defendants have put before the Court are Fannie Mae’s alleged failure to pay Defendants \$1,456,348.46 and their demand for an accounting. Fannie Mae, however, has

¹ By making these payments, Fannie Mae did not intend to waive any provision of the Housing and Economic Recovery Act of 2008 (“HERA”), 12 USC § 4501 *et seq.*, and the payments should not be interpreted as a waiver of any HERA provision by Fannie Mae or any other entity. These payments were made under protest and Fannie Mae reserves all of its rights and remedies in connection with the payments, including the rights to enforce its security interests and to cause the Defendants to disgorge the payments. Fannie Mae has not and is not waiving any such rights.

1 paid Defendants \$1,456,348.46 and Defendants were given an adequate accounting in connection
2 with the Motion to Estimate, which Fannie Mae again provides here.

3 Further, while the only issues the Motion purports to raise are the payment and accounting,
4 Defendants' proposed order includes language requiring that Fannie Mae be ordered to comply
5 with *all* provisions of the *Order Granting Defendants' Motion for Preliminary Injunction and*
6 *Denying Application for Appointment of Receiver* (the "Injunction").² Because Defendants have
7 not indicated how Fannie Mae purportedly has violated the Injunction other than by failing to pay
8 Defendants \$1,456,348.46 – something that has since occurred – this language is overbroad.

9 II. FACTUAL BACKGROUND

10 Fannie Mae provides the following limited factual statement to provide important detail and
11 to correct certain inaccuracies in Defendants' Motion.

12 A. Relevant Facts.

13 On November 20, 2020, the Court entered the Injunction. The Injunction is attached hereto
14 as **Exhibit "1."** Fannie Mae appealed the Injunction on November 30, 2020. Defendants did not
15 post the *de minimus* \$1,000.00 bond until December 1, 2020.³

16 On December 22, 2020, this Court granted Fannie Mae a 45-day stay of the Injunction's
17 mandatory provisions to allow Fannie Mae to seek a stay in the Nevada Supreme Court. On
18 February 11, 2021, the Nevada Supreme Court issued its *Order Granting Stay in Part and Denying*
19 *Stay in Part* (the "February 11, 2021 Order"). The February 11, 2021 Order stayed the Injunction's
20 provisions requiring Fannie Mae to rescind the Notices of Default and Election to Sell which Fannie
21 Mae caused to be recorded against Defendants' properties but denied a stay of the remaining
22 mandatory provisions. As such, any obligation to comply with the Injunction did not arise until
23 after February 11, 2021.

24 Following entry of the February 11, 2021 Order, Fannie Mae commenced taking measures
25 to comply with the Injunction's mandatory provisions which imposed unliquidated and unspecified

26 ² Motion, 10:11-12, 12:3-4 & Exhibit C.

27 ³ Fannie Mae has and continues to contend that this bond amount is woefully inadequate to protect the funds
28 at issue. Fannie Mae has previously requested that the bond amount be increased to \$1.5 million to protect
Fannie Mae from wrongful dissipation in the event Defendants are unwilling or unable to pay such funds
back to Fannie Mae once the rightful owner of these funds is determined on the merits.

1 payment obligations upon Fannie Mae.⁴ Paragraphs 5(g)⁵ and 5(h)⁶ of the Injunction (collectively
2 the “Mandatory Payment Provisions”)⁷ require Fannie Mae to make payments to Defendants but
3 do not specify the amount of those payments. Given the contentious nature of this case, Fannie Mae
4 was concerned that the amounts it calculated to satisfy the Mandatory Payment Obligations would
5 be met with objections by Defendants and claims of contempt.

6 In order to avoid unnecessary motion practice (such as that presented by the pending
7 Motion), 8 days after entry of the February 11, 2021 Order, Fannie Mae wrote Defendants,
8 requesting that they quantify the amounts they believed that Fannie Mae must pay to satisfy the
9 Mandatory Payment Obligations.⁸ A copy of the February 19, 2021 letter is attached hereto as
10 **Exhibit “2.”** Defendants’ response only discussed the insurance payment provision and claimed,
11 without support, that Defendants were entitled to roughly \$50,000 more than Fannie Mae had
12 identified.⁹ A copy of John Hofsaess’ February 19, 2021 email is attached hereto as **Exhibit “3.”**
13 Defendants did not substantively address any other questions from the February 19 letter.¹⁰

14 On February 22, 2021, just eleven days after entry of the February 11, 2021 Order and one
15 business day after the February 19, 2021 letter, Fannie Mae filed the Motion to Estimate to obtain
16

17 ⁴ Fannie Mae did this even though the use of mandatory injunctions to force payment is prohibited under
18 Nevada law because there are available adequate remedies at law including an award of monetary damages.
19 *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 781 587 P.2d 1329, 1330-31 (1978) (holding
20 that harm is not irreparable if it can be remedied through an award of monetary damages); *Excellence Cmty.*
21 *Mgmt., LLC v. Gilmore*, 131 Nev. 347, 353, 351 P.3d 720, 723 (2015) (“Irreparable harm is an injury for
22 which compensatory damages is an inadequate remedy”); *Rd. & Highway Builders, LLC v. N. Nev. Rebar,*
23 *Inc.*, 128 Nev. 384, 392, 284 P.3d 377, 382 (2012). Moreover, a party is not entitled to obtain an injunction
24 that serves as an attachment because Nevada’s attachment statutes provide an adequate remedy at law and a
25 party may not circumvent the attachment statutes by obtaining equivalent relief in an injunction. *Aronoff v.*
26 *Katleman*, 75 Nev. 424, 345 P.2d 221 (1959).

27 ⁵ Paragraph 5(g) provides that Fannie Mae is “enjoined from and may not do any of the following acts:”

28 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.”

⁶ Paragraph 5(h) provides that Fannie Mae is “enjoined from and may not do any of 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-damages
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.

⁷ There are other Mandatory Payment Obligations in the Injunction that are not relevant to this Opposition.

⁸ Kanute Dec., ¶ 3.

⁹ *Id.* at ¶ 4.

¹⁰ *Id.*

1 from the Court an estimate or determination of the amount that Fannie Mae was required to pay in
2 order to comply with the Injunction's Mandatory Payment Provisions.

3 Fannie Mae and Grandbridge used their best efforts to estimate the amount required to
4 satisfy the Mandatory Payment Obligations. The estimate Fannie Mae presented to the Court in the
5 Motion to Estimate was \$1,456,348.46 – the exact amount Defendants are now seeking in the
6 Motion. Motion, pp. 2, 12. Though Defendants then denigrated Fannie Mae's best efforts estimate
7 as being "incredibly understated,"¹¹ they have not stated, at any point, what they believe Fannie
8 Mae is required to pay to comply with the Mandatory Payment Provisions. Defendants also have
9 failed to introduce any evidence that Fannie Mae's \$1,456,348.46 estimate is incorrect.

10 On April 8, the Court denied both the Motion to Estimate and Defendants' countermotion,
11 which sought an order compelling Fannie Mae to pay Defendants and provide Defendants with an
12 accounting.¹² The Court's April 8, 2021 minute order stated: "the subjects of the Defendants
13 Countermotion would be better addressed following any pending or additional motion practice to
14 the Nevada Supreme Court on such subjects."

15 Twenty days later, Defendants filed the instant Motion seeking the very same relief as the
16 countermotion denied on April 8, this time on shortened time.

17 On April 14, 2021, days after the Court's April 8 minute order, Fannie Mae commenced
18 taking steps to make payment to Defendants in order to comply with the Injunction's Mandatory
19 Payment Provisions.¹³ A wire transfer of those funds to Snell & Wilmer was initiated on April 28,
20 2021¹⁴ and the funds were received by Snell & Wilmer on Friday April 30, 2021.¹⁵ Snell & Wilmer
21 attempted to arrange delivery of the payment on May 3, 2021 but there was no one to accept the
22

23
24 ¹¹ See *Defendants' Opposition to Motion to: (1) Estimate Amount of Mandatory Payments Obligations, Etc.*
25 (the "Opposition to Motion to Estimate") at 18:9. It is hard to imagine how Defendants allege the amount is
26 "understated" when, for example, it has submitted to the Court that the amount of excess payments made by
27 Defendants totaled \$550,748.78 when Defendants represented to the Court that the overpayments were only
28 \$150,000. See, e.g., *Opposition to Plaintiff's Application for Appointment of Receiver, etc.*, at 9:5-6 (Aug.
31, 2020).

¹² The Court has not yet entered a formal order denying the Motion to Estimate and Countermotion.

¹³ Noakes Dec., ¶ 3.

¹⁴ *Id.* at ¶ 5.

¹⁵ Kanute Dec., ¶ 6.

1 payment on that date.¹⁶ Payment was received by Defendants on May 4, 2021.¹⁷ A true and correct
2 copy of the receipt is attached hereto as **Exhibit “4.”**

3 Further, with Grandbridge’s assistance, Fannie Mae has already provided Defendants and
4 the Court with an accounting. Specifically, in the Motion to Estimate, Fannie Mae advised the Court
5 of the amount of fire insurance proceeds in its possession of \$905,599.68 and Grandbridge analyzed
6 Defendants’ payment history and determined that Defendants would have overpaid \$550,748.78 if
7 the loans were not in default. The Supplemental Declaration of Joe E. Greenhaw, Jr. that was filed
8 on March 22, 2021 went a step further and itemized the amount paid in excess of the monthly
9 payments amounts on a month by month and loan by loan basis. Defendants have not proffered any
10 evidence suggesting that these numbers are incorrect.

11 **B. Defendants’ Incorrect Statements in the Motion.**

- 12 • Defendants state that it is “undisputed” that Fannie Mae owes Defendants disbursements
13 of \$1,456,348.46. Mot. at 2, 12. That is not true. That amount is Fannie Mae’s best
14 estimate of the combined total of the swept fire insurance proceeds and the amount that
15 Grandbridge calculated that Defendants paid in excess of what they would have been
16 required to pay on their regularly scheduled payments if the loans were not in default.
17 Fannie Mae steadfastly maintains, for a number of reasons, that it is not liable to
18 Defendants for any amount.
- 19 • On page 5, lines 11-12, Defendants request that “Fannie Mae, Grandbridge, and all of
20 those acting for or with them should be compelled to stop interfering with Westland and
21 its Properties.” This statement implies that Fannie Mae and Grandbridge are currently
22 interfering with Westland and its Properties. But neither Fannie Mae nor Grandbridge
23 has done anything to interfere with Defendants and their Properties,¹⁸ nor is there any
24 evidence of interference.
- 25 • Defendants claim that Fannie Mae is holding funds in trust for Defendants. Mot. at 5:
26 22-24. However, this is inaccurate, and the funds are not held “in trust.” Indeed, the

27 ¹⁶ *Id.* at ¶¶ 8-9.

