SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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ELI KARP, HELLO NOSTRAND LLC, HELLO LIVING DEVELOPER NOSTRAND LLC, 271 LENOX LLC, and HELLO FLATBUSH LLC,

Plaintiffs,

Index No. 513756/2021

AMENDED VERIFIED COMPLAINT
JURY TRIAL DEMANDED

-against-

MADISON REALTY CAPITAL, L.P., JOSHUA B. ZEGEN, MARK GORMLEY, 1580 NOSTRAND AVENUE, LLC, 1580 NOSTRAND MEZZ LLC, 1357 FLATBUSH AVENUE 1 LLC, BROOKLYN THREE LLC, MRC RE HOLDINS II LLC, 271 LENOX LENDER LLC, FULTON STREET LENDER LLC, KRISS & FEUERSTEIN LLP, JEROLD C. FEUERSTEIN, ESQ., JEFFREY ZWICK, ESQ., and JEFFREY ZWICK & ASSOCIATES, P.C.,

Defendants,

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The plaintiffs, Eli Karp, Hello Nostrand LLC ("Hello Nostrand"), 271 Lenox LLC ("271 Lenox"), and Hello Flatbush LLC ("Hello Flatbush"), by their attorneys, Law Offices of Victor A. Worms, for their complaint against the defendants state and allege the following:

THE PARTIES

1. Plaintiff Eli Karp is a real estate developer operating in the State of New York, predominately in the County of Kings. Plaintiff Karp is the principal of plaintiffs Hello

Nostrand, 271 Lenox, and Hello Flatbush, and he has years of successful projects behind him as a real estate developer and is a resident of the State of New York, County of Monsey.

2. Plaintiff Hello Nostrand is a New York limited liability company that operates as a real estate developer in the State of New York, County of Kings, with an address at all relevant times at 33 35th Street, Suite B-613, Brooklyn, New York 11232.

3. Plaintiff 271 Lenox is a New York limited liability company that operates as a real estate developer in the State of New York, County of Kings, with an address at all relevant times at 33 35th Street, Suite B-613, Brooklyn, New York 11232.

4. Plaintiff Hello Flatbush is a New York limited liability company that operates as a real estate developer in the State of New York, County of Kings, with an address at all relevant times at 33 35th Street, Suite B-613, Brooklyn, New York 11232.

5. Defendant Madison Realty Capital, L.P. ("Madison Capital") is, upon information and belief, a limited liability partnership formed under the laws of the State of Delaware, with a principal place of business located at 520 Madison Avenue, Suite 3501, New York, New York 10022. Upon information and belief, defendant Madison Capital is authorized to conduct business in the State of New York.

6. Defendant Joshua B. Zegen is, upon information and belief, a resident of the State of New York and is the principal of defendant Madison Capital. Upon information and belief, defendant Zegen is the managing principal and co-founder of defendant Madison Capital.

7. Defendant Mark Gormley is, upon information and belief, a resident of the State of New York and is a director of defendant Madison Capital.

8. Defendant 1580 Nostrand Ave LLC ("1580 Nostrand Ave") is, upon information and belief, a limited liability company formed under the laws of the State of Delaware, with a principal place of business at c/o Madison Realty Capital, L.P., 520 Madison Avenue, Suite 3501 New York, New York 10022. Upon information and belief, defendant 1580 Nostrand Ave is authorized to conduct business in the State of New York. Defendant 1580 Nostrand Ave, upon information and belief, is a shell company formed and wholly-owned by defendant Madison Capital for the sole purpose of acquiring the loans at issue in this action and furthering the bad faith and predatory lending practices of the defendants as set forth below.

9. Defendant 1357 Flatbush Avenue 1 LLC ("1357 Flatbush Avenue") is, upon information and belief, a limited liability company formed under the laws of the State of Delaware, with a principal place of business at c/o Madison Realty Capital, L.P., 520 Madison Avenue, Suite 3501 New York, New York 10022. Upon information and belief, defendant 1357 Flatbush Avenue is authorized to conduct business in the State of New York. Defendant 1357 Flatbush Avenue, upon information and belief, is a shell company formed and wholly-owned by defendant Madison Capital for the sole purpose of acquiring the loans at issue in this action and furthering the bad faith and predatory lending practices of the defendants as set forth below.

10. Defendant Brooklyn Three LLC ("Brooklyn Three") is, upon information and belief, a limited liability company formed under the laws of the State of Delaware, with a principal place of business at c/o Madison Realty Capital, L.P., 520 Madison Avenue, Suite 3501 New York, New York 10022. Upon information and belief, defendant Brooklyn Three is authorized to conduct business in the State of New York. Defendant Brooklyn Three, upon information and belief, is a shell company formed and wholly-owned by defendant Madison Capital for the sole purpose of acquiring the loans at issue in this action and furthering the bad faith and predatory lending practices of the defendants as set forth below.

11. Defendant MRC RE Holdings II LLC ("MRC RE Holdings") is, upon information and belief, a limited liability company formed under the laws of the State of Delaware, with a principal place of business at c/o Madison Realty Capital, L.P., 520 Madison Avenue, Suite 3501 New York, New York 10022. Upon information and belief, defendant MRC RE Holdings is authorized to conduct business in the State of New York. Defendant MRC RE Holdings, upon information and belief, is a shell company formed and wholly-owned by defendant Madison Capital for the sole purpose of acquiring the loans at issue in this action and furthering the bad faith and predatory lending practices of the defendants as set forth below.

12. Defendant 271 Lenox Lender, LLC ("271 Lenox Lender") is, upon information and belief, a limited liability company formed under the laws of New York, with a principal place of business at c/o Madison Realty Capital, L.P., 520 Madison Avenue, Suite 3501 New York, New

York 10022. Upon information and belief, defendant 271 Lenox Lender is authorized to conduct business in the State of New York. Defendant 271 Lenox Lender, upon information and belief, is a shell company formed and wholly-owned by defendant Madison Capital for the sole purpose of acquiring the loans at issue in this action and furthering the bad faith and predatory lending practices of the defendants as set forth below.

13. Defendant Fulton Street Lender LLC ("Fulton Street Lender") is, upon information and belief, a limited liability company formed under the laws of the State of New York, with a principal place of business at c/o Madison Realty Capital, L.P., 520 Madison Avenue, Suite 3501 New York, New York 10022. Upon information and belief, defendant Fulton Street Lender is authorized to conduct business in the State of New York. Defendant Fulton Street Lender, upon information and belief, is a shell company formed and wholly-owned by defendant Madison Capital for the sole purpose of acquiring the loans at issue in this action and furthering the bad faith and predatory lending practices of the defendants as set forth below.

14. Defendant Jerold C. Feuerstein, Esq. a/ka/ as Jerry Feuerstein, is, upon information and belief, an attorney admitted to practice law in the State of New York and is a named partner in the law firm of Kriss & Feuerstein, LLP (hereafter "Kriss & Feuerstein") with an office for the transaction of business located at 360 Lexington Avenue, Suite 1200, New York, New York 10017.

15. Defendant Kriss & Feuerstein is, upon information and belief, a New York limited liability partnership authorized to practice law in the State of New York with an office for the transaction of business located at 360 Lexington Avenue, Suite 1200, New York, New York 10017.

16. Defendant Jeffrey Zwick, Esq. is, upon information and belief, an attorney admitted to practice law in the State of New York, and is the principal of Jeffrey Zwick & Associates, P.C. (hereafter "Zwick & Associates"), with an office for the transaction of business located at 266 Broadway, Suite 403, Brooklyn, New York 11211.

17. Defendant Zwick & Associates is, upon information and belief, a professional corporation licensed to practice law in the State of New York, with an office for the transaction of business located at 266 Broadway, Suite 403, Brooklyn, New York 11211.

JURISDICTION AND VENUE

18. Jurisdiction and venue are proper in this court based upon the residency of the plaintiffs and the subject real properties are located in the County of Kings, and all of the material events giving rise to this action occurred in the County of Kings.

THE NATURE OF THE ACTION

19. This is an action by the plaintiffs against the defendants for fraud, aiding and abetting fraud, conspiracy to commit fraud, breach of contract, breach of the covenant of good faith and fair dealing, legal malpractice, and breach of fiduciary duty arising from the predatory practices of defendant Madison Capital. More specifically, defendant Madison Capital, operating through

defendants Zegen and Gormley, and aided and abetted by defendants Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates, perpetrated a massive fraudulent scheme upon the plaintiffs by the manufacture of defaults by the plaintiffs on loans which defendant Madison Capital and its shell companies are the lenders.

20. At the heart of the fraudulent scheme by the defendants is the use of predatory lending practices by defendant Madison Capital and its shell companies to obtain ownership of buildings that are owned by the plaintiffs using what the Attorney General of the State of New York has described as "a predatory 'loan to own' business model."

21. The "loan to own" predatory business model of defendant Madison Capitals as defined by the Attorney General of the State of New York, involves making loans on unaffordable terms which the defendants expect to result in defaults and then to commence foreclosure proceedings so that the defendants can acquire the properties, at foreclosure sales, which were offered as security for those loans.

22. In this case, the defendants actively engaged in alleged fraudulent activities designed to manufacture defaults by the plaintiffs on their loans, which were owned by defendant Madison Capital and it shell companies, so that the defendants could charge the plaintiffs millions of dollars in default interest at the default interest rate of 24% on those loans and to force the plaintiffs into forbearance agreements as part of the defendants' fraudulent business model of "loan to own."

23. In an Assurance of Discontinuance entitled *In the Matter of Investigation of LETITIA JAMES, Attorney General of the State of New York, of Madison Realty Capital Advisors, LLC, Respondent,* Attorney General of The State of New York, Consumer Frauds And Protection Bureau, Assurance No. # 20-067, the New York Attorney General stated that the "Respondent . .

. aided and abetted conduct in violation of Executive Law § 63(12) and General Business Law ("GBL") Article 22-A, §§ 349-350."

24. In a press release which was issued by the New York Attorney General on December 15, 2020, which was subtitled, in part, "*AG James' Investigation Found Private Equity Lender Madison Realty Capital To Have Aided and Abetted Notorious Landlord by Lending More Than $100 Million*," the Attorney General stated that "'Madison Realty Capital aided one of our city's worst landlords in his unlawful scheme. . . ."

FACTUAL BACKGROUND

I. The Loan To Own Predatory Business Model of Defendant Madison Capital As Described By The Attorney General Of The State of New York

25. On May 17, 2017, in a bankruptcy proceeding entitled *In Re: East Village Properties, et. al., debtor*, United States Bankruptcy Court, Southern District of New York, Case No. 17-22453, the Attorney General of the State of New York submitted "*Objection of The New York Attorney General As A Party In Interest To the Final Consent Order (I) Authorizing And Directing Use Of Cash Collateral Pursuant To 11 U.S.C. § 363(c) (II) Granting Adequate Protection Pursuant To 11 U.S.C. § 361, And (III) Granting Related Relief*" (hereinafter referred to as the "Objection"). (A copy of the Objection by the Attorney General of the State of New York is annexed hereto as Exhibit "A").

26. The bankruptcy proceeding was "part of an ongoing property flipping scheme . . . [by] an inexperienced and unscrupulous landlord named Raphael Toledano ("Toledano") . . . using financing provided by Madison Capital ("Madison")." (Footnote omitted). (See Objection, ¶ 1).

27. As explained by the Attorney General in the Objection, defendant Madison Capital had loaned over $124 million to Toledano to purchase a portfolio of rent-stabilized apartments in the East Village of New York City.

28. Based upon the terms of the loans which were made by defendant Madison Capital, "Toledano was destined to default (as he did less than 10 months after purchase) when a reserve fund covering initial interest payments ran out." (See Objection, ¶ 7).[1]

29. In fact, "[a]fter Toledano defaulted by missing the interest payment due on July 1, 2016, his interest rate on all these loans jumped to Madison's default interest rate of 24%." Id.

30. In more fully describing defendant Madison Capital's predatory loan to own business model, the Attorney General in the Objection stated, in relevant part, the following:

> Madison is a private equity firm that has developed a reputation for high-cost equity-based loans, made based on the value of the collateral but without regard to the ability of the borrower to repay the loan terms. *See* Mark Maurer, 'Friend to Some, Foe to Others,' The Real Deal (Sept. 1, 2016), available at https://therealdeal.com/issues_articles/friend-to-some-foe-to-others/. . . .
>
> Madison's willingness to take over properties in default, as it is seeking to do through these bankruptcy proceedings, is consistent with reports that Madison engages in predatory 'loan to own' deals with unaffordable terms that it expects to result in a foreclosure and property acquisition. *See* Mark Maurer, 'Friend to Some, Foe to Others,' The Real Deal (Sept. 1, 2016), available at https://therealdeal.com/issues_articles/friend-to-some-foe-to-others/. According to this real estate industry news report, 'limited liability companies affiliated with Madison filed at least 50 foreclosure proceedings on more than 70 New York City properties since 2012.' *See* id. . . .
>
> Other lenders recognize that this is Madison's business model. Signature Bank, for example, has engaged in numerous transactions with Madison, including by purchasing a $70 million share of Madison's debt on the East Village Portfolio. According to internal documents provided to the NYAG, Signature agreed to accept Madison's loan to Toledano as collateral for its own $70 million loan to Madison, in part because Signature recognized that Madison 'would have no problem foreclosing and or owning' the Portfolio when the loan to Toledano entered into default. *See* Signature Bank Loan Data File, Email from Joseph

[1] As will be demonstrated below, one of the techniques that defendant Madison Capital uses to manufacture defaults on loans which it owns is to ensure that the interest reserve funds run out before the loans mature.

Fingerman to Brian Twomey (April 27, 2016, 3:35 PM), attached as Ladov Decl. Exhibit 3. (*See* Objection, ¶¶ 27, 31 & 32).

31. The defendants, in furtherance of defendant Madison Capital's business model of predatory "loan to own" lending practices have defrauded the plaintiffs, causing them millions in damages as more fully set forth below.

32. Further, the fraudulent conduct of the defendants was morally outrageous and reprehensible and exhibited wanton dishonesty for which punitive damages should be imposed upon the defendants to deter them from engaging in such fraudulent conduct in the future.

II. The Hello Nostrand Project And The Loan

33. Plaintiff Hello Nostrand is the owner and developer of a real estate project consisting of 209 luxury residential rental units, 15,000 square feet of community space, 134 parking spots, and 50 storage units located at 1580 Nostrand Avenue, Brooklyn, New York (the "Nostrand Project").

34. On or about December 6, 2017, Plaintiff Hello Nostrand and non-party Prophet Mortgage Opportunities LP (hereinafter alternatively the "Original Lender" or "Prophet Mortgage") entered into a loan agreement that would provide Plaintiff Hello Nostrand with financing for the construction of the Nostrand Project (the "Loan"), consistent with a letter of intent dated October 31, 2017.

35. The Loan was for the sum of $63,000,000.00 and was trifurcated into a senior project, and building loan component, during the period of December 6, 2017, to March 6, 2020 (the "Term").

36. The senior loan component (the "Senior Loan") was in the sum of $17,730,000.00. The Senior Loan was governed by a loan agreement (the "Senior Loan Agreement") and a

corresponding promissory note (the "Senior Loan Note"), both of which are dated December 6, 2017.

37. The project loan component (the "Project Loan") was in the sum of $5,500,000.00. The Project Loan was governed by a loan agreement (the "Project Loan Agreement") and a corresponding promissory note (the "Project Loan Note"), both of which are dated December 6, 2017.

38. The building loan component (the "Building Loan") was in the sum of $39,770,000.00 and was governed by a loan agreement (the "Building Loan Agreement") and a corresponding promissory note (the "Building Loan Note"), both of which are dated December 6, 2017.

39. Each of the three loan agreements and the corresponding notes for the Loan provided for interest on all amounts loaned at an interest rate of LIBOR (not less than 1.25%) plus the LIBOR spread (8.25%).

40. To secure the notes, plaintiff Hello Nostrand executed a series of additional documents, including (i) a Senior Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated December 6, 2017 and a Consolidation, Extension, and Modification of Senior Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture filing dated December 6, 2017 (the "Senior Mortgage"), which consolidated Borrower's pre-existing indebtedness under certain prior notes; (ii) a Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture filing dated December 6, 2017 (the "Project Mortgage"); and (iii) a Building Loan Mortgage Assignment of Leases and Rents Security Agreement and Fixture Filing dated December 6, 2017 (the "Building Mortgage").

41. In addition, the notes were further secured by a Non-Recourse Carve-out Guaranty (the "Guaranty") by plaintiff Karp, dated December 6, 2017, which imposed liability upon him for the obligations of plaintiff Hello Nostrand under the Loan Documents, including the Loan.

A. The Relevant Provisions of The Loan Documents

42. Pursuant to the terms of the Loan Documents, plaintiff Hello Nostrand was to make monthly interest-only payments to the Lender on the first calendar date of each month (the "Payment Date"), from December 6, 2017 through and including the maturity date of March 6, 2020.[2]

43. The Loan Documents, namely the Senior Loan Agreement, Project Loan Agreement, and Building Loan Agreement, required the Lender, prior to the Loan's closing date of December 6, 2017, to establish a payment reserve account (the "Payment Reserve Account"), for the purpose of holding funds to be used to pay the monthly installment payments due on the Loan.

44. Pursuant to the Loan Documents, the Payment Reserve Account was to be funded with payment holdback proceeds from the Loan in the sum of $4,882,127.82 (the "Payment Holdback Proceeds"), corresponding to the estimated sum of all interest payments due under the Senior Loan Note, the Project Loan Note, and the Building Loan Note for the Term.

45. The Loan Documents required the Lender to automatically disburse, on behalf of plaintiff Hello Nostrand, funds on deposit in the Payment Reserve Account as necessary to make the monthly installment payments due under the notes. Further, the Loan Documents required the Lender to fund and disburse portions of the Payment Holdback Proceeds into the Payment

[2] Lender was defined as Prophet Mortgage Opportunities LP in the Loan Documents. As such, the terms "Lender" and "Original Lender" shall be used interchangeably as appropriate but in each instance the reference shall be to Prophet Mortgage.

Reserve Account on plaintiff Hello Nostrand's behalf, to ensure that the balance of funds in the Payment Reserve Account remained equal to the minimum payment reserve balance of $1,500,000.00 (the "Minimum Payment Reserve Balance").

46. Moreover, pursuant to the Loan Documents, if the Lender determined that the funds in the Payment Reserve Account were insufficient to fund the remaining monthly installment payments at any point in time during the Term, plaintiff Hello Nostrand was to deposit funds into the Payment Reserve Account sufficient to satisfy the remaining monthly installment payments through the remaining Term.

47. The Loan Documents also provided that, an "Event of Default" included a default by plaintiff Hello Nostrand in the performance of any provision of any note or mortgage or any other Loan Documents, or a breach or failure to satisfy any term, provision, or condition under any note, mortgage, or Loan Documents, with the specified grace period having expired without the default having been cured. As to non-payments of interest on the Loan, the Loan Documents specified a five (5) day grace period following written notice from the Lender to cure the Event of Default.

48. According to the Loan Documents, if an Event of Default occurred and was continuing, the Lender had certain remedies, including withholding loan advances; accelerating the debt; and terminating its commitments under the Loan. Further, according to the Loan Documents, upon the occurrence of an Event of Default, any amounts deposited into or remaining in the Payment Reserve Account could be withdrawn by the Lender and applied in any manner as the Lender elected in its discretion.

49. In addition, the notes provided that upon the occurrence and continuance of an Event of Default under the Loan, the entire outstanding indebtedness would become due and payable and would bear interest at a rate of 24% per annum (the "Default Rate")

B. The Purchase of The Loan By Defendant Madison Capital

50. On or about June 7, 2019, defendant Madison Capital purchased the Loan from the Original Lender.[3] In connection therewith, the Original Lender assigned the Loan Documents, including the Senior Mortgage, the Project Mortgage, the Building Mortgage, the Senior Note, the Project Note, the Building Note, and the Guaranty to defendant Madison Capital, through its alter ego, defendant1580 Nostrand Ave.

51. Accordingly, defendant Madison Capital through defendant1580 Nostrand Ave assumed all obligations of the Original Lender pursuant to the Loan Documents.

C. The Defendants' Scheme to Frustrate Plaintiffs' Ability to Complete The Nostrand Project and To Manufacture a Default Under the Loan

52. Following defendant Madison Capital's purchase of the Loan, plaintiff Karp, on behalf of plaintiff Hello Nostrand, communicated with defendant Madison Capital through defendants Zegen and Gormley on at least three separate occasions in June 2019, requesting a meeting to discuss the Loan and to secure a loan advance.

53. On July 1, 2019, plaintiff Karp, on behalf of plaintiff Hello Nostrand, met with defendants Zegen and Gormley at defendant Madison Capital's offices.

54. During that meeting, defendants Zegen and Gormley, acting on behalf of defendants Madison Capital and 1580 Nostrand Ave, represented to plaintiff Karp that they would assist him

[3] As discussed below, defendant Madison Capital engaged in double dealing and alleged fraudulent activities when it purchased the Loan from Prophet Mortgage.

and plaintiff Hello Nostrand with completing the Nostrand Project, would work with them to upsize the Loan, and would provide them with the requested loan advance.

55. During that meeting, defendants Zegen and Gormley, acting on behalf of defendants Madison Capital and 1580 Nostrand Ave, further represented to plaintiff Karp that they would draw from the Loan's Payment Reserve Account to satisfy the monthly installment payments on the Loan (as the Original Lender had done) and that plaintiff Hello Nostrand would not need to add any additional funds to the Payment Reserve Account until the Loan was upsized.

56. These representations by defendants Zegen and Gormley were false and fraudulent in that they had no intention of working with plaintiffs Karp and Hello Nostrand to upsize the Loan or with assisting them with completing the Nostrand Project or provide any of the requested loan advances.

57. Instead, defendants Zegen and Gormley intended to engage in a fraudulent scheme of delaying the funding of the Nostrand Project to prevent its timely completion to manufacture an alleged default by plaintiff Hello Nostrand on the Loan; to trigger millions of dollars in default interests at the default interest rate of 24%; and ultimately to obtain ownership of the Property with the commencement of a foreclosure proceeding.

58. Plaintiff Karp was not aware that the representations of defendants Zegen and Gormley at the meeting on July 1, 2019 were false and fraudulent and that the representations that defendants Madison Capital and 1580 Nostrand Ave would timely fund the Nostrand Project and upsize the Loan were part of a fraudulent scheme designed to manufacture an alleged default by plaintiff Hello Nostrand on the Loan, and to permit defendants Madison Capital and 1580 Nostrand Ave to charge millions of dollars in default interest at the default interest rate of 24% on the Loan.

59. Therefore, plaintiffs Karp believed that these representations were true, and he relied upon them to his detriment.

60. After the July 1, 2019 meeting with defendants Zegen and Gormley, plaintiff Karp on July 11, 2019 sent an email to defendants Zegen and Gormley which stated, in relevant part, the following:

> It will be 8 weeks from last Funding. My project will go on hold.
> Please help me.

61. In response, on July 12, 2019, defendant Gormley sent an email to plaintiff Karp stating, in relevant part, as follows:

> Eli – there was a funding right before we bought the loan on June 7th. 8 weeks is not accurate. This draw is in good shape and we will be getting you affidavits to sign and fund first thing next week.

62. This email was false and fraudulent, and was intended to deceive, and did deceive plaintiff Karp because the "draw" was not in "good shape" and no "affidavits" were sent to plaintiff Karp for "funding first thing next week" of the Loan.

63. This is because it was always the undisclosed intention of defendants Madison Capital, Zegen, and Gormley to frustrate the completion of the Nostrand Project and to manufacture a default under the Loan, and to charge plaintiffs Karp and Hello Nostrand millions of dollars in default interest as part of the predatory lending practices of defendant Madison Capital.

64. As plaintiff Karp began to feel the unrelenting pressure of the fraudulent predatory lending practices of defendant Madison Capital, plaintiff Karp, in desperation, on July 17, 2019, sent another email to defendants Zegen and Gormley stating, in relevant part, as follows:

> Please help me. Subs are asking if it's turning into Fulton. Last funding was on May 24.

65. Despite plaintiff Karp's desperate pleas for help from defendants Zegen and Gormley for funding under the Loan, those pleas were ignored by defendants Madison Capital, Zegen, and Gormley because having the subcontractors walk off the Nostrand Project and having the Project stalled were precisely what defendants Madison Capital, Zegen, and Gormley wanted as part of their fraudulent scheme to manufacture a default on the Loan in furtherance of defendant Madison Capital's predatory loan to own business model.

66. When none of his pleas resulted in funding by the defendants for the Nostrand Project, plaintiff Karp turned to David Rosenblum, the principal of the Original Lender who had sold the Loan to defendant Madison Capital seeking his help in a series of text messages to get defendants Madison Capital, Zegen, and Gormley to fund the Loan.

67. In a text message on July 17, 2019, to David Rosenblum, plaintiff Karp stated the following:

> I haven't been funded since May 24. I'm basically toast. Thanks.