28 ¹⁷ *Id.* at ¶ 9.

¹⁸ Noakes Dec. at ¶ 7; Greenhaw Dec. at ¶ 13.

1 Loan Agreements provide: “The relationship between [Fannie Mae] and [Defendants]
2 shall be solely that of creditor and debtor, respectively, and nothing contained in this
3 Loan Agreement shall create any other relationship between [Fannie Mae] and
4 [Defendants].”¹⁹ Insurance proceeds are expressly included in the definition of
5 “Mortgaged Property” and in Fannie Mae’s perfected security interest in Defendants’
6 Accounts. There is no trust at issue in this case.

- 7 • Defendants allege that the Notice of Default and Acceleration of Note was based “on
8 unsupportable non-financial defaults, which have never been substantiated despite
9 multiple requests by Westland” and the claims were manufactured. Mot. At 6:7-10.
10 Like many of Defendants’ statements, they simply are not true.
 - 11 ○ As Fannie Mae has briefed to this Court on multiple occasions, in September 2019,
12 Fannie Mae caused Property Condition Assessments (“PCAs”) to be performed on
13 the Defendants’ properties. Those PCAs disclosed that the Defendants’ properties
14 required repairs in excess of \$2.8 million and the parties’ loan agreements required
15 Defendants to make necessary repairs on the properties. The parties’ loan
16 agreements further provided that Fannie Mae can demand Defendants to deposit a
17 sufficient amount with Fannie Mae – in this case \$2.845 million – to secure payment
18 of the necessary repairs. Fannie Mae made such a demand and Defendants refused
19 to make the deposits. This is not only a monetary default but a payment default under
20 the parties’ loan agreements.
 - 21 • On page 7, lines 3-4, Defendants allege that in its Motion to Stay “Fannie Mae made
22 many of the same arguments during the Receivership/Preliminary Injunction briefing
23 and oral arguments.” Again, nothing could be further from the truth.
 - 24 ○ In connection with the Defendants’ request for a Preliminary Injunction, Defendants
25 sought three forms of relief: (1) denial of or an injunction against appointment of a
26 receiver; (2) an injunction staying pending foreclosure proceedings; and (3) an
27 injunction against interference with Defendants’ quiet enjoyment of their properties.

28 ¹⁹ Complaint, Ex. 1, § 15.06(a); Ex. 6, § 15.06(a).

1 That requested relief was what was argued at the hearing on Defendants’
2 countermotion for a preliminary injunction.

3 ○ The Motion to Stay dealt with entirely different topics – the mandatory injunction
4 provisions that Defendants included in the Injunction (including the Mandatory
5 Payment Provisions), but did not request in their moving papers or at the hearing on
6 their countermotion for preliminary injunction.

7 • On pages 7 and 8 of the Motion, Defendants complain that Fannie Mae and Grandbridge
8 “completely disregarding the High Court’s order” by sending Defendants a
9 “Notification of Past Due Amounts” for each loan. While it is true that Grandbridge sent
10 Defendants those documents one day after the Nevada Supreme Court issued its order,
11 it is also true that they were sent to Defendants in error. Indeed, Grandbridge has
12 submitted a declaration to the Court explaining the matter²⁰ – something Defendants’
13 arguments ignore.

14 • Defendants also state that Fannie Mae has admitted the Notification of Past Defaults
15 “(which not coincidentally tied almost exactly to the demand it made from Westland
16 before declaring a default) was a mistake.”²¹ If Defendants are trying to imply that
17 Fannie Mae has admitted that the \$2.85 Million Notices of Demand that were sent to
18 Defendants in October 2019 were a “mistake,” that is incorrect.

19 • The first sentence of Defendants’ Motion states: “For months now, Plaintiff has,
20 unapologetically, violated this Court’s Order Granting Defendants Motion for
21 Preliminary Injunction and Denying Application for Appointment of Receiver, dated
22 November 22, 2020.” The Motion contains numerous similar statements. Defendants’
23 assertion is not correct as enforcement of the mandatory injunction provisions in the
24 Injunction was stayed until February 11, 2021.

25 ○ The Mandatory Payment Provisions are vague in that they require Fannie Mae to
26 make payments to Defendants but do not liquidate the amount of those payments.

27
28 ²⁰ See *Supplemental Declaration of Joe E. Greenhaw, Jr.* at ¶ 13 (March 22, 2021).

²¹ Motion, p. 8, n. 1.

Given the litigious conduct of Defendants, Fannie Mae believed and still believes - and the Motion confirms - that any amount it may pay to Defendants would be challenged as being too little.

- Fannie Mae has acted proactively since the stay of the Injunction was dissolved. Just eight days after entry of the February 11, 2021 Order, Fannie Mae asked for Defendants to tell Fannie Mae what they believe was owed on the Injunction. Defendants failed to do so with any specificity. On February 22, 2021, eleven days after the February 11, 2021 Order and one business day after the February 19, 2021 letter, Fannie Mae filed the Motion to Estimate. After receipt of this Court's April 8, 2021 minute order denying the Motion to Estimate, Fannie Mae began processing payment of \$1,456,348.46 to Defendants. Fannie Mae attempted to deliver the payment to Defendants on May 3, 2021 and ultimately paid Defendants \$1,456,348.46 on May 4, 2021.

II. ARGUMENT

A. The Motion Should be Denied as Moot.

Fannie Mae initiated payment of \$1,456,348.46 to Defendants before Defendants filed the Motion. Fannie Mae paid Defendants \$1,456,348.46 on May 4, 2021. Fannie Mae and Grandbridge also provided Defendants with an accounting in connection with the Motion to Compel. Since there is nothing left to compel, much less issue an order to show cause on, the Motion should be denied as moot. *See, e.g., Degraw v. The Eighth Judicial District Court*, 134 Nev. 330, 419 P.3d 136 (2018) (denying writ petition as moot).

B. The Court Should Not Issue Order to Show Cause Why Fannie Mae Should Not Be Held in Contempt.

Defendants seek an order directing Fannie Mae to show cause why it should not be held in contempt of court.²² Defendants are not clear on whether they want Fannie Mae to be held in civil contempt or criminal contempt. The Motion specifically mentions "fine or imprisonment as a

²² Motion, Exhibit C.

1 sanction” for Fannie Mae;²³ thus it appears that Defendants may be seeking to have Fannie Mae
2 held in criminal contempt.

3 **1. HERA bars contempt based on the Injunction.**

4 Fannie Mae respectfully submits that any attempt by Defendants to hold Fannie Mae in
5 contempt based on the Injunction is barred by the provisions of 12 U.S.C. § 4617.²⁴ Accordingly,
6 the Court should not grant any request by Defendants for a contempt ruling against Fannie Mae,
7 whether the contempt sought is civil or criminal.

8 **2. The distinction between civil and criminal contempt.**

9 It is uniformly accepted that the difference between civil contempt and criminal contempt
10 is that civil contempt is remedial in nature and intended to compel future compliance whereas
11 criminal contempt imposes punitive sanctions. *Lewis v. Lewis*, 132 Nev. 453, 457, 373 P.3d 878,
12 880-81 (2016). Any civil contempt order must contain a purge provision which allows the person
13 or entity being held in contempt to purge that contempt by complying with the applicable order.
14 *Hicks v. Felock*, 485 U.S. 624, 640 (1988); *International Union v. Bagwell*, 512 U.S. 821, 829
15 (1994); *Lewis*, 132 Nev. at 457, 373 P.2d at 881 (citing *Hicks*).

16 **3. There Is No Basis to Hold Fannie Mae in Civil Contempt.**

17 Fannie Mae has paid Defendants \$1,456,348.46. Accordingly, no basis exists for the Court
18 to issue an order to show cause why Fannie Mae should not be held in civil contempt. Even if the
19 Court determined that Fannie Mae violated the Injunction, by paying Defendants \$1,456,348.46 on
20 May 4, 2021, Fannie Mae has already purged itself of the alleged contemptuous conduct.

21 **4. No Basis Exists for An Order of Criminal Contempt.**

22 If a party seeks to hold a person or entity in criminal contempt, that party must make a
23 demonstration that is much more stringent than holding that person or entity in civil contempt. The
24 Nevada Supreme Court has stated that criminal contempt proceedings invoke constitutional
25 protections such as the Sixth Amendment’s right to counsel. *Lewis*, 132 Nev. at 458, 373 P.2d at
26

27 ²³ Motion, 9:21-23 (citing *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 784 P.2d 2 (1989)).

28 ²⁴ As that subject relates to HERA’s conservatorship provisions, it is within FHFA’s field of specialized expertise, and Fannie Mae anticipates that FHFA will take the lead in briefing it.

1 881. This is consistent with the United States Supreme Court’s rulings on criminal contempt.

2 Although this Court has inherent powers to enforce its orders, those inherent powers are not
3 unlimited and must be exercised with restraint and discretion. “Because of their very potency,
4 inherent powers must be exercised with restraint and discretion,” *Chambers v. NASCO, Inc.*, 501
5 U.S. 32, 44 (1991), and must “comply with the mandates of due process,” *id.* at 50. Further, criminal
6 contempt can only be imposed through a jury trial and a full criminal process, not summary
7 adjudication. *International Union v. Bagwell*, 512 U.S. 821, 831-33 (1994). Some contempt
8 involving out of court obedience to injunctions often require elaborate and reliable fact findings in
9 which “criminal procedural protections such the rights to counsel and proof beyond a reasonable
10 doubt are both necessary and appropriate to protect the due process rights of the parties and prevent
11 the arbitrary exercise of judicial power.” *Id.* at 834.

12 In this case, it would be futile to order Fannie Mae to show cause why it should not be held
13 in contempt. Since entry of the February 11, 2021 Order, Fannie Mae has been diligently trying to
14 ascertain how much it must pay in order to satisfy the Injunction’s Mandatory Payment Provisions.
15 Defendants have not offered any evidence to the contrary. Defendants also have offered no
16 assistance in that endeavor and, instead, actively resisted Fannie Mae’s efforts to ascertain how
17 much it needs to pay. The reason Fannie Mae did not know what amount it was required to pay is
18 a result of Defendants’ conduct. Defendants drafted an impermissibly vague Injunction that does
19 not state how much Fannie Mae is required to pay in order to comply with the Injunction. The
20 reason the Injunction is so vague is that Defendants never requested the relief contained in the
21 Mandatory Payment Provisions. Instead, Defendants inserted those provisions in the Injunction
22 only after prevailing at the hearing, thereby depriving the Court and the parties an opportunity to
23 adjudicate the amount required to satisfy the Mandatory Prepayment Provision. The Defendants
24 similarly have failed to present any evidence to the Court which quantifies the amount they are
25 allege they are entitled to be paid. Fannie Mae still, at this late date, has not been given notice of
26 what it needs to pay to comply with the Injunction. The Nevada Supreme Court has recently
27 emphasized the requirement that a person be given notice of the relief sought. *See, e.g., U.S. Bank*
28 *v. Resources Group, LLC*, 135 Nev. 199, 205, 444 P.3d 442, 447 (2019) (holding that HOA

1 foreclosure sale may be voided due to HOA's failure to advise lienholder of HOA foreclosure
2 proceedings).

3 When Fannie Mae asked this Court to estimate that amount, Defendants objected. This has
4 effectively placed Fannie Mae with having to make a Hobson's choice: either pay nothing and risk
5 Defendants seeking to hold Fannie Mae in contempt or pay something at the risk Defendants will
6 seek to hold Fannie Mae in contempt for not paying the right amount. Fannie Mae elected the
7 second alternative by paying Defendants \$1,456,348.46 – the amount that Defendants seek to
8 compel through the Motion while claiming, without evidence, that it is incorrect. Under such
9 circumstances, issuing an order to compel, much less an order to show cause why Fannie Mae
10 should not be held in contempt, is unnecessary.

11 **C. Defendants Should Not Be Awarded an Accounting.**

12 Fannie Mae has already provided Defendants with an adequate accounting. It has presented
13 evidence to the Court stating that when Defendants' loans went into default status, it swept
14 \$905,599.68 – all of the remaining fire insurance proceeds.²⁵ Similarly, Grandbridge has submitted
15 evidence of the \$550,748.78 Defendants allege they overpaid. First, it calculated and disclosed the
16 amount that each Defendant overpaid.²⁶ After Defendants challenged the amounts, Grandbridge
17 submitted an accounting of the overpayments by each Defendant broken down by each month.²⁷
18 Rather than accepting the evidence that Fannie Mae and Grandbridge have put before the Court,
19 they are still demanding an accounting. In addition to this information, Defendants are now
20 demanding an accounting of all custodial accounts from August 2018 through the present.²⁸
21 Though Defendants are not entitled to an accounting, Grandbridge has provided additional
22 accounting information today.²⁹

23 Although Defendants have been provided with the accountings requested, it bears noting
24 that Defendants' request for an accounting is improper for a multitude of reasons. Fannie Mae, by
25

26 ²⁵ See Declaration of Roy Miller in Support of Motion for Stay Upon Posting Bond, ¶ 3 (Feb. 22, 2021).

27 ²⁶ See Declaration of Joe E. Greenhaw, Jr., ¶¶ 7-8 (Feb. 22, 2021).

28 ²⁷ See Supplemental Declaration of Joe E. Greenhaw, Jr., ¶¶ 10-11 (March 22, 2021).

29 ²⁸ Motion, 12:8.

28 ²⁹ See Declaration of Joe E. Greenhaw, Jr. and the flow of funds documents, attached as Exhibits 1-3 to Grandbridge's opposition to the Motion, which was filed today, May 5, 2021.

1 providing the accounting, does so subject to the following objections:

- 2 ○ The Injunction does not require an accounting.
- 3 ○ The demand for an accounting is moot because Fannie Mae voluntarily provided to this
- 4 Court and Defendants an accounting. *See Home Gambling Network, Inc. v. Piche*, No.
- 5 2:05-CV-00610-DAE, 2013 WL 5492568, at *10 (D. Nev. Sept. 30, 2013) (“[S]ince the
- 6 information sought by Plaintiffs is contained in the database produced to Plaintiffs,
- 7 Plaintiffs’ request for an accounting appears to be moot.”); *United States v. Eberhard*,
- 8 No. 03 CR 562 RWS, 2014 WL 504873, at *1 (S.D.N.Y. Feb. 4, 2014) (defendant’s
- 9 motion for an accounting of payments is moot in light of production of the relevant
- 10 accounting history); *see also Bochenski v. M&T Bank*, No. CV ELH-14-1031, 2016 WL
- 11 1585500, at *7 (D. Md. Apr. 20, 2016) (mortgage-related claim for accounting rendered
- 12 moot by Bank’s production of payment records).
- 13 ○ Defendants have also been receiving monthly statements, as if the loans were not in
- 14 default, pursuant to the Injunction. Those monthly statements include information
- 15 regarding the amounts attributable to the reserve and escrow accounts if the loans were
- 16 not in default.³⁰
- 17 ○ Defendants already possess the information required to prepare an accounting.
- 18 Defendants are sophisticated borrowers and undoubtedly know how much they have
- 19 paid on the loans and how much they have been reimbursed. If Defendants contest any
- 20 amounts that Fannie Mae has submitted to the Court, the burden should be placed upon
- 21 Defendants to present admissible evidence to the Court regarding the additional
- 22 amounts they claim are due under the Mandatory Payment Provisions.
- 23 ○ Assuming Defendants do not possess this information, it is the type of information that
- 24 Defendants should be required to obtain through discovery. A party to litigation such as
- 25 Defendants should not be allowed to use an injunction to “short cut” the discovery
- 26

27 ³⁰ *See* March, April, and May 2021 monthly invoices prepared by Grandbridge to Defendants, attached
28 hereto as **Exhibit “5.”** Fannie Mae is providing these invoices to the Defendants monthly pursuant to the
Injunction and reserves all arguments, rights, and remedies. Providing the invoices is not an admission or
waiver.

process.

- The case law cited by Defendants does not support awarding them an accounting at such a preliminary stage in this case. In *Golconda Fire Prot. Dist. v. Cty. of Humboldt*, the Nevada Supreme Court reversed a district court's order dismissing a complaint. 112 Nev. 770, 918 P.2d 710 (1996), decision clarified on reh'g, 113 Nev. 104, 930 P.2d 782 (1997). There, the court reviewed the statutory provisions under NRS Chapter 355 and NRS Chapter 474 and concluded that the district court erroneously ruled on the meaning of Nevada's public investments laws. *Id.* at 774. While the court ultimately remanded the case for an accounting, it did not set forth any language similar to what Defendants provided this Court in its Motion. *See* Mot. 10:21-23. Additionally, Nevada has not adopted the standard articulated in *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179, 92 Cal. Rptr. 3d 696, 716 (2009). *See Windmill Farms, Inc. v. Findlay*, 459 P.3d 238 (Nev. 2020) (citing *Foster v. Arata*, 74 Nev. 143, 154, 325 P.2d 759, 765 (1958) (explaining that there is no absolute right to an accounting and a court will only order an accounting upon proof of official misconduct). Here there has been no showing of misconduct by Fannie Mae.

Thus, Defendants' request for an accounting should be denied.

III. CONCLUSION

Fannie Mae already paid Defendants \$1,456,348.46 pursuant to the Injunction's Mandatory Payment Provisions. Fannie Mae and Grandbridge have also provided Defendants with a full and complete accounting supporting the payment of \$1,456,348.46. Defendants bear the burden of proving the Injunction requires Fannie Mae to pay something other than the \$1,456,348.46. Defendants, however, have not presented any evidence to the Court making that demonstration. Under these circumstances, it is unnecessary to grant the Motion to Compel. It follows, therefore, that Defendants' request for an order compelling Fannie Mae to appear before Court and show cause why it should be held in contempt is also improper. Thus, the Motion should be denied as moot. Additionally, Fannie Mae requests that the Court scrutinize any order submitted by Defendants in connection with the Motion as their proposed order (to which Fannie Mae objects)

1 contains relief which extends far beyond remedying the purported misconduct of which they accuse
2 Fannie Mae.

3 Dated: May 5, 2021.

SNELL & WILMER L.L.P.

4
5 By: /s/ Bob L. Olson

Nathan G. Kanute, Esq. (NV Bar No. 12413)
Bob L. Olson, Esq. (NV Bar No. 3783)
David L. Edelblute, Esq. (NV Bar No. 14049)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

6
7
8 *Attorneys for Plaintiff Federal National*
9 *Mortgage Association*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 **OPPOSITION TO APPLICATION ON ORDER SHORTENING TIME FOR COURT TO HEAR DEFENDANTS' MOTION FOR (1) AN ORDER FOR IMMEDIATE PLAINTIFF COMPLIANCE WITH ORDER GRANTING DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION AND DENYING APPLICATION FOR APPOINTMENT OF RECEIVER AND (2) AN ACCOUNTING** by the method indicated:

X Electronic Service

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*

Leslie Bryan Hart, Esq.
John D. Tennert, Esq.
Fennemore Craig, P.C.
7800 Rancharra Pkwy
Reno NV 89511
lhart@fennemorelaw.com
jtennert@fennemorelaw.com

*Attorneys for Intervenor Federal Housing
Finance Agency*

DATED: May 5, 2021

Joseph G. Went, Esq.
Lars K. Evensen, Esq.
Sydney R. Gambia, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
JGWent@hollandhart.com
LKEvensen@hollandhart.com
SRGambia@hollandhart.com

*Attorneys for Third Party Defendant
Grandbridge Real Estate Capital, LLC*

Michael A.F. Johnson, Esq.
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave, NW
Washington DC 20001
michael.johnson@apks.com

*Attorneys for Intervenor Federal Housing
Finance Agency*

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

EXHIBIT 1 - Injunction Order

EXHIBIT 1 - Injunction Order

ORDR

JOHN BENEDICT, ESQ.

Nevada Bar No. 005581

LAW OFFICES OF JOHN BENEDICT

2190 E. Pebble Road, Suite 260

Las Vegas, NV 89123

Telephone: (702) 333-3770

Facsimile: (702) 361-3685

E-Mail: John@BenedictLaw.com

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

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

Hearing Date: October 13, 2020

Hearing Time: 10:30 a.m.

AND ALL RELATED ACTIONS

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

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

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

8 ***FINDINGS OF FACT***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

//

//

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

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

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

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

10. Westland has made a substantial investment in the collateral securing the loan and continue 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 minimus.