68. On July 18, 2019, plaintiff Karp sent a series of text messages to David Rosenblum stating the following:

> Please call me. I need help ASAP.[4]
>
> Did you hear back?[5]
>
> I'm so screwed.[6]
>
> He tells me every day that he's funding.[7]

[4] Sent at 9:59 a.m.
[5] Sent at 1:33 p.m.
[6] Sent at 2:04 p.m.
[7] Sent at 3:23 p.m.

69. As part of his efforts to obtain funding under the Loan to avoid a catastrophic collapse of the Nostrand Project, on July 19, 2019, plaintiff Karp sent defendant Gormley a text message, which stated, in part, as follows:

> June 18 I realized that it will be close to 4 weeks to get funding. I requested a meeting to see what I can do to help speed this up. Again I requested a meeting June 26. My meeting was set for July 1st. They assured me they will speed up the process. July 10, I'm begging him to help me. July 11, I sent the email to Josh & Mark & they say it's not 8-weeks. From May 24 to July 19 is exactly 8 weeks. But they still used up my interest reserve with very little work production on site.

70. Finally, with the assistance of David Rosenblum, on July 19, 2019, plaintiff Karp was able to get defendant Madison Capital to make the initial funding to plaintiff Hello Nostrand under the Loan after defendant Madison Capital purchased the Loan from the Original Lender.

71. From approximately July 19, 2019, when defendant Madison Capital made the initial funding to plaintiff Hello Nostrand, through approximately early November 2019, defendants Zegen and Gormley, acting on behalf of defendants Madison Capital and 1580 Nostrand Ave, continuously misrepresented to plaintiff Karp that an upsize of the Loan would happen in short order. However, there was no upsizing of the Loan because defendants Madison Capital and 1580 Nostrand Ave. never intended to upsize the Loan and made this representation to default plaintiffs Karp and Hello Nostrand.

72. Once again in desperation, on November 18, 2021, plaintiff Karp sent a text message to defendant Gormley which stated the following:

> I need the funds, I keep losing weeks of working. If we can't make it work I'll need to sell everything ASAP.[8]

73. Subsequently, on November 22, 2019, plaintiff Karp sent another text message to defendant Gormley which stated, in relevant part, as follows:

[8] Sent at 9:35 p.m.

> If you can't help me I need to know as I'll be forced to sell ASAP. Without production & incurring heavy interest it will be total loss.[9]

74. In response also on November 22, 2019, defendant Gormley sent plaintiff Karp a text message stating, in relevant part, as follows:

> I'm getting it figured out right now.

75. By December 2, 2019, plaintiff Karp had become increasingly frustrated with the delay in the funding of the Nostrand Project, unaware that this delay was deliberate and purposeful and was part of a fraudulent scheme by defendants Madison Capital, Zegen, and Gormley to manufacture a default on the Loan by plaintiff Hello Nostrand.

76. Accordingly, on December 2, 2019, plaintiff Karp sent defendants Zegen and Gormley the following email:

> Guys it's been more than 8 months since I was promised a loan upsizing for Nostrand, but so far I have yet to receive a TS. In the meantime the funding has slowed down to a trickle, & progress on site is reduced to a crawl, at the same time large interest keep accruing making it impossible to hold on to this amazing project that I have worked on for so long. Sadly Please send me a payoff letter for Nostrand.

77. In requesting a payoff letter for the Loan, plaintiff Karp wanted to refinance out of the Loan with defendants Madison Capital and 1580 Nostrand Ave on the Nostrand Project by obtaining a new lender, and a payoff letter was necessary for that purpose.

78. Given the nature of the defendants' business, they knew that the only reason that plaintiff Karp was requesting a payoff letter was so that plaintiff Hello Nostrand could obtain a new lender to refinance the Nostrand Project.

79. Even as he was looking to refinance out of the Loan for the Nostrand Project with defendant Madison Capital, plaintiff Karp was desperate to save the project, and so he was still

[9] Sent at 11:42 a.m.

requesting to have the Loan upsized when, on December 10, 2019, he sent the following text message to defendant Gormley:

> I know you're very busy. I need your help. Please get me the ts for Nostrand so I can work on the Mezz.[10]

80. Having not heard back from defendants Madison Capital, Zegen, and Gormley about his repeated requests for a payoff letter for the Loan on the Nostrand Project or about the repeated representations by defendant Madison Capital, Zegen, and Gormley that they would upsize the Loan, on December 17, 2019, plaintiff Karp sent defendant Gormley the following text message:

> This is extremely painful. Why am I being ignored? I have issues that need to be resolved & I need to know how to move forward.[11]

81. During this entire period of time, defendants Madison Capital, 580 Nostrand Ave., Zegen, and Gormley never communicated to plaintiffs Karp and Hello Nostrand that there were any issues with the funds available in the Loan's Payment Reserve Account or that defendant Madison Capital, acting through defendant 1580 Nostrand Ave, was unable to draw funds from the Payment Reserve Account sufficient to satisfy plaintiff Hello Nostrand's monthly installment payments on the Loan.

82. Moreover, during this period of time, neither defendants Madison Capital nor 1580 Nostrand Ave sent written notice to plaintiffs Karp and Hello Nostrand indicating that an Event of Default had occurred with respect to any monthly installment payments due on the Loan or any requests that funds be added to the Loan's Payment Reserve Account.

83. Accordingly, plaintiffs Karp and Hello Nostrand were under the reasonable belief that defendant Madison Capital, through 1580 Nostrand Ave, had been automatically disbursing

[10] Sent at 6:19 p.m. "tm" means "Term Sheet" and "Mezz" refers to upsizing the Loan.
[11] Sent at 11:33 a.m.

funds from the Payment Reserve Account on plaintiff Hello Nostrand's behalf as necessary to make the monthly installment payments due under the Loan, as explicitly set forth in the Loan Documents.

D. Defendants Deliberately Ignore Plaintiffs' Request for a Payoff Letter

84. Despite repeated follow-up text messages by plaintiff Karp to defendant Gormley, defendants Madison Capital, Zegen, and Gormley in furtherance of their scheme to frustrate the ability of plaintiff Karp to complete the Nostrand Project and to manufacture a subsequent default under the Loan by plaintiff Hello Nostrand, steadfastly ignored plaintiff Karp's request for a payoff letter which was made in his email of December 2, 2019, to defendant Gormley.

85. Instead, in December 2019, defendant Madison Capital, through defendants Zegen and Gormley, continued to falsely and fraudulently represent to plaintiff Karp that Madison Capital was working on an upsize of the Loan and that there was no reason for Plaintiff Karp to sell the Project because defendant Madison Capital would have a term sheet for him after the holidays and early in the new year.

86. Those representations were false and were known to be false by defendants Madison Capital, Zegen, and Gormley, in that they had no intention to upsize the loan, and those representations were made by them solely to induce plaintiff Karp to rely upon those representations to continue his lending relationship with defendant Madison Capital so that defendants Madison Capital, Zegen, and Gormley could fully implement their fraudulent scheme to manufacture a default on the Loan by plaintiff Hello Nostrand in furtherance of defendant Madison Capital's predatory loan to own business model.

87. In reliance on the false and fraudulent representations by defendants Madison Capital, Zegen, and Gormley that a term sheet for an upsize of the Loan would be forthcoming

any day, plaintiff Karp was prepared to continue his lending relationship with defendant Madison Capital as he waited to receive a term sheet for the anticipated upsize of the Loan from defendants Madison Capital, Zegen, and Gormley in January 2020.

88. However, during that period of time, defendants Madison Capital, Zegen, and Gormley, as part of their fraudulent scheme to frustrate the ability of plaintiff Karp to complete the Nostrand Project and to manufacture a subsequent default, provided neither a term sheet for an upsize of the loan nor any additional funding for the Nostrand Project. Defendants Madison Capital, Zegen, and Gormley also did not provide a payoff letter as had been requested by plaintiff Karp in his December 2, 2019 email to defendants Zegen and Gormley.

E. Defendants' Predatory Proposal to Upsize the Nostrand Project Loan and To Manufacture A Default on The Loan

89. On February 11, 2020, after defendants Madison Capital, Zegen, and Gormley failed to provide the requested payoff letter, plaintiff Karp sent an email to defendants Zegen and Gormley stating, in relevant part, as follows:

> I reached out to you in December for the payoff as I had a year end buyer. But you told that you'll get the loan upsized immediately. That didn't happen so I guess I'll have to find a buyer ASAP. Send me the payoff.

90. In response, defendant Gormley contacted plaintiff Karp to proposed terms for the upsizing of the Loan, which defendants Madison Capital, Zegen, and Gormley knew or had reason to know would be unacceptable to plaintiffs Karp and Hello Nostrand because those terms were financially unreasonable and were made in furtherance of the fraudulent scheme of defendants Madison Capital, Zegen, and Gormley to manufacture a default under the Loan by plaintiff Hello Nostrand.

91. Specifically, the proposed terms included an interest rate at 14% with a 10-month minimum – an additional 5.5% increase in interest rate over the rate of the Loan.

92. Accordingly, on or about February 11, 2020, plaintiff Karp communicated to defendants Madison Capital, Zegen, and Gormley that the terms of the proposed upsize of the Loan were not acceptable. Plaintiff Karp also once again requested a payoff letter.

93. In furtherance of the fraudulent scheme of defendants Madison Capital, Zegen, and Gormley and the predatory lending practices of defendant Madison Capital, rather than provide a payoff letter at that time or provide funding under the Loan in accordance with recent and repeated requests of plaintiffs Karp, on February 14, 2020, defendant Madison Capital sent plaintiffs Karp and Hello Nostrand a purported notice of alleged Events of Default existing under the Loan and demanding immediate payment of the alleged "payment arrears" (the "February 14, 2020 Default Letter").

94. The February 14, 2020 Default Letter was sent by the attorneys for defendants Madison Capital and1580 Nostrand Ave., defendants Feuerstein Kriss & Feuerstein.

95. The February 14, 2020 letter by defendants Feuerstein and Kriss & Feuerstein was part of the scheme by defendants Madison Capital, Zegen, and Gormley of using fraud and predatory lending practices to obtain ownership of buildings which are owned by the plaintiffs, including specifically the Nostrand Property; defendants Feuerstein and Kriss & Feuerstein had knowledge of the fraud by defendants Madison Capital, Zegen, and Gormley; and the February 14, 2020 letter by defendants Feuerstein and Kriss & Feuerstein was intended to, and did, provide substantial assistance in the achievement of the fraud.

96. Significantly, the February 14, 2020 Default Letter, written by defendants Feuerstein and Kriss & Feuerstein, stated, in relevant part, as follows:

> Please be advised that certain Event(s) of Default exist under the Loan Documents for, among other things, failure to pay the monthly interest payments due on July 1, 2019 and every subsequent payment thereafter (the "Payment Arrears") in accordance with the terms of the Loan Documents.

> By reason of the foregoing Event(s) of Default, demand is hereby made for the immediate payment of the Payment Arrears in accordance with the Loan Documents. Interest on this debt will continue to accrue on a daily basis at the Default Rate.[12]

97. Notably, defendants Madison Capital, Zegen, and Gormley never (i) advised plaintiffs Karp and Hello Nostrand that defendants Madison Capital and 1580 Nostrand Ave had not previously drawn from the Payment Reserve Account in order to make the monthly installment payments due under the Loan on plaintiff Hello Nostrand's behalf; (ii) made any prior requests for plaintiffs Karp and Hello Nostrand to replenish funds in the Payment Reserve Account so as to allow such draws to be made; or (iii) provided prior written notice to plaintiffs Karp and Hello Nostrand that an Event of Default had occurred arising from any alleged non-payment of the monthly installment payment due on the Loan.

98. In actual fact, the Loan Documents required defendants Madison Capital and 1580 Nostrand Ave to automatically disburse funds on deposit in the Payment Reserve Account on plaintiff Hello Nostrand's behalf as necessary to make the monthly installment payments due under the Loan and the Loan Documents required defendants Madison Capital and 1580 Nostrand Ave to ensure that the balance of funds in the Payment Reserve Account contained a Minimum Reserve Payment Balance of $1,500,000.00.

99. Importantly, to manufacture plaintiff Hello Nostrand's default on the Loan, as asserted in the February 14, 2020 letter of defendants Feuerstein and Kriss & Feuerstein, defendants Madison Capital and 1580 Nostrand Ave took the Payment Reserve Account containing a Minimum Reserve Payment Balance of $1,500,000.00 and gave it as a credit to

[12] The Default Interest Rate is 24%.

plaintiff Hello Nostrand and designated it as "Cash Collateral" which resulted in a zero balance in the Payment Reserve Account.