//

//

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

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

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

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

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

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

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

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

24 //

25 //

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

3 a) appoint a receiver;

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

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

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

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

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

1 service payment each month;

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

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

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

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

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

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


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

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

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

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

10 Dated: November __, 2020



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

11
12 //
13 //
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Agreed as to Form and Content:
2

3 SNELL & WILMER L.L.P.
4

5 By: **DOES NOT APPROVE**
6 Nathan G. Kanute, Esq.
7 Bob L. Olson, Esq.
8 David L. Edelblute, Esq.
9 3883 Howard Hughes Parkway, Suite 1100
10 Las Vegas, NV 89169

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

13 LAW OFFICES OF JOHN BENEDICT

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

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

20 *Respectfully Submitted:*
21

22 Dated: November 16, 2020

23 LAW OFFICES OF JOHN BENEDICT

24 By: /s/ **John Benedict**
25 John Benedict, Esq.
26 2190 E. Pebble Road, Suite 260
27 Las Vegas, Nevada 89123

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

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Federal National Mortgage,
7 Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/20/2020

16 Joseph Went	jgwent@hollandhart.com
17 Sydney Gambia	srgambia@hollandhart.com
18 Brian Dziminski	brian@dziminskilaw.com
19 John Benedict	john@benedictlaw.com
20 Lara Taylor	ljtaylor@swlaw.com
21 Nathan Kanute	nkanute@swlaw.com
22 Mary Full	mfull@swlaw.com
23 Docket Docket	docket_las@swlaw.com
24 Bob Olson	bolson@swlaw.com
25 Jacqueline Gaudie	jacqueline@benedictlaw.com

26
27
28

Joyce Heilich	jeheilich@hollandhart.com
D'Andrea Dunn	ddunn@swlaw.com
Charlie Bowman	cabowman@hollandhart.com
Angelyn Cayton	Angelyn@benedictlaw.com
Office Admin	office.admin@benedictlaw.com
David Edelblute	dedelblute@swlaw.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/23/2020

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

EXHIBIT 2 - Kanute February 19, 2021 Letter

EXHIBIT 2 - Kanute February 19, 2021 Letter

3883 Howard Hughes Parkway
Suite 1100
Las Vegas, NV 89169
702.784.5200
702.784.5252 (Fax)
www.swlaw.com

Nathan G. Kanute
(702) 784-5200
nkanute@swlaw.com

ALBUQUERQUE
BOISE
DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
PORTLAND
RENO
SALT LAKE CITY
SAN DIEGO
SEATTLE
TUCSON
WASHINGTON DC

February 19, 2021

VIA EMAIL

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

Re: Federal National Mortgage Association v. Westland Liberty Village, LLC, et al.
Case No. A-20-819412-B
***Request for Reimbursement of Insurance Reserves & Demand for Compliance
with Order Granting Defendants' Motion for Preliminary Injunction and
Denying Application for appointment of Receiver***

Dear Mr. Hofsaess:

I am writing in response to your letter dated February 11, 2021 demanding that Fannie Mae comply with the Order Granting Defendants' Motion for Preliminary Injunction and Denying Application for Appointment of Receiver dated November 20, 2020 (the "Injunction").

Fannie Mae disagrees with your label of the February 11, 2021 demand letter as a "routine servicing request" as you state in footnote 1. Instead it is a demand letter that you appear to have drafted to use as an exhibit in contempt proceedings before the court. As Fannie Mae has mentioned in the past, all communications from any and all representatives of the Defendants to Fannie Mae must be routed through counsel. Other than communications with Fannie Mae's counsel, the Defendants' counsel are prohibited from contacting any representative of Fannie Mae as footnote 1 of your demand letter suggests you desire to do.

I will address the demands contained in your letter in the same order as you. As you will note, I have placed in **bold type** the additional information that Fannie Mae needs from the Defendants to address their demands.

John Hofsaess
February 19, 2021
Page 2

The first, and what appears to be the primary, concern of your letter in the first paragraph on page 2 requests the release of funds related to the funds earmarked for the repair of the fire damaged buildings, Buildings 3426 and 3517 pursuant to paragraph 5(h) of the Injunction. The issue with this mandatory payment obligation is that the amount of payment required from Fannie Mae to satisfy this obligation is not stated anywhere in the Injunction and there appears to be a discrepancy in what Defendants have demanded and the amount in reserve. The September 4, 2020 and November 25, 2020 letters that you mention demand disbursement of \$1,111,533.77. However, Fannie Mae has reviewed its records and noted that the amount of the funds swept from the applicable reserve accounts related to the repair of the fire damaged buildings was \$905,599.68. That is over a \$200,000.00 difference.

Given the discrepancy in these amounts and the Defendants' repeated complaints about any action taken by Fannie Mae, Fannie Mae fears that Defendants will take the position that any amount paid by Fannie Mae is insufficient to satisfy this mandatory payment requirement. **Please advise us at your earliest convenience of the amount Defendants think Fannie Mae must pay to comply with this mandatory requirement.** This will enable Fannie Mae to know how much Defendants allege that Fannie Mae is required to pay to comply with paragraph 5(h) of the Injunction and to be able to take action on this demand.

The second demand you make in paragraph 1) of your letter is that Fannie Mae "must not" "[i]nterfere with Westland's enjoyment of the Properties pending final determination of the parties' rights" pursuant to paragraph 4 of the Injunction. At no point before or during this litigation has Fannie Mae interfered with or attempted to interfere with Westland's enjoyment of the Properties. **If the Defendants maintain that Fannie Mae or anyone acting on its behalf has interfered with Westland's enjoyment of the Properties, please provide us with a description of the date and time of the alleged interference, the identity of the involved person or persons, and the nature of the interference.**

The third demand you make in paragraph 2) of your letter is that Fannie Mae "must not" "take possession of Westland's real or personal property" pursuant to paragraph 5(b) of the Injunction. At no point has Fannie Mae, before or during this litigation, taken possession of Westland's real or personal property. **If the Defendants maintain that Fannie Mae has violated paragraph 5(b) of the Injunction, please provide us with a description of the property Fannie Mae took possession of, the dates and times of the possession and the identity of the involved person or persons.**

The fourth demand you make in paragraph 3) of your letter is that Fannie Mae "must not" "take any further action against the Properties, including filing any further liens without specific permission of the Court" pursuant to paragraph 5(c) of the Injunction. The only action that Fannie Mae has taken against the Properties was to file a complaint seeking the appointment of a Receiver. Other than the receivership complaint, Fannie Mae has not taken any actions against the Properties

John Hofsaess
February 19, 2021
Page 3

before or during this litigation. Similarly, other than the lien of Fannie Mae recorded against the Properties before Defendants purchased them, Fannie Mae has not recorded any liens against the Properties. **If the Defendants maintain that Fannie Mae has violated paragraph 5(c) of the Injunction, please provide us with a description of the violation including the nature of the violation, the dates and times of the violation and the identity of the involved person or persons.**

The fifth demand you make in paragraph 4) of your letter is that Fannie Mae “must not” “interfere with Westland’s management of the Properties, collection of rents, or take actions that would impair Westland’s use or preservation of the Properties, including its interest in leases, rents, and reserve escrow accounts” pursuant to paragraph 5(d) of the Injunction. At no point before or during this litigation has Fannie Mae interfered with the management of the Properties, the collection of rents from the Properties or Defendants’ use or preservation of the Properties.¹ **If the Defendants maintain that Fannie Mae has violated paragraph 5(d) of the Injunction, please provide us with a description of Fannie Mae’s alleged interference, the dates and times of the interference and the identity of the involved person or persons.**

The sixth demand you make in paragraph 5) of your letter is that Fannie Mae “must not” “fail to turn over to Westland the monthly debt service invoices for the Properties, which have been withheld between February 2020 and present, and in complying with this demand, please note that the Court specifically ordered that ‘on a going forward basis, Fannie Mae or its servicer will forward the monthly statements Fannie Mae or its servicer will forward *the monthly statement Fannie Mae’s servicers produce for any borrower who is not in default*’”² pursuant to section 5(e) of the Injunction. As you note in footnote 2 of your letter, Fannie Mae, through counsel, has forwarded Grandbridge’s statements for the last two months. Fannie Mae maintains that those statements comply with the Injunction, which does not specify the line items that need to be included in and excluded from the monthly statements. **If there is other information Defendants believe needs to be included in the invoices, please provide us with a detailed list of the information you are requesting in the monthly statements.** Fannie Mae is willing to consider Defendants’ request and ask Grandbridge whether it can generate statements containing the information that Defendants are demanding, even though that requirement does not appear in the Injunction.

The seventh demand you make in paragraph 6) of your letter is that Fannie Mae “must not” “fail to process loan payment consistent with the terms of the loan agreements, including that Fannie Mae, or its servicer, will continue the ordinary practice of auto-debiting Westland’s account for the amount of the non-default normal monthly debt service payment, as it did in February

¹ The Injunction contains specific provisions related to reserve accounts. Fannie Mae will respond to Defendants’ allegations concerning the reserve accounts with those specific provisions.

² The quotation of paragraph 5(e) of the Injunction contained in your letter is incorrect.

John Hofsaess
February 19, 2021
Page 4

2021” pursuant to paragraph 5(f) of the Injunction. As you note in your letter, Fannie Mae and Grandbridge did this in February (while the stay of enforcement was in effect) and thus are in compliance with paragraph 5(f) of the Injunction. Fannie Mae and Grandbridge intend to continue to do this until ordered otherwise by the Court.

The eighth demand you make is in paragraph 7) of your letter is that Fannie Mae “must not” “retain possession of any funds paid in excess of the non-default monthly debt service payments, which excess funds Wetland paid between February 2020 and the present based on the refusal of Fannie Mae’s servicer to produce monthly statements to Westland” pursuant to paragraph 5(g) of the Injunction. As with the prior mandatory payment obligation, the amount of payment required from Fannie Mae to satisfy this obligation is not stated anywhere in the Injunction or otherwise liquidated. Fannie Mae has requested Grandbridge review its records to provide information on the amount of the purported overpayment and we will provide that information to you for review as soon as we have it. In the meantime, please provide us with the amounts Defendants believe have been overpaid.

Again, though, given the Defendants’ repeated complaints about any action taken by Fannie Mae, Fannie Mae fears that Defendants will take the position that any amount paid by Fannie Mae is insufficient to satisfy this mandatory payment requirement. **Please advise us at your earliest convenience of the amount Defendants think Fannie Mae must pay to comply with this mandatory requirement.** This will enable Fannie Mae to know how much Defendants allege that Fannie Mae is required to pay to comply with paragraph 7) of the Injunction and to be able to take action on this demand.

The ninth demand you make in paragraph 8) of your letter is that Fannie Mae “must not” “restore the reserves and credit the account with interest for the funds that were moved from the interest bearing Replacement Reserve Account to the non-interest bearing Repair Reserve Account” pursuant to paragraph 5(i) of the Injunction. The problem with this mandatory payment obligation, in addition to your demand not making any sense, is that the amount of payment required from Fannie Mae to satisfy this obligation is not stated anywhere in the Injunction.