100. Defendants Madison Capital and 1580 Nostrand Ave also, as reflected in the February 14, 2020 letter of defendants Feuerstein and Kriss & Feuerstein, and with the substantial assistance, upon information and belief, of defendants Feuerstein and Kriss & Feuerstein, backdated plaintiff Hello Nostrand's alleged default on the Loan to July 1, 2019, thereby charging plaintiff Hello Nostrand, default interest of 24% starting on July 1, 2019, and making plaintiff Hello Nostrand falsely and fraudulently liable for millions of dollars in default interest on the Loan at the default interest rate of 24%.

101. The February 14, 2020 Default Letter by defendants Feuerstein and Kriss & Feuerstein is clear evidence that defendants Madison Capital and 1580 Nostrand Ave knowingly and intentionally failed to disburse funds from the Payment Reserve Account to make the monthly installment payments on the Loan on plaintiff Hello Nostrand's behalf dating back to July 1, 2019.

102. Thus, the February 14, 2020 Default Letter by defendants Feuerstein and Kriss & Feuerstein was a transparent manufactured default by plaintiff Hello Nostrand on the Loan because it backdated the default to July 1, 2019, at a time when the Payment Reserve Account contained a Minimum Reserve Payment Balance of $1,500,000.00 which was more than sufficient to pay the monthly interest amount due on the Loan to avoid any default on the Loan by plaintiff Hello Nostrand.

103. The manufactured default by plaintiff Hello Nostrand on the Loan permitted defendants Madison Capital and 1580 Nostrand Ave to charge default interest at the rate of 24%

per annum on the Loan in furtherance of the predatory lending practices of defendant Madison Capital of loan to own consistent with its business model.

F. Defendants Provided a Purported Payoff Letter

104. On February 17, 2020, plaintiff Karp communicated with defendants Madison Capital and 1580 Nostrand Ave through counsel and once again requested a payoff letter for the Loan because plaintiff Karp had sourced new financing to pay off the Loan and to get away from defendant Madison Capital's predatory lending practices.

105. Shockingly, on February 17, 2020, defendants Madison Capital and 1580 Nostrand Ave, through defendants Feuerstein and Kriss & Feuerstein – and having already sent the February 14, 2020 Default Letter charging default interest on the Loan dating back to July 1, 2019 at a rate of 24% per annum – responded to plaintiff Karp's request by stating that it "seem[ed] a bit early to send a payoff letter."

106. It was only after plaintiff Karp made yet another request for the payoff letter (the fourth written request in total) that defendants Madison Capital and 1580 Nostrand Ave, through defendants Feuerstein and Kriss & Feuerstein, finally provided a payoff letter that plaintiff Karp had been requesting for months.

107. The purported payoff letter sent on February 18, 2020 by defendants Feuerstein and Kriss & Feuerstein (the "February 18, 2020 Payoff Letter") made clear that defendants Madison Capital and 1580 Nostrand Ave were seeking to collect default interest on the Loan at a rate of 24% per annum based on alleged Events of Default that purportedly existed dating back to July 1, 2019, as set forth in the February 14, 2020 Default Letter of defendants Feuerstein and Kriss & Feuerstein.

108. In any event, according to the February 18, 2020 Payoff Letter, which was sent by defendants Feuerstein and Kriss & Feuerstein, defendants Madison Capital and 1580 Nostrand Ave claimed that plaintiff Hello Nostrand owed default interest on the Loan in the total amount of $7,179,162.34 for the period of July 1, 2019 through March 25, 2020.

109. In addition, the February 18, 2020 Payoff Letter indicated that defendants Madison Capital and 1580 Nostrand Ave had purportedly applied the $1,500,000.00 credit, which previously had been given to plaintiff Hello Nostrand and which had been designated as "Cash Collateral" in the February 14, 2020 Default Letter, against the millions of dollars in default interest defendants Madison Capital and 1580 Nostrand Ave had charged plaintiff Hello Nostrand, based upon the manufactured default of plaintiff Hello Nostrand on the Loan.

110. The misapplication by defendants Madison Capital and1580 Nostrand Ave of the $1,500,000.00 Minimum Interest Reserve which was contained in the Payment Reserve Account demonstrated that defendants Madison Capital and 1580 Nostrand Ave had manufactured the alleged default by plaintiff Hello Nostrand on the Loan.

111. In the February 14, 2020 Default Letter by defendants Feuerstein and Kriss & Feuerstein, the $1,500,000.00 was shown as a credit to plaintiff Hello Nostrand designated as "Cash Collateral" and three days later in the February 17, 2020 Payoff Letter, the same $1,500,000.00, which had it been properly applied there would not have been any default by plaintiff Hello Nostrand on the Loan, was being applied against the millions of dollars in default interest being claimed by defendants Madison Capital and 1580 Nostrand Ave. There would never have been millions of dollars in default interest on the Loan if the same $1,500,000.00 had been properly applied to pay plaintiff Hello Nostrand's monthly interest payments on the Loan.

112. At the same time that defendants Madison Capital, Zegen, and Gormley were manufacturing a default by plaintiff Hello Nostrand on the Loan, they were persistently refusing to provide plaintiff Karp with a payoff letter which was originally requested by him on December 2, 2019. The failure and refusal of defendants Madison Capital, Zegen, and Gormley to provide the requested payoff letter prevented plaintiff Karp from obtaining replacement financing for the Nostrand Project even as defendants Madison Capital, Zegen, and Gormley had stopped making any funding for the project under the Loan.

113. By the time that defendants Madison Capital, Zegen, and Gormley sent plaintiff Karp the February 17, 2020 Payoff Letter, defendants Madison Capital, Zegen, and Gormley had not provided any funding for the Nostrand Project in 10 weeks which completely stalled the Project at the same time defendants Madison Capital, Zegen, and Gormley had declared plaintiff Hello Nostrand in default on the Loan in the February 14, 2020 Default Letter, and began charging plaintiff Hello Nostrand millions of dollars in default interest at the rate of 24% backdated to July 1, 2019.

114. At this point, plaintiffs Karp and Hello Nostrand were trapped in the Loan with defendants Madison Capital and 1580 Nostrand Ave, and they were completely in the clutches of the piracy and the predatory lending practices of defendant Madison Capital because with millions of dollars in default interest piling on the Loan every month, no new lender would be willing to provide plaintiffs Karp and Hello Nostrand with replacement financing given the debt-to-equity ratio of any new loan.

115. The February 17, 2020 Payoff letter by defendants Feuerstein and Kriss & Feuerstein was part of the fraud by defendants Madison Capital, Zegen, and Gormley using predatory lending practices to fraudulently obtain ownership of buildings which are owned by

the plaintiffs, including specifically the Nostrand Property; defendants Feuerstein and Kriss & Feuerstein had knowledge of the fraud by defendants Madison Capital, Zegen, and Gormley; and the February 17, 2020 Payoff Letter by defendants Feuerstein and Kriss & Feuerstein was intended to, and did, provide substantial assistance in the achievement of the fraud.

G. Defendants Provide a Purported "Corrected" Default Letter And "Corrected" Payoff Letter

116. On or about March 2, 2020, after it became clear to defendants Madison Capital, Zegen, and Gormley how extreme it was for them to backdate plaintiff Hello Nostrand alleged default on the Loan to July 1, 2019, and to charge it default interest at the rate of 24% dating back to July 1, 2019, defendants Madison Capital, Zegen, and Gormley decided to send plaintiffs Karp and Hello Nostrand another default letter (the "Corrected Default Letter"), the substance of which was inconsistent with the February 14, 2020 Default Letter. The Corrected Default letter was again sent by defendants Feuerstein and Kriss & Feuerstein.

117. The Corrected Default Letter purported to serve as notice that alleged Events of Default existed under the Loan, and pursuant to the Corrected Default Letter, defendants Madison Capital and 1580 Nostrand Ave demanded immediate payment of the alleged "payment arrears."

118. However, the Corrected Default Letter stated that alleged Events of Default under the Loan purportedly existed dating back to November 1, 2019 – as opposed to July 1, 2019 as set forth in the February 14, 2020 Default Letter – arising from plaintiff Hello Nostrand's purported failure to pay the monthly interest payments on the Loan in accordance with the Loan Documents.

119. Even though the Corrected Default Letter of March 2, 2020 provided by defendant Madison Capital no longer backdated the default to July 1, 2019, and no longer charged default

interest back to July 1, 2019, but instead to November 1, 2019, defendants Madison, Zegen, and Gormley failed and refused to provide plaintiff Karp with a corrected payoff letter despite a request to do so by plaintiff Karp.

120. The refusal of defendants Madison, Zegen, and Gormley to provide a corrected payoff letter was designed to thwart plaintiff Karp's ability to attempt to find replacement financing to get out of the Loan with defendant Madison Capital and avoid its predatory lending practices.

121. Indeed, defendants Madison Capital, Zegen, and Gormley did not provide plaintiff Karp with what they claimed was a purported payoff letter under the Corrected Default Letter until weeks later, on March 16, 2020 (the "Corrected Payoff Letter").

122. According to the Corrected Payoff Letter, defendants Madison Capital and 1580 Nostrand Ave claimed that plaintiff Hello Nostrand owed default interest at the rate of 24% in the amount of $3,989,045.73 for the period of November 1, 2019 through March 25, 2020.

123. The Corrected Payoff letter by defendants Feuerstein and Kriss & Feuerstein was part of the fraud by defendants Madison Capital, Zegen, and Gormley using predatory lending practices to fraudulently obtain ownership of buildings which are owned by the plaintiffs, including specifically the Nostrand Property; defendants Feuerstein and Kriss & Feuerstein had knowledge of the fraud by defendants Madison Capital, Zegen, and Gormley; and the Corrected Payoff Letter by defendants Feuerstein and Kriss & Feuerstein was intended to, and did, provide substantial assistance in the achievement of the fraud.

H. The Forced Forbearance By The Plaintiffs And The Mezzanine Loan

124. By August 2020, it was already nine months since defendants Madison Capital and 1580 Nostrand Ave last funded the Loan, and by then, the Nostrand Project was completely shut

down while at the same time defendants Madison Capital and 1580 Nostrand Ave were collecting millions of dollars in default interest at the rate of 24% on the Loan.

125. This was exactly where defendants Madison Capital, Zegen, and Gormley wanted plaintiffs Karp and Hello Nostrand as part of the fraudulent scheme to use predatory lending practices to ultimately acquire ownership of the Nostrand Property.

126. Trapped between the ever-increasing default interest on the Loan and the prospect of losing the Nostrand Project in a foreclosure proceeding, as the millions of dollars in default interest made it unlikely that plaintiffs Karp and Hello Nostrand would be able to obtain replacement financing on the Loan from a new lender, on August 28, 2020, plaintiffs Karp and Hello Nostrand entered into a forced forbearance agreement, prepared by defendants Feuerstein and Kriss & Feuerstein, with defendant 1580 Nostrand Ave.

127. As part of the forced forbearance, plaintiffs Karp and Hello Nostrand were required to take out a mezzanine loan with defendant 1580 Nostrand Ave in the amount of $3 million and a Second Senior Loan in the amount of $8.3 million.

128. The mezzanine loan in the amount of $3 million was secured against 100% of the membership interest in plaintiff Hello Nostrand, the owner of the Nostrand Property.

129. Notably, more than 50% of the Second Senior Loan was to pay default interest of $4,486,015.59 for the manufactured default by plaintiff Hello Nostrand under the Senior Loan.

130. The forbearance agreement and related agreements were part of the fraudulent scheme of Madison Capital, Zegen, and Gormley, with the substantial assistance of defendants Feuerstein and Kriss & Feuerstein, to use predatory lending practices to obtain ownership of Nostrand Property.

131. For the closing on the forced forbearance agreement and the related agreements, the plaintiffs were represented by defendants Zwick and Zwick & Associates, who had previously been recommended to plaintiff Karp by defendant Gormley and his business colleague Mr. Eli Tabak.

132. At the time that defendant Gormley and Mr. Tabak first recommended defendants Zwick and Zwick & Associates to represent the plaintiffs in connection with refinancing of loans to be made to the plaintiffs by defendant Madison Capital, defendant Gormley did not disclose to the plaintiffs that, upon information and belief, defendants Zwick and Zwick & Associates had a significant financial relationship with defendant Madison Capital, and that defendants Zwick and Zwick & Associates would not represent the best interests of the plaintiffs in their loan transactions with defendants Madison Capital, 1580 Nostrand Ave, and the other Madison Capital related shell companies.

133. Further, defendant Gormley did not disclose to the plaintiffs that, upon information and belief, defendants Zwick and Zwick & Associates had knowledge of the fraud by defendants Madison Capital, Zegen, and Gormley; that the representation of the plaintiffs by defendants Zwick and Zwick & Associates, upon information and belief, was part of the fraudulent scheme; and that the representation of the plaintiffs by defendants Zwick and Zwick & Associates was intended to, and did, provide substantial assistance in the achievement of the fraud.