Again, Fannie Mae fears that Defendants will take the position that any amount paid by Fannie Mae is insufficient to satisfy this payment requirement. **Please advise us at your earliest convenience of the amount Defendants think Fannie Mae must pay to comply with this requirement with a calculation of how those amounts were determined including the amounts that Defendants believe they are entitled to be paid interest on, the applicable interest rate, how the interest rate was calculated and the period that the interest was accrued.** This will enable Fannie Mae to be able to take action on this demand.

The tenth demand you make in paragraph 9) of your letter is that Fannie Mae “must not” “process the outstanding reserve disbursement requests that were previously submitted, and

John Hofsaess
February 19, 2021
Page 5

process new reserve disbursement requests, within 10 days of receipt” pursuant to paragraph 5(j) of the Injunction. This demand as drafted does not make sense. Fannie Mae is not in violation of this provision of the Injunction. We are not aware of any disbursement requests Defendants have submitted as contemplated by paragraph 5(j) of the Injunction. **If there are any outstanding requests that Defendants believe fall within paragraph 5(j) of the Injunction, please immediately provide us with the requests.**

The final demand you make in paragraph 10) of your letter is that Fannie Mae “must not” “take any adverse action or discriminate against Westland or discriminate against Westland-affiliated entities in relation to other loans based on this purported default, and remove all Westland-affiliated entities from ‘a check’” pursuant to paragraph 5(o) of the Injunction. Fannie Mae is not aware of any adverse action against any Westland-affiliated entities “based on the purported default that arose from failing to deposit the additional \$2.85 million into escrow as requested.” **Please let us know of any instance you allege that Fannie Mae has taken an adverse action or discriminated against any Westland-affiliated entities since the entry of the injunction based on the failure to deposit the demanded funds.**

The next to last paragraph of your letter specifies prior demands made to receive 1) compliant monthly debt service invoices, 2) return funds that Defendants overpaid, and 3) disburse Restoration Reserve Funds. Fannie Mae notes first that the “length of time” about which you complain is time during which Fannie Mae had appealed and sought a stay of the Injunction. The stay that was obtained only expired February 11th, the same day you sent your letter. In addition, as noted above, Fannie Mae is in full compliance with the Injunction requirement to send out monthly debt service invoices. **If Defendants want specific information contained in the monthly debt service invoices, please let us know what information you want and Fannie Mae will attempt to include that information.**

The other two demands you reiterate relate to mandatory payment obligations imposed upon Fannie Mae by the Injunction. The problem, as noted above, is that those mandatory payment obligations have not been liquidated and Fannie Mae believes that Defendants will complain that any amount paid by Fannie Mae is insufficient. For that reason, Fannie Mae requests two weeks from the date these amounts are liquidated by Defendants to make the payments or take such other action it deems appropriate at that time. **In addition to liquidation of the amounts, Fannie Mae requests that Defendants provide written confirmation that: (1) any amounts that may be paid by Fannie Mae to the Defendants pursuant to the Injunction will be maintained by Defendants and immediately returned to Fannie Mae in the event the Injunction is overturned, whether on appeal or by the trial Court; and (2) that Defendants will increase the bond of \$1,000 to an amount not less than the amounts they believe Fannie Mae is required to pay in order to be in compliance with the Injunction.**

John Hofsaess
February 19, 2021
Page 6

We have not endeavored to explain in this letter the multitude of reasons why the Injunction is improper and will be reversed on appeal. Nothing contained in this letter is an admission by Fannie Mae that the Injunction is valid or a waiver by Fannie Mae of any of the rights it has in this litigation including without limitation the right to contest the Injunction, seek an increase in the bond required and the exercise of any other rights Fannie Mae have before the District Court, the Nevada Supreme Court and any other Court. Fannie Mae specifically reserves any and all rights it has under the agreements with Defendants, under applicable and in the litigation.

Sincerely,

SNELL & WILMER



Nathan G. Kanute

cc: John Benedict, Esq. (via e-mail)
Joseph Went, Esq. (via e-mail)

EXHIBIT 3 - Hofsaess February 19, 2021 Email

EXHIBIT 3 - Hofsaess February 19, 2021
Email

From: John Hofsaess <john.h@westlandreg.com>
Sent: Friday, February 19, 2021 5:48 PM
To: Kanute, Nathan
Cc: John Benedict; Joseph Went; Olson, Bob
Subject: RE: Liberty Village/Village Square - Response to February 11th Letter

[EXTERNAL] john.h@westlandreg.com

Nathan,

The letter was written as a courtesy to let Fannie Mae know that a week would be provided for compliance. It is Fannie Mae's obligation to comply with the Court's preliminary injunction order. If you disagree with the phrasing of the letter, please consult the terms of the order itself, and have your client comply.

As to the Restoration Reserve, please note that despite Fannie Mae's repeated representations that Westland Liberty Village LLC sought the release of \$1.1 million, that is simply not the case. Westland Liberty Village LLC *spent* \$1.1 million on the restoration of those two structures but knowing that it had *spent an amount in excess of the funds in the restoration reserve*, Westland only requested the release of the full Restoration Reserve balance, which should have been \$951,407.55. Specifically, the reserve disbursement request for Building 3426 states "Total Amount Invoiced: 606,204.05" and for Building 3517 states "Total Amount Invoiced: 505,329.72," which in combination amounts to \$1.1 million. However, the forms next state "Total Disbursement Requested: Full balance of funds in Bldg 3426 repair escrow" and "Total Disbursement Requested: Full balance of funds in Building 3517 repair escrow." The use of that language should have presented precisely this issue. Additionally, Westland Liberty Village's Initial Disclosures clearly state that the balance in the Restoration Reserve account should have been \$951,407.55. Finally, to be clear, based on your letter Fannie Mae does not dispute that \$905,599.68 was contained in the reserve account, and on that basis, those funds are not subject to any reasonable dispute. Westland demands that Fannie Mae disburse the \$905,599.68 immediately. To alleviate any dispute over the correct amount to be disbursed from the Restoration Reserve, please provide an accounting for that escrow account.

Please note this is a quick response designed to immediately address Fannie Mae's non-compliance with one of the more obvious terms of the Court's order. As such, Westland has not raised all issues, claims, remedies, and damages in this correspondence, and our not doing so shall not be treated as a waiver of such rights, and to the contrary, all of Westland's rights, remedies, claims, and damages are hereby expressly reserved.

Very truly yours,



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

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

From: Kanute, Nathan [mailto:nkanute@swlaw.com]
Sent: Friday, February 19, 2021 4:28 PM
To: John Hofsaess
Cc: John Benedict; Joseph Went; Olson, Bob
Subject: Liberty Village/Village Square - Response to February 11th Letter

John,

Please see the attached response to your February 11th letter. Let us know if you want to discuss.

Thanks,
Nathan

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



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

EXHIBIT 4 - Receipt of Copy

EXHIBIT 4 - Receipt of Copy

1 Nathan G. Kanute, Esq.
Nevada Bar No. 12413
2 Bob L. Olson, Esq.
Nevada Bar No. 3783
3 David L. Edelblute, Esq.
Nevada Bar No. 14049
4 SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
5 Las Vegas, NV 89169
Telephone: (702) 784-5200
6 Facsimile: (702) 784-5252
Email: nkanute@swlaw.com
7 bolson@swlaw.com
dedelblute@swlaw.com

8 *Attorneys for Plaintiff Federal National Mortgage Association*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 FEDERAL NATIONAL MORTGAGE
13 ASSOCIATION,

14 Plaintiff,

15 vs.

16 WESTLAND LIBERTY VILLAGE, LLC, and
17 WESTLAND VILLAGE SQUARE, LLC,

18 Defendants.

19
20 AND ALL RELATED ACTIONS.

Case No. A-20-819412-B

Dept No. 13

RECEIPT OF COPY

21
22 Receipt is hereby acknowledged of the following:

- 23 1. Nathan G. Kanute, Esq. letter to Westland Village Square LLC, Westland Liberty
24 Village LLC c/o John Benedict, Esq. dated May 3, 2021,
- 25 2. Check in the amount of \$519,017.48 payable to Westland Liberty Village;
- 26 3. Check in the amount of \$31,731.30 payable to Westland Village Square; and
- 27 4. Check in the amount of \$905,599.68 payable to Westland Liberty Village.

LAW OFFICES OF JOHN BENEDICT

By: [Signature] (signature)

Angelyn Cayton 05/04/21
Printed Name Date

EXHIBIT 5 - March, April, and May Invoices

EXHIBIT 5 - March, April, and May Invoices



PO Box 890817
Charlotte NC 28289-0817

Statement Date February 22, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Village Square LLC
520 West Willow Street
Long Beach, California 90806

LOAN INFORMATION*

Loan Number	330455177
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	9,326,769.37
Interest Rate		2.49000%
Tax Escrow Balance	\$	-11,928.42
Insurance and/or FHA/MIP Escrow Balance	\$	121,647.45
Reserve and/or Misc. Fee Escrow Balance	\$	306,042.92
Other Escrow Balance	\$	0.00

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION*

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	21,677.38
Current Interest Due	\$	18,062.84
Current Tax Due	\$	5,462.12
Current Insurance and/or FHA/MIP Due	\$	9,594.03
Current Reserve	\$	10,259.08
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	65,055.45

Total Amount Due	\$	65,055.45
-------------------------	-----------	------------------

Payment Due Date	3/1/2021
-------------------------	-----------------

*Subject to adjustment following posting of all funds into the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455177
Due Date	3/1/2021
Total Amount Due	\$65,055.45

Westland Village Square LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.
This billing statement is for
information only.
Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC



PO Box 890817
Charlotte NC 28289-0817

Statement Date February 22, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Liberty Village LLC
520 West Willow Street
Suite 110
Long Beach, California 90806

LOAN INFORMATION*

Loan Number	330455178
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	28,875,667.22
Interest Rate		2.35000%
Tax Escrow Balance	\$	102,392.81
Insurance and/or FHA/MIP Escrow Balance	\$	242,153.75
Reserve and/or Misc. Fee Escrow Balance	\$	635,669.63
Other Escrow Balance	\$	905,599.68

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION*

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	68,354.39
Current Interest Due	\$	52,778.30
Current Tax Due	\$	15,040.83
Current Insurance and/or FHA/MIP Due	\$	21,729.05
Current Reserve	\$	18,600.00
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	176,502.57

Total Amount Due	\$	176,502.57
-------------------------	-----------	-------------------

Payment Due Date	3/1/2021
-------------------------	-----------------

*Subject to adjustment following posting of all funds into the loan accounting system of record and accompanying internal analysis

.....
Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455178
Due Date	3/1/2021
Total Amount Due	\$176,502.57

Westland Liberty Village LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.
This billing statement is for
information only.
Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC



PO Box 890817
Charlotte NC 28289-0817

Statement Date March 23, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Village Square LLC
520 West Willow Street
Long Beach, California 90806

LOAN INFORMATION*

Loan Number	330455177
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	9,305,091.99
Interest Rate		2.46700%
Tax Escrow Balance	\$	-6,466.30
Insurance and/or FHA/MIP Escrow Balance	\$	131,241.48
Reserve and/or Misc. Fee Escrow Balance	\$	316,994.29
Other Escrow Balance	\$	0.00

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	19,858.49
Current Interest Due	\$	19,767.38
Current Tax Due	\$	5,462.12
Current Insurance and/or FHA/MIP Due	\$	23,438.75
Current Reserve	\$	10,259.08
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	78,785.82

Total Amount Due	\$	78,785.82
-------------------------	-----------	------------------

Payment Due Date	4/1/2021
-------------------------	-----------------

*Subject to adjustment following posting of all funds into the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455177
Due Date	4/1/2021
Total Amount Due	\$78,785.82

Westland Village Square LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.

This billing statement is for
information only.

Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC



PO Box 890817
Charlotte NC 28289-0817

Statement Date March 23, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Liberty Village LLC
520 West Willow Street
Suite 110
Long Beach, California 90806

LOAN INFORMATION*

Loan Number	330455178
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	28,807,458.49
Interest Rate		2.32700%
Tax Escrow Balance	\$	117,433.64
Insurance and/or FHA/MIP Escrow Balance	\$	263,882.80
Reserve and/or Misc. Fee Escrow Balance	\$	655,756.93
Other Escrow Balance	\$	905,599.68

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	62,912.97
Current Interest Due	\$	57,724.55
Current Tax Due	\$	15,040.83
Current Insurance and/or FHA/MIP Due	\$	21,729.05
Current Reserve	\$	18,600.00
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	176,007.40

Total Amount Due	\$	176,007.40
-------------------------	-----------	-------------------

Payment Due Date	4/1/2021
-------------------------	-----------------

*Subject to adjustment following posting of all funds to the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455178
Due Date	4/1/2021
Total Amount Due	\$176,007.40

Westland Liberty Village LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.

This billing statement is for
information only.

Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC



PO Box 890817
Charlotte NC 28289-0817

Statement Date April 15, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Village Square LLC
520 West Willow Street
Long Beach, California 90806

LOAN INFORMATION*

Loan Number	330455177
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	9,285,233.50
Interest Rate		2.47000%
Tax Escrow Balance	\$	-1,004.18
Insurance and/or FHA/MIP Escrow Balance	\$	154,680.23
Reserve and/or Misc. Fee Escrow Balance	\$	327,253.37
Other Escrow Balance	\$	0.00

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	20,530.63
Current Interest Due	\$	19,112.11
Current Tax Due	\$	5,462.12
Current Insurance and/or FHA/MIP Due	\$	23,438.75
Current Reserve	\$	10,259.08
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	78,802.69

Total Amount Due	\$	78,802.69
-------------------------	-----------	------------------

Payment Due Date	5/1/2021
-------------------------	-----------------

*Subject to adjustment following posting of all funds into the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455177
Due Date	5/1/2021
Total Amount Due	\$78,802.69

Westland Village Square LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

Please do not remit.

This billing statement is for
information only.

Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC



PO Box 890817
Charlotte NC 28289-0817

Statement Date April 15, 2021

IMPORTANT MESSAGES

Please note that payments are processed only on business days (typically Monday through Friday). Any payments sent for delivery on a weekend or a holiday will be deemed received and processed the next business day.

Westland Liberty Village LLC
520 West Willow Street
Suite 110
Long Beach, California 90806

LOAN INFORMATION*

Loan Number	330455178
-------------	-----------

CURRENT BALANCES

Principal Balance	\$	28,744,545.52
Interest Rate		2.33000%
Tax Escrow Balance	\$	132,474.47
Insurance and/or FHA/MIP Escrow Balance	\$	285,611.85
Reserve and/or Misc. Fee Escrow Balance	\$	674,356.93
Other Escrow Balance	\$	905,599.68

YEAR TO DATE AMOUNTS

Interest Paid YTD	\$	0.00
Taxes Disbursed YTD	\$	0.00
Insurance Disbursed YTD	\$	0.00

PAYMENT INFORMATION

Past Due Principal	\$	0.00
Past Due Interest	\$	0.00
Past Due T/I, FHA/MIP or Reserve Escrows	\$	0.00
Past Due Other	\$	0.00
Past Due Late Charge	\$	0.00
Total Past Due	\$	0.00

Current Principal Due	\$	64,876.38
Current Interest Due	\$	55,812.33
Current Tax Due	\$	15,040.83
Current Insurance and/or FHA/MIP Due	\$	53,134.29
Current Reserve	\$	18,600.00
Current Misc. Fee Due	\$	0.00
Current Other Escrow	\$	0.00
Total Current Due	\$	207,463.83

Total Amount Due	\$	207,463.83
-------------------------	-----------	-------------------

Payment Due Date	5/1/2021
-------------------------	-----------------

*Subject to adjustment following posting of all funds to the loan accounting system of record and accompanying internal analysis

Fold and detach here and return this portion with your payment in the enclosed envelope. Please retain the top portion of this statement for your records. Allow at least 7 days for the postal delivery.

Loan Number	330455178
Due Date	5/1/2021
Total Amount Due	\$207,463.83

Westland Liberty Village LLC
5025 Nellis Oasis Lane
Las Vegas, Nevada 89115

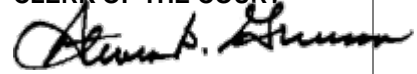
Please do not remit.

This billing statement is for
information only.

Your payment is paid by bank draft.

- Please do not include any correspondence with payment
- Include loan number on check and make payable to:
Grandbridge Real Estate Capital LLC

10



MCLA

Leslie Bryan Hart, Esq. (SBN 4932)
John D. Tennert, Esq. (SBN 11728)
FENNEMORE CRAIG, P.C.
7800 Rancharrah Parkway
Reno, Nevada 89511
(Tel) 775-788-2228 (Fax) 775-788-2229
lhart@fennemorelaw.com
jtennert@fennemorelaw.com

Michael A.F. Johnson, Esq.
(admitted *pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(Tel) 202-942-5000 (Fax) 202-942-5999
michael.johnson@arnoldporter.com

*Attorneys for Intervenor Federal Housing Finance Agency in
its capacity as Conservator for the Federal National Mortgage Association*

**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.

AND ALL RELATED CLAIMS

CASE NO.: A-20-819412-B

DEPT. NO.: XIII

**FEDERAL HOUSING FINANCE AGENCY'S
MOTION FOR CLARIFICATION OF
MINUTE ORDER AND REVISION OF THE
PROPOSED ORDER DENYING MOTION
TO DISSOLVE PRELIMINARY
INJUNCTION**

Hearing Not Requested

Intervenor Federal Housing Finance Agency (FHFA) in its capacity as Conservator for the Federal National Mortgage Association (Fannie Mae), respectfully moves for clarification of the Court's Minute Order and revision of the Defendant-submitted proposed order denying FHFA's motion to dissolve the preliminary injunction. FHFA recognizes that the Court has

1 denied the Motion, and seeks clarification of the August 10, 2021 Minute Order and revision of
2 the proposed order only to resolve two ambiguities that could leave a misleading impression, not
3 to change the substance of the Court's ruling. FHFA respectfully requests that the Court clarify
4 its Minute Order and revise the proposed order in the manner suggested in **Exhibit 1**.

5 **BACKGROUND**

6 On November 20, 2020, this Court, acting through a different judge, entered a
7 preliminary injunction at Defendants' request. On April 26, 2021, the Court granted FHFA's
8 motion to intervene in this action in its capacity as Fannie Mae's Conservator; the Court entered
9 the corresponding order on June 11, 2021. On June 14, 2021, FHFA filed a motion to dissolve
10 the preliminary injunction as void under 12 U.S.C. § 4617(f). After briefing, this Court heard
11 argument on August 2, 2021. On August 10, 2021, the Court issued a minute order denying
12 FHFA's motion and directing counsel for Defendants to submit a proposed order consistent with
13 its ruling, after presenting it to opposing counsel for signification of approval or disapproval.

14 After Defendants presented a draft of the proposed order to the other Parties, FHFA
15 proposed revisions that Defendants did not accept. After an e-mail exchange, Defendants
16 submitted the proposed order over FHFA's objection. Fannie Mae also objects to the proposed
17 order.

18 The August 10, 2021 Minute Order and Westland's proposed order thereto are the subject
19 of this motion.

20 **ARGUMENT**

21 FHFA requests one simple revision to the Minute Order and two simple revisions to the
22 proposed order.¹

23 *First*, FHFA proposes to revise language, currently in both the Minute Order and the
24 proposed order, stating that the Court was unpersuaded that dissolution of the preliminary
25 injunction is warranted because, in part, "the injunction was issued after extensive development

26
27 ¹ These revisions are similar in substance to those FHFA proposed to Westland in
28 correspondence, but differ slightly in form because FHFA has sought to address points Westland
asserted after reviewing FHFA's comments.

1 of the issues before this Court.”² While some issues relating to the preliminary injunction were
2 “extensively developed” before “the injunction was issued” in November 2020, those issues did
3 not include the application of 12 U.S.C. § 4617(f), which was first mentioned in FHFA’s motion
4 to intervene (filed in April 2021) and first briefed in connection with FHFA’s motion to dismiss
5 the preliminary injunction (filed in June 2021). All of that happened *after* the preliminary
6 injunction had been entered and had taken effect in November 2020. As a result, the text of the
7 Minute Order and the proposed order conveys the misimpression that the Court had already
8 considered Section 4617(f) at the time it issued the Preliminary Injunction and was merely
9 reiterating a conclusion it had reached in 2020. FHFA respectfully requests that the Court clarify
10 that point in a revised Minute Order and in Paragraph 4 of the proposed order as follows
11 (deleting the stricken-through word and adding the bolded phrase): “the injunction was issued
12 after extensive development of ~~the~~ issues **unrelated to 12 U.S.C. § 4617(f)** before this Court” so
13 that the record in this case does not inadvertently imply that any party raised or briefed Section
14 4617(f) before FHFA intervened in this action.