134. In any event, on August 7, 2020, more than two weeks before the August 28, 2020 forced forbearance, Ms. Maria Roman, a paralegal in the office of defendants Feuerstein and Kriss Feuerstein, sent an email to defendant Zwick with blank signature pages, to be signed by plaintiff Karp, of the documents that would be part of the closing of the forced forbearance agreement and related agreements.

135. The email of August 7, 2020, from Ms. Roman to defendant Zwick, the subject of which was "1580 Nostrand-signature pages, stated as follows:

> Hi Jeff,
>
> Attached are the signature page packets for 1580 Nostrand. Please have the borrower fully complete and sign the Certification of Beneficial Ownership that is included with the land loan documents.
>
> Please have pdfs of the executed signature pages scanned and emailed to us (this email chain), and the originals sent to the following address:
>
> **Jasmine Delgado**
> **Kriss & Feuerstein LLP**
> **360 Lexington Avenue, Suite 1200**
> **New York, NY 10017**
>
> Thanks,
>
> Maria (Emphasis added).

136. Defendant Feuerstein, as well as several other individuals in the firm of defendant Kriss & Feuerstein, were copied on Ms. Roman's August 7, 2020 email to defendants Zwick and Zwick & Associates, which was sent at 10:22 a.m.

137. In response, defendants Zwick and Zwick & Associates, and as part of the fraudulent scheme, did not object to having plaintiff Karp signed in blank documents for the closing of the forced forbearance and related transactions or requested that they be provided with copies of the actual documents before recommending that their client, plaintiff Karp, sign those documents.

138. Rather, at 10:24 a.m. on August 7, 2020, defendants Zwick and Zwick & Associates forwarded Ms. Roman's email to plaintiff Karp with the following message:

> Eli
> Here is a sig page packet
> Can you please follow instructions below[.].

139. In reliance upon the recommendation of his attorneys, defendants Zwick and Zwick & Associates, plaintiff Karp signed the signature pages in blank and sent them by Federal Express to defendants Zwick and Zwick & Associates, who sent them to the office of defendants Feuerstein.

140. On August 25, 2020, three days before the closing of the forced forbearance, Brad Lefkowitz, Esq., from the office of defendant Kriss & Feuerstein, sent defendants Zwick and Zwick & Associates the closing documents, some of which had been already previously signed in blank and returned to the office of defendants Feuerstein and Kriss & Feuerstein.[13]

141. In response, on August 26, 2020 defendants Zwick and Zwick & Associates sent an email to Mr. Lefkowitz, which stated, in relevant part, as follows:

> Brad,
> There are many gating items which come up in this new draft which will prohibit my client from proceeding. Frankly, I am unsure why these drafts came the night before a closing when you have had my comments for weeks- . . . .
>
> Your client is holding Eli hostage to date and is now looking to continue that hostage situation indefinitely. (Emphasis added).
>
> Some of these are new requirements which never existed prior to last night and others are comments that don't work.
>
> Let me know when you can discuss the foregoing as this is not going to close in the current format.
> Jeff

142. Nonetheless, defendants Zwick and Zwick & Associates, upon information and belief, aware of the fraudulent scheme of defendants Madison Capital, Zegen and Gromley, and to provide substantial assistance in the achievement of that fraud, allowed the closing to proceed without explaining to plaintiff Karp the terms and conditions of the forbearance agreement and the related agreements.

[13] Mr. Lefkowitz's email contained an asterisk after his name stating "Not Admitted in New York."

143. For example, paragraph 4 of the forbearance agreement contained a waiver of claims and release, which was not explained to plaintiff Karp by defendants Zwick and Zwick & Associates, and provided, in relevant part, as follows:

> The Borrower and Guarantor hereby acknowledge and agree that they have no offsets, defenses, claims, or counterclaims against the Lender, its predecessors in interest, or any of their respective parents, subsidiaries, affiliates, members, managers, partners, agents, officers, principals, directors, shareholders, employees, attorneys, representatives, servicers, participants, predecessors, successors, assigns, or any person holding an interest in the Existing Loan (collectively, the "Lender Parties") with respect to the Existing Loan, the Existing Loan Documents, or the Existing Loan Obligations, including, without limitation, the Existing Default, or otherwise, and that if the Borrower or the Guarantor now have, or ever did have, any offsets, defenses, claims, or counterclaims whatsoever against the Lender Parties, whether known or unknown, foreseen or unforeseen (regardless of by whom raised), at law or in equity (or mixed), from the beginning of the world through the Effective Date and through the time of execution of this Agreement, all of them are hereby expressly WAIVED, and the Borrower and Guarantor each hereby remises, RELEASES, acquits, and discharges the Lender Parties from any liability therefor. It is understood and agreed that this paragraph shall not be deemed or construed as an admission by Lender of liability of any nature whatsoever arising from or related to the subject of this paragraph or otherwise.

144. As the purported waiver and release had not been explained or made known to plaintiff Karp and the other plaintiffs, by defendants Zwick and Zwick & Associates, and was, upon information and belief, part of the efforts of defendants Zwick and Zwick & Associates to aid and abet the fraudulent scheme of defendants Madison Capital, Zegen and Gormley, the purported release and waiver could not have been contemplated and intended by plaintiff Karp, and the other plaintiffs, to cover the breach of contract claims, claims for fraud and other tortious conduct by the plaintiffs against the defendants.

145. Also, since the purported waiver and release had not been discussed and explained to plaintiff Karp and the other plaintiffs, by defendants Zwick and Zwick & Associates, it cannot be said that the purported waiver and release was fairly and knowing made.

146. In the same vein, defendant Zwick and Zwick & Associates did not discuss and explain to plaintiff Karp and the other plaintiffs, the terms and conditions of the other related agreements.

147. At the closing of the forced forbearance, the Second Senior Loan in the amount of $8.3, which plaintiffs Karp and Hello Nostrand were required to take out against the Nostrand Project, was disbursed essentially to pay the millions of dollars in default interest which plaintiff Hello Nostrand had allegedly incurred because of its manufactured default on the Loan with defendants Madison Capital and 1580 Nostrand Ave.

148. Specifically, the loan settlement statement, dated August 28, 2020, from the closing of the forced forbearance, indicated that from the $8.3 million Second Senior Loan, $4,486,015.59 went to paid "Capitalized Accrued Default Interest to Lender" and $3,302,890.78 went to "Escrow Holdbacks: Interest Reserve."

149. In other words, $4,486,015.59 from the Second Senior Loan went to pay default interest which had been capitalized into the Loan, and $3,302,890.78 ironically, was being held in interest reserve to pay the interest on the Loan. It was the failure by the defendant Madison Capital and 1580 Nostrand Ave to have applied the $1,500,000.00 Minimum Interest Reserve, which was contained in the Payment Reserve Account, to pay the monthly interest payments of the Loan that permitted defendants Madison Capital and 1580 Nostrand Ave to have manufactured plaintiff Hello Nostrand's default on the Loan.

150. Significantly, the failure of defendants Zwick and Zwick & Associates to discuss and explained to plaintiff Karp, and the other plaintiffs the terms and conditions of the forbearance agreement, constituted professional malpractice because both defendants Zwick and Zwick & Associates did not exercise the ordinary reasonable skill and knowledge commonly

possessed by a member of the legal profession and that breach of duty proximately caused the plaintiffs to sustained actual and ascertainable damages.

151. In addition, as the attorneys for plaintiff Karp, and the other plaintiffs, in connection with the forbearance agreement, defendants Zwick and Zwick & Associates owed a fiduciary duty to the plaintiffs, but defendants Zwick and Zwick & Associates breached that duty by aiding and abetting the fraud which was perpetrated by defendants Madison Capital, Zegen, and Gormley upon the plaintiffs.

152. Parenthetically, as part of the forced forbearance closing, the defendants requested that plaintiff Karp sign a non-disparagement agreement, but he refused to do so. The non-disparagement agreement was not contained in the forbearance agreement like the purported release and waiver. To be sure, if defendant Madison Capital's lending practices were proper, it would not need plaintiff Karp to sign a non-disparagement agreement as part of the closing on the forced forbearance.

III. Defendant Madison Capital's Predatory Lending Practices Are A Continuous Course of Doing Business

153. On or about September 25, 205, defendants Madison Realty, Zegen, and defendants Feuerstein and Kriss & Feuerstein were named as defendants in an action before this very Court entitled *Sylvester Smolarczyk, et. al. v. Madison Realty Capital, LLP, et. al.*, Index Number 511720/2015 (hereinafter the "Smolarczyk Action") in which it was alleged that the defendants engaged in predatory lending practices similar those which have been alleged in this action.[14] (A copy of the complaint in the Smolarczyk Action is annexed hereto as Exhibit "B").

[14] Due to the similarities between the allegations in the Smolarczyk Action and this action, there will be extensive quotations from the complaint in that action.

154. Specifically, the complaint in the Smolarczyk Action alleged that defendant Madison Capital had purchased seven distressed mortgage notes from New York Community Bank for the sum of $10.00 each using a shell company.

155. Shortly after purchasing the distressed mortgages, defendant Madison Capital commenced foreclosure proceedings to recover the properties secured by those notes.

156. In this respect, the complaint alleged the following:

> Madison and Zegan had acquired these (7) notes by unlawful means with the banks aid with the intentions of executing a full-fledged land grab or worst case cash in on a significant profit to be made from the default interest and per diem. Once their land grab scheme was called out in open court on June 3, 2013 before Justice: Bernard J. Graham all (7) foreclosure complaints had been disposed by order of the Supreme Court County of Kings on June 25, 2013 (see Exhibit 2). (Emphasis added)(Exhibits omitted).
>
> Thereafter defendants were ordered to settle the remaining dispute with Madison, Zegan and Feuerstein whereby they strong armed them into entering forbearance agreements with exuberant amounts of both default interest and per diem being pilled on daily. (Emphasis added).
>
> Plaintiff's resumed securing financing to pay off the (7) mortgage notes held by Madison and Zegan. Since the (7) properties had a substantial amount of accrued debt, plaintiffs began focusing on financing their entire real estate portfolio which totaled (10) commercial properties and provided more equity.
>
> While working with Mr. Joseph Failla of Failla Funding ("Failla"), a licensed NYS mortgage broker, plaintiffs were then introduced to Mr. Jefforey Bell of CLS Inc ("CLS"), who presented themselves as a commercial lender. CLS claimed to have the capacity in providing a commercial bridge loan whereby capital would be allocated by their investors. Upon review of financial documents prepared by the plaintiffs and Failla, CLS then provided a term sheet (see Exhibit 3).
>
> There was a clear transparency present and mutual understanding from the beginning regarding partial releases for all (10) properties so plaintiffs could either successfully secure refinancing and/or sell off a number of properties to pay off the proposed loan, this was again acknowledged in the term sheet provided. Only after the fact that the term sheet was executed by the plaintiffs, CLS disclosed that their so called investors were in fact Madison and Zegan who would be providing the capital. Furthermore, CLS stressed the importance of a quick 2-4 week closing in favor of an attractive 10.75% rate and guaranteed funding by their so called investors.

> This was clearly a misrepresentation by CLS claiming to be the lender when in fact Madison and Zegan were the actual lenders. Plaintiffs recall at one point after executing the said term sheet, CLS had joked by asking if it wasn't going to be a problem to secure financing through their so called investors, Madison and Zegan due to the fact that part of the capital would be used to pay off (7) mortgage notes held by the same investors. . . .

(See Complaint, ¶¶ 28, 29, 30, 31, 32 & 33).