15 *Second*, FHFA asks that the Court revise the final clause of Paragraph 3 of the proposed
16 order, which currently states that “Defendants further argue that ... [Section 4617(f)] only
17 applies when Intervenor takes action that is necessary to put Fannie Mae in a sound and solvent
18 condition, *which is not applicable in this action*.” Proposed Order ¶ 3 (emphasis added). The
19 italicized phrase could convey that the Court adopted Defendants’ argument that Section 4617(f)
20 applies only where FHFA takes such action and concluded that FHFA had not taken such an
21 action here. In fact, the Court’s Minute Order does not address that argument at all. FHFA
22 respectfully requests that the Court clarify that point by amending the phrase to read “*which*
23 *Defendants contend is not applicable in this action*” in the final order.

24 CONCLUSION

25 FHFA respectfully requests that the Court clarify its August 10, 2021 Minute Order as set
26

27 ² To be clear, Defendants appear to have adopted this passage verbatim from the Court’s
28 minute order. In offering this Motion, FHFA does not suggest that Defendants introduced the
ambiguity when drafting the proposed order.

1 out above and revise the proposed order so that the Court's final Order incorporates the language
2 described above and set forth in Exhibit 1.

3 DATED this 7th day of September 2021.

4
5 FENNEMORE CRAIG, P.C.

6 /s/ Leslie Bryan Hart

7 Leslie Bryan Hart
8 John D. Tennert, III
9 7800 Rancharra Parkway
10 Reno, Nevada 89511
11 Tel: 775-788-2228
12 lhart@fclaw.com

13 ARNOLD & PORTER

14 KAYE SCHOLER LLP

15 /s/ Michael A. F. Johnson

16 Michael A.F. Johnson*
17 601 Massachusetts Ave., NW
18 Washington, DC 20001
19 Tel: 202-942-5000
20 michael.johnson@arnoldporter.com
21 * Admitted pro hac vice

22 *Attorneys for Intervenor Counter-Defendant*
23 *Federal Housing Finance Agency in its*
24 *Capacity as Conservator for Federal*
25 *National Mortgage Association*
26
27
28

CERTIFICATE OF MAILING

The undersigned, an employee of Fennemore Craig PC, hereby certifies that on the 7th day of September, 2021, she caused a copy of the **FEDERAL HOUSING FINANCE AGENCY'S MOTION FOR CLARIFICATION OF MINUTE ORDER AND REVISIONS OF THE PROPOSED ORDER DENYING MOTION TO DISSOLVE PRELIMINARY INJUNCTION** to be transmitted by electronic service to all interested parties listed below, through the Court's **E-Service** system:

John Benedict Law Offices of John Benedict 2190 E. Pebble Road, Suite 260 Las Vegas, NV 89123 john@benedictlaw.com	Nathan G. Kanute, Esq. David L. Edelblute, Esq. Snell & Wilmer LLP 3883 Howard Hughes Parkway, Suite 110 Las Vegas, NV 89169 nkanute@swlaw.com
Brian W. Barnes Cooper & Kirk, PLLC 1523 New Hampshire, N.W. Washington, DC 20036 bbarnes@cooperkirk.com	<i>Attorneys for Plaintiff Federal National Mortgage Association</i>
John W. Hofsaess Westland Real Estate Group 520 W. Willow Street Long Beach, CA 90806 john.h@westlandreg.com	
<i>Attorneys for Defendants/Counterclaimants/Third Party Plaintiffs Westland Liberty Village, LLC & Westland Village Square LLC</i>	
Joseph G. Went, Esq. Lars K. Evensen, Esq. Sydney R. Gambee, Esq. Holland & Hart LLP 9555 Hillwood Drive, 2nd Floor Las Vegas, NV 89134 jgwent@hollandhart.com <i>Attorneys for Third Party Defendants Grandbridge Real Estate Capital, LLC</i>	

/s/ Shawna Braselton
An Employee of Fennemore Craig PC

Exhibit 1

Exhibit 1

1 **ORDR**

2
3
4 **EIGHTH JUDICIAL DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 FEDERAL NATIONAL MORTGAGE
7 ASSOCIATION,

8 Plaintiff,

9 vs.

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

12 Defendants.

13
14 AND ALL RELATED ACTIONS
15

CASE NO. A-20-819412-B

DEPT NO. XIII

16 **ORDER DENYING INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S**
17 **MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION AND JOINDER THERETO**
18 **BY PLAINTIFF FEDERAL NATIONAL MORTGAGE ASSOCIATION**

19 On August 2, 2021, Intervenor Federal Housing Finance Agency's Motion to Dissolve the
20 Preliminary Injunction (the "Motion") and Plaintiff Federal National Mortgage Association's Joinder
21 thereto (the "Joinder") came before the Court for hearing via Bluejeans. Intervenor Federal Housing
22 Finance Agency ("Intervenor") was represented by Leslie Bryan Hart, Esq. and Michael A.F. Johnson,
23 Esq., Plaintiff Federal National Mortgage Association ("Plaintiff") was represented by Nathan G.
24 Kanute, Esq., and Defendants Westland Liberty Village, LLC and Westland Village Square, LLC
25 ("Defendants") were represented by Brian Barnes, Esq. and John Benedict, Esq. After considering the
26 Motion, the Joinder, the Opposition, and the Reply, the exhibits and declarations attached thereto, the
27 other pleadings and papers on file with the Court, and the oral argument of counsel, the Court denies the
28 Motion and Joinder for the reasons set forth herein.

1 1. After substantial briefing and oral argument, on November 24, 2020, this Court entered
2 the Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for
3 Appointment of Receiver. The preliminary injunction is the subject of an appeal by Plaintiff pending
4 before the Nevada Supreme Court.

5 2. Intervenor generally premises its Motion and requested relief therein on the premise that
6 the injunction should be dissolved as *void ab initio* because this Court lacked jurisdiction to grant it
7 under 12 U.S.C. § 4617(f), which provides that “no court may take any action to restrain or affect the
8 exercise of powers or functions of the Agency as a conservator.” Intervenor and Plaintiff argue that the
9 Order Granting Defendants’ Motion for Preliminary Injunction and Denying Application for
10 Appointment of Receiver restrains or affects the exercise of the Intervenor’s powers and functions as
11 conservator of Plaintiff.

12 3. In their Opposition, Defendants generally argue that the Motion should be procedurally
13 denied as the appeal divests this Court of jurisdiction over the preliminary injunction. Defendants further
14 argue that should this Court decide that it does possess jurisdiction to decide the Motion on its merits,
15 that Intervenor’s and Plaintiff’s arguments in the Motion and Joinder, respectively, fail in that 12 U.S.C.
16 § 4617(f) does not apply to the issues present in this case between the Parties, and that such statute only
17 applies when Intervenor takes action that is necessary to put Fannie Mae in a sound and solvent
18 condition, which Defendants contend is not applicable in this action.

19 4. While the Court is unpersuaded by Defendants’ contention that the pending appeal before
20 the Nevada Supreme Court divests this Court of jurisdiction, the Court is also unpersuaded that the
21 dissolution of the subject preliminary injunction is warranted in that the injunction was issued after
22 extensive development of issues unrelated to 12 U.S.C. § 4617(f) before this Court and is now the subject
23 of litigation on the pending appeal.

24 BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, DECREED AND ORDERED
25 that Intervenor Federal Housing Finance Agency’s Motion to Dissolve the Preliminary Injunction and
26 Plaintiff Federal National Mortgage Association’s Joinder thereto are DENIED. This Order supersedes

27 ///

28 ///

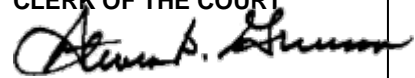
1 the Court's Minute Order entered August 10, 2021.

2 IT IS SO ORDERED.

3 Dated this ____ day of _____, 2021.

4 _____
5 Honorable Mark R. Denton
6 District Court Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11



NOTC

JOHN BENEDICT, ESQ.

Nevada Bar No. 005581

LAW OFFICES OF JOHN BENEDICT

2190 E. Pebble Road, Suite 260

Las Vegas, NV 89123

Telephone: (702) 333-3770

Facsimile: (702) 361-3685

E-Mail: John@BenedictLaw.com

BRIAN W. BARNES, ESQ.

Pro Hac Vice

COOPER & KIRK, PLLC

1523 New Hampshire, N.W.

Washington, DC 20036

Telephone: (202) 220-9623

Facsimile: (202) 220-9601

E-Mail: bbarnes@coperkirk.com

JOHN W. HOFSAESS, ESQ.

Pro Hac Vice

WESTLAND REAL ESTATE GROUP

520 W. Willow Street

Long Beach, CA 90806

Telephone: (310) 438-5147

E-Mail: John.H@WestlandREG.com

*Attorneys for Defendants/Counterclaimants
Westland Liberty Village, LLC & Westland Village
Square LLC and related Counterclaimants*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-20-819412-B

DEPT NO. 13

**WESTLAND'S NOTICE OF MOOTNESS
AND RESERVATION OF RIGHTS**

AND ALL RELATED ACTIONS

1 WESTLAND LIBERTY VILLAGE, LLC, and WESTLAND VILLAGE SQUARE, LLC
2 (collectively “Westland”) prevailed in opposing the Federal Housing Finance Agency’s (“FHFA”) Motion to Dissolve the Preliminary Injunction (the “Motion”). On August 10, 2021, the Court
3 issued a minute order (the “Minute Order”), and on September 7, 2021, Westland submitted a
4 proposed order concerning that Motion. That same day, FHFA filed a Motion for Clarification of
5 the Minute Order and Revision of the Proposed Order Denying Motion to Dissolve Preliminary
6 Injunction (“Motion for Clarification”) with a caption stating, “Hearing Not Requested.” However, a
7 hearing was seemingly automatically set by master calendaring. On September 17, 2021, this Court
8 entered Westland’s proposed order (the “Order”), which rendered the Motion for Clarification moot
9 in Westland’s understanding. Prior to the Court entering the Order, Westland intended to oppose the
10 Motion for Clarification but is not currently doing so due to mootness. However, Westland reserves
11 the right to file an opposition if the Court further considers the Motion for Clarification. In that case,
12 it requests a briefing schedule be set with a deadline for Westland to file its opposition.
13