157. As in this case, there were many suspicious activities surrounding the closing as alleged in the complaint, in relevant part, as follows:

> During the pre-closing period from September 30, 2013 to November 1 & 4, 2013, plaintiffs worked with their closing attorney Mr. Elliot Martin, Esq. ("Martin"), Failla, CLS, Madison, Zegan and Feuerstein on closing items. Plaintiffs had yet again stressed the importance of partial release clauses for each of the (10) properties to be financed so that they may refinance and/or sell to eventually pay off the proposed loan. This request is evident in the Term Sheet provided discussed earlier. . . .
>
> Furthermore, it again did seem odd that a lender/investor who had purchased such distressed/defaulted mortgage notes and obviously knew about the plaintiffs 'the borrower's' history of default would agree to fund a multimillion dollar loan. Clearly establishing that Madison and Zegan where in fact engaging in some form of predatory lending practices. Since the plaintiffs had no time to debate such questions with daily per diems over their heads due to Madison and Zegan, they proceeded to move towards closing. (Emphasis added).
>
> On November 1 & 4, 2013 plaintiffs, Martin, Failla, CLS along with Madison, Zegan, Feuerstein and SDF's executed the closing of hard money bridge loan at the offices of Feuerstein who was the attorney representing Madison, Zegan and SDF's.
>
> The closing was executed in an unconventional manner whereby not all parties involved with the closing were at one table rather the plaintiffs, Martin and Failla were placed in a small room with the door closed.
>
> Feuerstein remained in a separate room and did not appear once throughout the entire closing. . .
>
> Madison and Zegan were not physically present but had numerous telephone conversations with Feuerstein throughout the entire closing. . . .
>
> In reality the transaction was essentially originated by CLS who posed as a Lender and provided plaintiffs with a Letter Of Interest/Term Sheet. Later shedding his snake skin and exposing himself as being a

> broker/correspondent who was paid commission from the loan proceeds. CLS was actually nothing more than a front man for Madison and Zegan who was used to execute a classic bait-and-switch on the plaintiffs.

(See Complaint, ¶¶ 34, 37, 38, 39, 40, 42 & 44).

158. The manner in which the closing documents was handled at the closing was particularly noteworthy, as was the conduct of the plaintiffs' attorney as alleged in the complaint, in relevant part, as follows:

> Closing documents were then brought into the room by Feuerstein's various staff members piece by piece. The documents did not appear to have been stapled/bound together, but rather loose. Each set of documents had a specific places for signatures as all legal binding documents but it appeared that as plaintiffs were being presented with these documents to execute only the last page was designated for signatures with no continuation of legal language running onto them. Those last pages of each set of documents were the only part signed by the plaintiffs, no initialing on any other pages was requested as many lenders often do with core loan documents for a large loan amount.
>
> Martin did not seem concerned nor did he object to any of the unconventional things going on, rather he would frequently leave the room and walk over to Feuerstein's office. This seemed rather odd since plaintiffs had a solid working relationship with Martin and knew him of a serious demeanor, a stickler for due process and pledging by the book. As Martin would make his rounds back and forth from Feuerstein's office he seemed less and less concerned with anything of the sort. In fact Martin became almost fixated with a simple fee disagreement that evolved between plaintiffs, Failla and CLS to the extent that he diverged attention away from the closing itself to referee. . . .
>
> Plaintiffs looked upon very puzzled then verbally asked both Martin and Feuerstein's staff members in the presence of Failla about their set of closing documents. Which then they were told that since there was 'a lot of paperwork/documents generated from the closing' there was no time to make a set for everyone and a set of original loan/closing documents would be forwarded to them shortly thereafter. After spending 2 long days in a small confined room, stressed out and exhausted they obliged and went home.

(See Complaint, ¶¶ 46, 47 & 50).

159. The events following the closing made clear to the plaintiffs that defendants Madison Capital and Zegen intended to trap them in a high-interest loan as part of a fraudulent scheme of loan to own by alleging in the complaint as follows:

> Post closing of the loan plaintiffs had made all interest payments in a timely manner, began marketing (4) of the (10) properties via MLS just one month thereafter (See Exhibit 4) and commenced searching for a conventional 'bank' / agency 'capital markets' refinancing within a few months. The missing loan/closing documents were not delivered to Martin until several months had passed by. . . .
>
> While the plaintiffs had been hard at work from both angles of potentially selling a portion of the assets or securing complete and/or partial refinancing as planned, Madison, Zegen, Feuerstein and SDF's, had been building their framework of fraud and deception. The first sign came when plaintiffs had requested to exercise their initial six month extension in a timely manner whereby Madison and SDF's began stalling the process intentionally then finally agreed to provide the extension but adding an additional 1% fee which naturally was being justified due to the plaintiffs allegedly not meeting the required time frame in their request. . . .
>
> A couple months thereafter plaintiffs had secured an Agency term sheet from working with Prudential Capital ("Prudential") for a proposed Freddie Mac refinancing at a very low/attractive interest rate with capability to pay off the entire bridge loan (See Exhibit 6). . . .
>
> An attorney on behalf of the Prudential requested a copy of the closing documents. Yet another revelation of never seen documents came to surface such as a First Right Of Refusal (See Exhibit 6). . . .
>
> Once . . . [this] unforeseen issue had surfaced the plaintiffs were advised that the current bridge loan was in fact problematic and a clean re-bridge would have to be put in place by another private money lender. The First Right Of Refusal was a deliberate roadblock put in place to create a hardship for the plaintiffs when seeking refinancing. Furthermore, these types of underhanded tactics are well known to be used by 'lend to own' lenders to make it nearly impossible for a borrower to get out from under their grip. (Emphasis added).
>
> Due to the circumstances mentioned the plaintiffs commenced to secure a clean re-bridge with yet another new lender in hopes that it would help them transition into a conventional/agency refinance in the near future. But for that to have been possible, a new lender would've needed to present more favorable terms than the present loan in place as per the First Right Of Refusal clause.

Again plaintiffs went to work on finding such lender through various sources and time consuming meetings, conference calls, countless emails, submittal of loan packages each tailored specifically to every lender. Finally a new lender was found, site inspection completed, loan package reviewed/analyzed, additional financial reports updated/submitted, face to face meetings and a term sheet was issued specifically to present more favorable terms. . . .

As plaintiffs and new lender waited underwriting had moved forward, title reports ordered/delivered/reviewed and survey updates ordered. The new lender raised a red flag with respect to a large amount of back property taxes owed and water/sewer charges, whereby the initial loan amount had to be raised.

As the plaintiffs realized of the problematic loan in place which led them to discover three serious unforeseen issues already, they commenced on doing a thorough and careful review of the entire closing documents. From the review they had unveiled layers of deception and fraud evident as black and white could be.

Since no original hard copies of the closing documents had been provided to plaintiffs as discussed earlier, the review had to be done using electronically scanned documents instead.

Nevertheless, the first questionable item was found by simple exploration of each PDF file and its properties which showed that they were not created until November 21, 2013, a total of (13) business after the closing (See Exhibit 6).

Second was the last pages which contained plaintiffs signatures as part of the documents that had come in question discussed earlier, seemed to have been stapled, separated by removal of staples then attached by re stapling but still did not match up to the staple marks on the entire set allegedly part of (See Exhibit 7).

Third was a review of the loan settlement statement whereby plaintiffs discovered that a total of $649,671.22 proceeds from the closing had been escrowed for the purpose of SDF's in paying Real Property Taxes and Water/Sewer Charges 18 months forward as the lender on plaintiffs behalf as discussed and agreed upon (See Exhibit 8).

But in contrary plaintiff has since learned that no Real Property Taxes had in fact been paid forward since the day of the closing as mentioned earlier and was forced to execute agreements with the NYCDOF to avoid sale of liens while having to incur additional 18% interest penalty (See Exhibit 9). . . .

As mentioned/discussed earlier Madison, Zegen, Feuerstein and SDF's had knowingly and maliciously put roadblocks in place to prevent the plaintiffs from successfully exiting/paying off the current bridge loan in place.

> This was achieved by first purchasing 7 out of 10 mortgage notes on the portfolio giving them an unfair leverage by holding majority of the debt.
>
> Second was the predatory bridge loan offering using CLS which took advantage of the plaintiff's vulnerability in wrapping their arms around the entire debt of the portfolio.
>
> Third was the fraudulent First Right Of Refusal, denial/exclusion of any partial release clauses for refinancing, exorbitant fees due for any exercised option to sell making it impractical/impossible in executing any such, withholding escrowed funds from being applied to any forward Real Estate Taxes thereby passing on the burden to the plaintiff and increasing the total amount of new capital needed to pay off the current bridge loan in place, forcing plaintiffs to go into default.
>
> Thereby using the default status to increase the exit fee and capitalize on charging 24% default interest (See Exhibit 12). Madison, Zegen, Feuerstein and SDF's have also deliberately stalled deliverance of pay off statements, all negotiations and demanded both forbearance agreements and waivers of foreclosure defense from plaintiff (See Exhibit 13) in hopes of chasing the current new lender away so they could ultimately complete their land grab scheme by commencing foreclosure proceedings.

(See Complaint, ¶¶ 51, 53, 57, 58, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 73, 74, 75, 76 & 77).

160. On September 7, 2016, the parties entered into a stipulation to dismiss the Smolarczyk Action with prejudice.[15]

161. The predatory lending practices that were detailed in the Smolarczyk Action are similar to the predatory lending practices which defendants Madison Capital, Zegen, and Gormley, aided and abetted by defendants Feuerstein, Kriss & Feuerstein, Zwick and Zwick & Associates, employed in this action against the plaintiffs.

[15] In another legal action that was commenced against defendant Madison Capital, among other defendants, in the Supreme Court, New York County entitled *Gulf Coast Arms, a Non-Profit Trust of Jefferson County, Texas v. Madison Realty Capital, L.P., et. al.*, Index No. 650643/2013, the defendants in that action were alleged to have engaged in money laundering in violation of 18 U.S.C. §1956; monetary transactions in property derived from specific unlawful activity in violation of 18 U.S.C. §1957; wire fraud in violation of 18 U.S.C. §1343; financial institution fraud in violation of 18 U.S.C. §1344; mail fraud in violation of 18 U.S.C. §1341; and/or interstate or international travel in violation of the Travel Act, 18 U.S.C. That action was also dismissed as part of a stipulation between the parties.

IV. The Beginning: How The Madison Pirates Got Their Hooks Into The Plaintiffs

162. The Nostrand Project was not the first project of plaintiff Karp that defendants Madison Capital, Zegen, and Gormley employed predatory lending practices to defraud plaintiff Karp and to manufacture a default on a loan owned by defendant Madison Capital so as to charge plaintiff Karp millions of dollars in default interest. The Nostrand Project was the culmination of prior predatory lending practices by defendants Madison Capital, Zegen, and Gormley for which the Nostrand Project, plaintiff Karp's most spectacular project, was the ultimate target.

163. As in the Smolarczyk Action, the playbook of defendants Madison Capital, Zegen, and Gormley in targeting the various projects of plaintiff Karp was the same.

164. First, acquire the note of a defaulted loan; then falsely promise to provide refinancing to bring the loan current; delay or refuse to provide the promised refinancing while charging millions of dollars in default interest on the loan; enter into a forbearance agreement to add more debt and interest charges on top of the default interest to prevent a new lender from providing any new refinancing for the loan; and finally when the mountain of default interest is unsustainable commence a foreclosure proceeding to take away the property.

165. The most critical feature of the defendants' fraudulent predatory lending practices is to make sure that defendant Madison Capital is on both sides of the loan transaction. In other words, defendant Madison Capital must both own the loan in default and be the lender providing the refinancing to bring the loan out of default.

166. By being on both sides of the loan transaction, defendants Madison Capital, Zegen, and Gormley can manipulate the transaction by delaying the refinancing to bring the loan current while at the same time driving up the default interest by millions of dollars by charging default interest at the rate of 24%.

167. This ability to manipulate the loan transaction by being on both sides allow defendants Madison Capital, Zegen, and Gormley to trap the borrower in the loan and ensures that the borrower cannot escape by finding a new source of refinancing because the amount in default interest will be in the millions of dollars and no other financing company will refinance the borrower out of the loan held by defendant Madison Capital.

A. Defendant Madison Capital Acquired The Loan On The Fulton Project

168. The Nostrand Project was not the beginning of plaintiff Karp's nightmare with the lending piracy of defendants Madison Capital, Zegen, and Gormley. It started with plaintiff Karp's real estate development at 1520 Fulton Street, Brooklyn, New York, which consists of 50 luxury rental apartments, large private terraces, and 25 parking spaces (hereafter the "Fulton Project").

169. On April 25, 2018, plaintiff Karp had a meeting with defendant Zegen, who expressed interest in taking over the loan on the Fulton Project.

170. Defendant Zegen explained to plaintiff Karp that since he himself is a developer, defendant Madison Capital understood much better how to service a construction loan. Accordingly, defendant Zegen explained that he and defendant Madison Capital could close very quickly and fund any construction loans that plaintiff Karp had with defendant Madison Capital.

171. In particular, defendant Zegen expressed interest in having defendant Madison Capital take over the loans on the Fulton Project, and on another project of plaintiff Karp which was a real estate development at 271 Lenox Road, Brooklyn, New York, which consists of 56 luxury rental apartments, with private elevators opening directly into each apartment, expansive private terraces, and 32 parking spaces (hereinafter the "Lenox Project").

172. In response, plaintiff Karp explained to defendant Zegen that the Fulton Project was almost completed and that he was not interested in changing lenders at this stage in the construction, but plaintiff Karp indicated to defendant Zegen that perhaps they could work together on other future projects.

173. Following the April 25, 2018 meeting with defendant Zegen, plaintiff Karp sent an email to Aryeh Friedman, the then managing director of originations for defendant Madison Capital, expressing interest in doing future business with defendant Madison Capital.

174. At the time, the loan for the Fulton Project was with Centennial Bank, and the loan was not in default.

175. On July 22, 2018, defendant Gormley sent an email to plaintiff Karp seeking to coordinate a walk-through of the Fulton Project with Centennial Bank, which was peculiar since defendant Madison Capital did not own the loan on the Fulton Project.

176. The activities of defendant Gormley in coordinating the walkthrough by Centennial Bank of the Fulton Project were so alarming that later on July 22, 2018, Mr. Ted Nikolov, the project manager of the Fulton Project, sent plaintiff Karp an email entitled "Lender Inspection Request" in which he stated the following:

> Who is Mark from Madison Realty Capital? It seams he will be the one touring the site with Sean. Centennial had a company called BBG schedule a walkthrough on Friday as part of their evaluation of the project. I had Liam walk with them as I didn't want to be put on the spot with questions I couldn't answer.
>
> I don't think you should cancel the walkthrough but I think we should be careful because it seems the vultures are circling. Thank you. (Emphasis added).

177. During the walk-through, defendant Gormley pulled plaintiff Karp aside and informed him that defendant Madison Capital could provide him with a loan on better terms

than the loan which Centennial Bank had on the Fulton Project and requested that plaintiff Karp send Madison Capital the rental projections.

178. After the walkthrough of the Fulton Project on July 24, 2018, at 12:45 p.m., plaintiff Karp, as requested by defendant Gormley, sent him the rental projections by email which stated the following:

> It was nice to meet you today, attached is the rental projections. Its in excel so you can play around with it.

179. In response, defendant Gormley on July 24, 2018 at 5:58 p.m. sent an email to plaintiff Karp stating the following:

> Eli – great meeting you today. I spoke with Josh and we would like to setup a meeting for first thing next week. He is traveling the rest of this week. Are you around Monday/Tuesday next week?
>
> Thanks,
> Mark

180. Unbeknownst to plaintiff Karp at the time, defendants Madison Capital, Zegen and Gormley were, upon information and belief, in conspiracy with Centennial Bank to manufacture a default by plaintiff Hello Fulton, the borrower on the Fulton Project, on the loan with Centennial Bank.

181. In particular, plaintiff Karp was not aware that the request by defendants Madison Capital, Zegen and Gormley for the rental projections on the Fulton Project was part of their fraudulent scheme to take over the loan on the Fulton Project from Centennial Bank after the manufactured default, charge default interest of 24% on the loan, and refuse to fund the Fulton Project so that it could be completed on schedule.

182. Thus, the request by defendants Madison Capital, Zegen and Gormley for the rental projections of the Fulton Project was in furtherance of their fraudulent scheme because, upon information and belief, they wanted to evaluate whether or not plaintiff Karp and Hello Fulton

would be able to refinance out of the manufactured default based upon the projected rental income for the Fulton Project.

183. As part of the fraudulent scheme by defendants Madison Capital, Zegen and Gormley to take over the loan with Centennial Bank on the Fulton Project after the manufactured default, defendants Zegen and Gormley had a meeting with plaintiff Karp at the offices of defendant Madison Capital on July 31, 2018 ostensibly to discuss defendant Madison Capital providing Hello Fulton with a refinancing loan on better terms than the loan which it had with Centennial Bank.

184. After the meeting between plaintiff Karp, Zegen, and Gormley on July 31, 2018, defendant Gormley, at 3:34 p.m., sent plaintiff Karp the following email:

> Eli – thanks for coming in. Shoot me over that revised budget and we will get our construction guys out there this week.
> Thanks,
>
> Mark

185. On August 20, 2018, less than a month after the July 31, 2018 meeting between plaintiff Karp and defendants Zegen and Gormley, Centennial Bank sent plaintiff Karp and Hello Fulton a default notice on the loan which it had on the Fulton Project supposedly because plaintiffs Hello Fulton and Karp had failed to provide the bank with the quarterly financial statements under the loan agreement.

186. After Centennial Bank put plaintiffs Hello Fulton and Karp in default on the loan for the Fulton Project, defendant Madison Capital, acting through its shell company, defendant Fulton Street Lender, purchased the loan from Centennial Bank.

187. Subsequently, on September 28, 2018, an assignment of mortgage from Centennial Bank to defendant Fulton Street Lender was filed with NYC Department of Finance, Office of the City Register containing a notation on the cover page that the filed copy should be returned

to defendants Feuerstein and Kriss & Feuerstein. (A copy of the assignment of mortgage from Centennial Bank to defendant Fulton Street Lender is annexed hereto as Exhibit "C").

B. Defendant Madison Capital Acquired The Loan On The Lenox Project

188. At about the same time that Centennial Bank sent plaintiff Karp a default notice on the loan for the Fulton Project, he was close to the completion of the Lenox Project, which would have allowed him to lease up the building.

189. To accomplish this, plaintiff Karp was in negotiations with Investors Bank, which owned the loan on the Lenox Project, for a three-month extension of that loan. The negotiations with Investors Bank were in their final stages, and plaintiff Karp had already paid the extension fee of $45,250.00 to the bank.

190. However, as part of their fraudulent scheme to gain control over all of plaintiff Karp's pending projects, defendants Madison Capital, Zegen, and Gormley, upon information and belief, conspired with Investors Bank to deny the extension of the loan.

191. Accordingly, on July 27, 2018, Investors Bank sent plaintiff Karp and plaintiff 271 Lenox, the borrower, a notice of maturity in which it stated that "[a]t this time the Bank is not interested in renewing the Subject Loan." Investors Bank also returned the $45,250.00 extension fee paid to it by plaintiff Karp.

192. Subsequently, Investors Bank notified plaintiff Karp that defendant Madison Capital, acting through its shell company, defendant MRC RE Holdings, had purchased the loan on the Lenox Project from the bank. The notice to plaintiff Karp from Investors Bank of the assignment of the loan on the Lenox Project to defendant Madison Capital advised him that payments and any questions about the loan should be sent to "MRC RE Holdings IIC, c/o Kriss

& Feuerstein LLP, 360 Lexington Avenue, Suite 1200, New York, New York 10007."[16] (A copy of the letter to plaintiff Karp from Investors Bank notifying him of the assignment of the loan on the Lenox Project to defendant Madison Capital is annexed hereto as Exhibit "D").

193. Subsequently, on August 30, 2018, an assignment of mortgage from Investors Bank to defendant MRC RE Holdings c/o of Kriss & Feuerstein LLP was filed with NYC Department of Finance, Office of the City Register containing a notation on the cover page that the filed copy should be returned to attorney Feuerstein's law offices. (A copy of the assignment of mortgage from Investors Bank to defendant MRC RE Holdings is annexed hereto as Exhibit "E").

194. On the very next day, on August 31, 2018, an assignment of mortgage from MRC RE Holdings to defendant 271 Lenox Lender was filed with NYC Department of Finance, Office of the City Register containing a notation on the cover page that the filed copy should be returned to attorney Feuerstein's law offices. (A copy of the assignment of mortgage from MCR RE Holdings to 271 Lenox Lender LLC is annexed hereto as Exhibit "F").

195. Notably, defendant 271 Lenox Lender LLC was formed as a New York corporation on August 31, 2018, the very day that MRC RE Holdings assigned the mortgage on the Lenox Project to 271 Lenox Lender for filing with the NYC Department of Finance, Office of the City Register. (A copy of the entity information on 271 Lenox Lender is annexed hereto as Exhibit "G").

196. In any event, now that defendants Madison Capital owned the loans on both the Fulton and Lenox Projects, it was in a position to charge plaintiff Karp millions of dollars in default interest on the loans and at the same time stall the completion of both projects as part of their fraudulent scheme of loaning to own using predatory lending practices.

[16] This is the law firm of attorney Feuerstein.

C. The Madison Pirates Prevented Plaintiff Karp From Refinancing The Loans On The Fulton and Lenox Projects With LoanCore

197. After it purchased the loans on the Fulton and Lenox Projects, defendant Madison, Zegen, and Gormley represented to plaintiff Karp that they wanted to make things work and they would be sending him pre-negotiation letters so that the default interest on the two loans could be lowered.

198. Months passed before plaintiff Karp finally received the pre-negotiation letters from defendant Gormley by email on October 11, 2018, at 12:02 p.m., which plaintiff Karp signed and promptly returned to defendant Gormley.

199. However, defendants Madison Capital, Zegen, and Gormley had no intention to promptly provide any refinancing to plaintiff Karp for the loans on the Fulton and Lenox Projects because they wanted to have the default interest on those loans mount so that plaintiff Karp could not refinance out of the loans.

200. As time passed with no refinancing by defendant Madison Capital on the two loans for the Fulton and Lenox Projects, while the default interest on both loans was ballooning, plaintiff Karp began looking for alternative lenders, and on November 9, 2018, he received a term sheet from LoanCore with exceptionally good terms and a low rate of interest. (A copy of the terms sheet for the loan with LoanCore is annexed hereto as Exhibit "H").

201. In response, plaintiff Karp informed defendants Zegen and Gormley that he would be proceeding with LoanCore, not defendant Madison Capital, to refinance the loans on the Fulton and Lenox Projects.

202. Defendants Zegen and Gormley represented to plaintiff Karp that if he stayed with defendant Madison Capital to refinance the loans on the Fulton and Lenox Projects, defendant Madison Capital would work out a forbearance agreement that would reduce the default interest

rate, and the amount in default interest that plaintiff Karp would have to pay on both loans on the Fulton and Lenox Projects.

203. However, defendants Zegen and Gormley made it clear to plaintiff Karp that if he proceeded to refinance the loans for the Fulton and Lenox Projects with LoanCore, there would be no reduction in the millions of dollars in default interest, and plaintiff Karp would be responsible for all of those months of default interest at the default interest rate.

204. Defendant Gormley requested that plaintiff Karp give him a few days for defendant Madison Capital to send him a term sheet for the refinancing of the loans on the Fulton and Lenox Projects.

205. On November 20, 2018, after the terms sheet to refinance the loans for the Fulton and Lenox Projects with LoanCore had expired, defendant Gormley finally sent plaintiff Karp a term sheet to refinance the loans with defendant Madison Capital.

206. Significantly, the November 20, 2018 term sheet which defendants Madison Capital, Zegen and Gormley sent plaintiff Karp had a higher rate of interest than the interest rate that was provided in the LoanCore term sheet. However, to defraud plaintiff Karp into proceeding with the refinancing of the loans for the Fulton and Lenox Projects, the term sheet did contain language that there would be a forbearance by defendant Madison Capital on the default interest rate on the loans and that the default interest rate would be reduced.

207. Specifically, the November 20, 2018 term sheet contained the following language:

> **Forbearance**: As a further condition to the making of the Loans, Borrower and Guarantor shall enter into a forbearance agreement acceptable to Lender in its sole discretion, with respect to the maturity defaults (and treatment of interest accrued post-maturity, including default interest) under the existing loans held by Lender on each Property.

(A copy of the November 20, 2018 term sheet from Madison Capital is annexed hereto as Exhibit "I").

208. The representations by defendants Zegen and Gormley that if plaintiff Karp did not refinance the loans for the Fulton and Lenox Projects with LoanCore, but instead with defendant Madison Capital, there would be a forbearance on the default interest rate and that the default interest rate would be reduced, were false and fraudulent and were made with the intent to defraud plaintiff Karp into foregoing the refinancing of the loans with LoanCore, as defendants Gormley and Madison Capital had no intention of reducing the amount of the default interest.

209. Plaintiff Karp believed the representations by defendant Gormley to be true, and he relied upon those representations in foregoing the refinancing of the loans with LoanCore, which offered him a lower rate of interest than the rate of interest provided for in the November 20, 2018 term sheet by defendant Madison Capital.

D. The Madison Pirates Use The Fulton And Lenox Projects To Get There Hands On The Flatbush Project

210. On November 25, 2018, plaintiff Karp informed defendant Gormley that he had an opportunity to buy out his partners in the Fulton and Lenox Projects.

211. Under the terms of the buyout, plaintiff Karp had twenty days to make a total non-refundable deposit of $3.3 million to his partners in both projects and to pay the remaining $10 million within 90 days after the initial deposit of $3.3 million. The non-refundable deposit on the Lenox Project was $2 million, and the non-refundable deposit on the Fulton Project was $1.3 million.

212. If plaintiff Karp failed to make the payment of $10 million within 90 days, he would lose his $3.3 million deposit plus both buildings to his partners.