14
15 Dated this 21st day of September 2021

Respectfully submitted,

16 **LAW OFFICES OF JOHN BENEDICT**

17 By: /s/ John Benedict

18 JOHN BENEDICT, ESQ. (Nevada Bar No. 005581)
2190 E. Pebble Road, Suite 260
19 Las Vegas, NV 89123

20 **WESTLAND REAL ESTATE GROUP**

21 By: /s/ John W. Hofsaess

22 JOHN HOFSAESS, ESQ. (Pro Hac Vice)
520 W. Willow Street
Long Beach, CA 90806

23 *Attorneys for Defendants/Counterclaimants*
24 *Westland Liberty Village, LLC & Westland Village*
Square LLC and related Counterclaimants

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 21, 2021, a copy of the foregoing **WESTLAND'S**
3 **NOTICE OF MOOTNESS AND RESERVATION OF RIGHTS** was served on the parties listed
4 below via electronic service through Odyssey to the following:

5 Robert L. Olson, Esq.
6 Nathan G. Kanute, Esq.
7 David L. Edelblute, Esq.
8 Snell & Wilmer L.L.P.
9 3883 Howard Hughes Parkway, Suite 110
10 Las Vegas, Nevada 89169
11 E-mail: nkanute@swlaw.com; dedelblute@swlaw.com
12 Attorneys for Plaintiff

13 Joseph G. Went, Esq.
14 Lars K. Evensen, Esq.
15 Sydney R. Gambee, Esq.
16 Holland & Hart LLP
17 9555 Hillwood Drive, 2nd Floor
18 Las Vegas, NV 89134
19 jgwent@hollandhart.com
20 *Attorneys for Third Party Defendants*
21 *Grandbridge Real Estate Capital, LLC*

22 Leslie Bryan Hart, Esq.,
23 John D. Tennert, Esq.
24 FENNEMORE CRAIG, P.C.
25 7800 Rancharra Parkway
26 Reno, Nevada 89511
27 E-mail: lhart@fennemorelaw.com; jtennert@fennemorelaw.com
28 *Attorneys for Federal Housing Finance Agency*

Michael A.F. Johnson, Esq. (*Pro Hac Vice*)
Arnold & Porter Kay Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
E-mail: Michael.johnson@arnoldporter.com
Attorneys for Federal Housing Finance Agency

25 /s/ Tyler Dufrene

26 An Employee of the Law Offices of John Benedict

12

ORDR

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

JOHN W. HOFSAESS, ESQ.
Pro Hac Vice
WESTLAND REAL ESTATE GROUP
520 W. Willow Street
Long Beach, CA 908806
Telephone: (310) 438-5147
E-Mail: John.H@WestlandREG.com

Attorneys for Defendants & Counterclaimants
Westland Liberty Village, LLC & Westland Village Square LLC
et. al

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.

AND ALL RELATED ACTIONS

CASE NO. A-20-819412-B

DEPT NO. XIII

**ORDER DENYING FEDERAL
HOUSING FINANCE AGENCY'S
MOTION FOR CLARIFICATION OF
MINUTE ORDER AND REVISION OF
THE PROPOSED ORDER DENYING
MOTION TO DISSOLVE
PRELIMINARY INJUNCTION, AND
FEDERAL NATIONAL MORTGAGE
ASSOCIATION'S JOINDER THERETO**

On August 10, 2021, the Court entered its Minute Order ("Minute Order") regarding the denial of Intervenor Federal Housing Finance Agency's ("FHFA") Motion to Dissolve Preliminary Injunction. On September 7, 2021, Defendants/Counterclaimants/ Third Party Plaintiffs Westland Liberty Village, LLC and Westland Village Square LLC ("Westland") submitted their proposed Order to the Court. On September 7, 2021, FHFA filed a Motion for Clarification of Minute Order and Revision of the Proposed

1 Order Denying Motion to Dissolve Preliminary Injunction (the “Motion for Clarification”), and Plaintiff
2 Federal National Mortgage Association (“Plaintiff”) filed its Joinder thereto (“Joinder”). On September
3 17, 2021, the Court entered the Order Denying FHFA’s Motion to Dissolve the Preliminary Injunction
4 and Plaintiff’s Joinder Thereto (“Order”). On September 21, 2021, Defendants filed a Notice of
5 Mootness and Reservation of Rights (“Notice”). On September 24, 2021, FHFA filed its Response to
6 the Notice (“Response”), and on September 27, 2021, Plaintiff filed its Joinder to the Response. On
7 October 11, 2021, the Motion for Clarification and the Joinder came before the Honorable Judge Mark
8 R. Denton for a hearing via Bluejeans.

9 After considering the Motion for Clarification, the Joinder, the Notice, and the Response, the
10 exhibits and declarations attached thereto, the other pleadings and papers on file with the Court, and the
11 oral argument of counsel, the Court finds:

- 12 1. In the briefing, Westland did not waive or admit anything under EDCR 2.20;
- 13 2. That clarification of the Minute Order is unwarranted;
- 14 3. That on the merits of the Motion for Clarification, Westland presented a more persuasive
15 argument than FHFA;
- 16 4. That the Order Denying FHFA’s Motion to Dissolve Preliminary Injunction and
17 Plaintiff’s Joinder thereof entered on September 17, 2021, shall remain the Order of this Court; and

18 //

19 //

5. That no modification shall be made to the Minute Order or the Order.

BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, DECREED AND ORDERED that FHFA's Motion for Clarification of Minute Order and Revision of the Proposed Order Denying Motion to Dissolve the Preliminary Injunction and Plaintiff's Joinder thereto are DENIED.

Dated this 3rd day of November, 2021

IT IS SO ORDERED.



ABG

BFA E49 FC98 F996
Mark R. Denton
District Court Judge

Respectfully Submitted By:

Approved as to Form and Content:

LAW OFFICES OF JOHN BENEDICT

SNELL & WILMER L.L.P.

By: /s/ John Benedict
John Benedict, Esq. (SBN 5581)
2190 East Pebble Road, Suite 260
Las Vegas, Nevada 89123
Email: John@Benedictlaw.com
*Attorneys for Defendants
& Counterclaimants*

By: /s/ Nathan G. Kanute
Nathan G. Kanute, Esq. (SBN 12413)
3883 Howard Hughes Parkway, Suite 110
Las Vegas, Nevada 89169
E-mail: nkanute@swlaw.com
Attorneys for Plaintiff

Approved as to Form and Content:

FENNEMORE CRAIG, P.C.

By: /s/ Leslie Bryan Hart
Leslie Bryan Hart, Esq. (SBN 4932)
7800 Rancharra Highway
Reno, Nevada 89511
E-mail: lhart@fennemorelaw.com
*Attorneys for Federal Housing Finance
Agency*

Michael A.F. Johnson, Esq.
(Pro Hac Vice)
Arnold & Porter Kay Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
E-mail: Michael.johnson@arnoldporter.com
*Attorneys for Federal Housing Finance
Agency*

RE: Order re: Denial of Motion to Dissolve Preliminary Injunction

Hart, Leslie Bryan <lhart@fennemorelaw.com>

Mon 11/1/2021 6:16 PM

To: Tyler Dufrene

<Tyler@benedictlaw.com>; michael.johnson@arnoldporter.com

<michael.johnson@arnoldporter.com>; Kanute,

Nathan

<nkanute@swlaw.com>; jgwent@hollandhart.com

<jgwent@hollandhart.com>; Tennert, John

<jtennert@fennemorelaw.com>

Cc: John Hofsaess

<john.h@westlandreg.com>; Office Admin

<office.admin@benedictlaw.com>

You may affix my signature.

Leslie

Leslie Bryan Hart, Director

FENNEMORE.

7800 Rancharrah Parkway, Reno, NV 89511

T: 775.788.2228 | F: 775.788.2229

lhart@fennemorelaw.com | [View Bio](#)



CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

COVID-19: Governors in our markets have deemed law firms essential services. As a result, our offices will be open from 8 am to 5 pm, but most of our team members are working remotely. To better protect our employees and clients, please schedule an appointment before coming to our offices.

Re: Order re: Denial of Motion to Dissolve Preliminary Injunction

Kanute, Nathan <nkanute@swlaw.com>

Tue 11/2/2021 5:26 AM

To: Hart, Leslie Bryan <lhart@fennemorelaw.com>

Cc: Tyler Dufrene

<Tyler@benedictlaw.com>; Michael.Johnson@arnoldporter.com

<Michael.Johnson@arnoldporter.com>; jgwent@hollandhart.com

<jgwent@hollandhart.com>; Tennert, John

<jtennert@fennemorelaw.com>; John Hofsaess

<john.h@westlandreg.com>; Office Admin

<office.admin@benedictlaw.com>

Approved

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Federal National Mortgage
7 Association, Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/3/2021

16 Valerie Larsen vllarsen@hollandhart.com

17 Philip Erwin pre@cwlawlv.com

18 John Chong jyc@cwlawlv.com

19 Joseph Went jgwent@hollandhart.com

20 Sydney Gambee srgambee@hollandhart.com

21 Brian Dziminski brian@dziminskilaw.com

22 John Benedict john@benedictlaw.com

23 Leslie Hart lhart@fclaw.com

24 Lara Taylor ljaylor@swlaw.com

25 Nathan Kanute nkanute@swlaw.com

1	Mary Full	mfull@swlaw.com
2	Docket Docket	docket_las@swlaw.com
3	Bob Olson	bolson@swlaw.com
4	Joyce Heilich	jeheilich@hollandhart.com
5	Shawna Braselton	sbraselton@fennemorelaw.com
6	Angelyn Cayton	Angelyn@benedictlaw.com
7	John Hofsaess	john.h@westlandreg.com
8	Sara D'Amico	sara.damico@arnoldporter.com
9	Michael Johnson	michael.johnson@arnoldporter.com
10	Elliott Mogul	elliott.mogul@arnoldporter.com
11	Court Filings	courtfilings@fennemorelaw.com
12	Brenda Schroeder	BLSchroeder@hollandhart.com
13	Shay Burdette	SBurdette@mcguirewoods.com
14	Cheryl Haas	CHaas@mcguirewoods.com
15	T. Richmond McPherson	RMcPherson@mcguirewoods.com
16	Theresa Rhymes	trhymes@mcguirewoods.com
17	Brian Barnes	bbarnes@cooperkirk.com
18	D'Andrea Dunn	ddunn@swlaw.com
19	John Snow	JSnow@parsonsbehle.com
20	Office Admin	office.admin@benedictlaw.com
21	John Tennert	jtennert@fclaw.com
22	David Edelblute	dedelblute@swlaw.com
23	Miranda Gerolaga	mgerolaga@swlaw.com
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Claudio Lerma	clerma@fennemorelaw.com
Sarah Hope	shope@fennemorelaw.com