213. In response, defendants Zegen and Gormley represented to plaintiff Karp that defendant Madison Capital would be able to provide him with the $3.3 million for the deposit on the buyout of his partners in the Fulton and Lenox Projects and that defendant Madison Capital would be able to close on the remaining $10 million within 90 days so that plaintiff Karp could fully buy out his partners and would not have to lose the Fulton and Lenox buildings to his partners.

214. These representations by defendants Madison Capital, Zegen, and Gormley were false and fraudulent in that defendants Madison Capital, Zegen and Gormley had no intention to fund the buyout by plaintiff Karp of his partners in the Fulton and Lenox Projects, but defendants Madison Capital, Zegen, and Gormley, intended to use the pretext of providing funding to plaintiff Karp to buy out his partners to attempt to gain control of plaintiff Karp's real estate development at 1357 Flatbush Avenue, Brooklyn, New York which consists of 35 luxury rentals, with large private terraces, indoor gym, and 7,000 square feet of retail space (hereinafter the "Flatbush Project"), and ultimately the Nostrand Project as further discussed below.

215. In furtherance of the fraud which defendants Madison Capital, Zegen, and Gormley perpetrated upon plaintiff Karp in their attempt to take over the Flatbush and Nostrand Projects, they represented to plaintiff Karp that if he wanted the $3.3 million to make the non-refundable deposit of the buyout of his partners in the Fulton and Lenox Projects, he should allow defendant Madison Capital to refinance the loans on those projects at a proposed rate of interest which was double the current interest rate on those loans, and, in addition, he should pledge his shares in the Flatbush Project to defendant Madison Capital to secure the $3.3 million loan to buyout his partners.

216. Accordingly, on October 28, 2018, defendants Madison Capital, Zegen, and Gormley sent plaintiff Karp a term sheet for a loan secured by a pledge of his shares in the Flatbush Project. The term sheet made it clear that the proceeds from the loan would be used by plaintiff Karp to pay the non-refundable deposit of $3.3 million to buy out his partners in the Fulton and Lenox Project by stating, in relevant part, as follows:

> **Proceeds:** Immediately upon closing the loan Madison shall release $3,500,000.00 in loan proceeds to the Borrower. Such proceeds will be used as a purchase deposit to secure investor buyout of 271 Lenox Road & 1520 Fulton Street. This loan is part of a proposed larger loan for $75,000,000.00 which will eventually cross collateralize 1357 Flatbush, 1520 Fulton Street & 271 Lenox Road. (Emphasis added).

(A copy of the October 28, 2018 term sheet for the loan on the Flatbush Project is annexed hereto Exhibit "J").

217. However, defendants Madison Capital, Zegen and Gormley falsely represented to plaintiffs Karp that if he pledged his shares in the Flatbush Project to defendant Madison Capital and take a loan for $3.5 million against the Flatbush Project to pay the non-refundable deposit to his partners, defendant Madison Capital would close within two weeks on a large loan to refinance the Fulton, Lenox and Flatbush Projects as a cross-collateralized loan.

218. This large cross-collateralized loan, defendants Madison Capital, Zegen, and Gormley falsely represented to plaintiff Karp would fund the remaining construction costs to complete the Fulton Project and to provide the additional $10 million that plaintiff Karp needed to buy out his partners in the Fulton and Lenox Projects.

219. These representations by defendants Madison Capital, Zegen, and Gormley were false and fraudulent in that they had no intention to close on the large cross-collateralized loan to refinance the loans on the Fulton and Lenox Projects or to provide funding to complete the

Fulton Project or the $10 million which plaintiff Karp needed to complete the buyout of his partners in the Fulton and Lenox Projects.

220. Instead, these false and fraudulent representations by defendants Madison Capital, Zegen, and Gormley were intended to defraud plaintiff Karp into permitting defendant Madison Capital, to place a loan on the Flatbush Project, which was merely a steppingstone in furtherance of their fraudulent scheme to gain ownership of the Flatbush and Nostrand Projects.

221. Indeed, defendants Madison Capital, Zegen, and Gormley also had no intention of funding the remaining construction costs so that the Fulton Project could be completed on schedule since plaintiff Karp had made it clear to them that completion of the Fulton Project was critical to the repayment of the large proposed cross-collateralized loan.

222. As explained by plaintiff Karp, with funding, the Fulton Project would be completed within the 90 days he was required to pay his partners the $10 million for the buyout, and the rental income from the Fulton Project could be used to repay the large proposed cross-collateralized loan.

223. On November 29, 2018, defendants Madison Capital, Zegen, and Gormley sent plaintiff Karp the deal sheet for the Flatbush interim deal by which defendant Madison Capital would loan plaintiff Karp the $3.5 million, secured by a pledge of his shares in the Flatbush Project, and the deal sheet for the large cross-collateralized loan covering the Fulton, Lenox and Flatbush Projects. (A copy of the deal sheet for the three proposed loans involving the Fulton, Lenox and Flatbush Projects is annexed hereto as Exhibit “K”).

224. The deal sheet contained three separate proposed loan transactions: the loan to refinance the loans on the Fulton and Lenox Projects; the interim loan on the Flatbush Project for

the deposit for plaintiff Karp to buy out his partners in the Fulton and Lenox Projects and the large cross-collateralized loan covering the Fulton, Lenox and Flatbush Projects.

225. The portion of the deal sheet to refinance the loans on the Fulton and Lenox Projects indicated that the payoff amount for the Fulton Project loan was $21,606,690.00 and the payoff amount for the Lenox Project was $18,005,298.00, and the interest reserve for both loans was $2,264,814.00, and with origination fees and other closing costs, the total amount of the loan for the Fulton and Lenox Projects was $50,750,000.00.

226. The portion of the deal sheet for the interim loan for the Flatbush Project was for $14,500,000.00, of which $10,800,000.00 was to be used to pay off the loan, which was held on the project by Community Preservation Corporation ("CPC"), a nonprofit affordable housing and community revitalization finance company. The CPC loan which plaintiff Hello Flatbush, the borrower, had on the Flatbush Project was a low-interest rate loan.

227. The interim loan on the Flatbush Project also provided for $3.5 million that would be used to pay the deposit to buy out plaintiff Karp's partners in the Fulton and Lenox Projects.

228. The portion of the deal sheet on the large proposed cross-collateralized loan, covering the Fulton, Lenox and Flatbush Projects, was for $75 million, with a gap or equity of $2,479,436 to be contributed by plaintiff Karp to make the total loan transaction $77,479,436.00, with an interest reserve of $3,500,000.00 which would have been sufficient to pay the monthly interest during the term of the loan.

229. To conceal the fact that they had no intention to provide plaintiff Karp with the cross-collateralized loan for $75,000,000.00 and that they intended merely to have him pledge his shares on the Flatbush Project loan, defendants Madison Capital, Zegen, and Gormley

insisted that instead of closing the large cross-collateralized loan for $75 million, they should first close on the Flatbush Project loan and then on the other loans.

230. Accordingly, plaintiff Karp signed the term sheet for the loan on the Flatbush Project and returned it to defendants Madison Capital, Zegen, and Gormley. (See Exhibit "J" annexed hereto).

231. In response, defendants Madison Capital, Zegen, and Gormley moved extremely quickly to close on the loan for the Flatbush Project, which was secured by a pledge of plaintiff Karp's shares in that project, and which replaced the CPC loan. All that was required for the closing was for plaintiff Karp to sign some blank signature pages, which were prepared by defendants Feuerstein and Kriss and Feuerstein. The actual loan agreements were not then provided.[17]

232. However, when it came to the cross-collateralized loan for $75 million, there was no rush by defendants Madison Capital, Zegen, and Gormley to close that loan as they never had any intention to do so.

E. The Bait-And-Switch Of The Deal Sheet For The Cross-Collateralized Loan

233. The deal sheet which defendants Madison Capital, Zegen, and Gormley sent to plaintiff Karp on November 29, 2018 for the cross-collateralized loan for $75 million was a bait-and-switch. It was sent to plaintiff Karp to defraud him into not refinancing the loans for the Fulton and Lenox Projects with LoanCore or any other lender and to permit defendants Madison Capital, Zegen and Gormley to defraud him into pledging his shares in the Flatbush Project to defendant Madison Capital, based upon false and fraudulent representations.

[17] As alleged in the Smolarczyk Action, there seem to be a recurring pattern of defendant Feuerstein having closing documents signed in blank.

234. Specifically, defendants Madison Capital, Zegen, and Gormley falsely and fraudulently represented to plaintiff Karp that Madison Capital would close the $75 million cross-collateralized loan promptly after the closing of the Flatbush loan, and within 90 days, to provide plaintiff Karp with the $10 million to buy out his partners in the Fulton and Lenox Projects, and to provide him with the funding to complete the Fulton Project.

235. In reality, defendants Madison Capital, Zegen, and Gormley had no intention whatsoever to close on the $75 million cross-collateralized loan so that plaintiff Karp would be able to pay the $10 million to buy out his partners in the Fulton and Lenox Projects within 90 days or to provide him with the funding which he needed to complete the Fulton Project on schedule.

236. The false and fraudulent representations by defendants Madison Capital, Zegen, and Gormley about the prompt closing of the $75 million cross-collateralized loan were merely designed to fraudulently induce plaintiff Karp to pledge to defendant Madison Capital his shares in the Flatbush Project.

237. As such, even though defendants Madison Capital, Zegen, and Gormley had sent the deal sheet for the $75 million cross-collateralized loan on November 29, 2018, there had been no date scheduled for the closing of the loan, and no funding had been provided to plaintiff Karp to complete the Fulton Project or to pay the $10 million to buy out his partners in the Fulton and Lenox Projects.

238. Becoming increasingly concerned, on December 18, 2018, plaintiff Karp sent defendant Gormley a text message stating, in relevant part, as follows:

> . . . . Help me get Flatbush & Fulton up & running. It's a crucial part of the 75m.

239. In a response text message, defendant Gormley stated the following:

> She is reviewing. I'm sure all fine and will fund tomorrow or the next day. No later than Friday.

240. This representation by defendant Gormley was false and fraudulent because defendants Madison Capital, Zegen, and Gormley had no intention to provide the $75 million cross-collateralized loan, and no funding of that loan was imminent, as asserted by defendant Gormley in his December 18, 2018, text message to plaintiff Karp.

241. With the 90-day clock ticking down for him to provide his partners with the $10 million or lose the Fulton and Lenox buildings, and with no funding forthcoming to complete the Fulton Project, on December 26, 2018, plaintiff Karp sent defendant Gormley a text message offering him best wishes on his honeymoon and inquiring about the funding for the Fulton Project.

242. In response, defendant Gormley sent plaintiff Karp a disingenuous text message stating the following:

> Are you putting in a draw on Fulton?

243. Plaintiff Karp responded by text message stating the following:

> Yes. We are sending in for Fulton. All Subs are excited to get back.

244. Based upon defendant Gormley's representation that funding for the Fulton Project would be forthcoming, plaintiff Karp had contacted all of the subcontractors who had walked off the project because there had been no funding for the project, and he requested that they return to work since defendant Madison Capital, Zegen and Gormley had represented that they would be providing the funding to complete the Fulton Project.

245. Since defendant Madison Capital was on both sides of the loans for the Fulton, Lenox and Flatbush Projects, as the owner of those loans and as the company that would refinance those loans to itself, there was little incentive for defendants Madison Capital, Zegen,

and Gormley to rush a closing of the $75 million cross-collateralized loan because each day the closing was delayed resulted in higher default interest on the loans for the Fulton and Lenox Projects, and each day the completion of the Fulton Project was delayed increased the likelihood of default on the Flatbush Project loan by plaintiff Karp.

246. Therefore, defendants Madison Capital, Zegen, and Gormley continued their systematic delay of the closing of the $75 million cross-collateralized loan.

247. Accordingly, on January 15, 2019, plaintiff Karp sent a text message to defendant Gormley inquiring as to whether he was "reviewing with Ted the Fulton Req?"[18]

> Defendant Gormley responded by stating that, "[y]es, speak tomorrow at 4 p.m."

248. However, upon information and belief, no such review of the requisition for the Fulton Project was taking place by defendant Gormley or by anyone else at defendant Madison Capital since there was no intention by defendants Madison Capital, Zegen, or Gormley to close on the $75 million cross-collateralized loan or to make any funding for the Fulton Project.

249. On January 21, 2019, plaintiff Karp sent another text message to defendant Gormley, which provided, in relevant part, as follows:

> Any update on funding Fulton?

250. Defendant Gormley responded that day by text message stating, "[l]et's wrap up this week." Once again, this representation was false and fraudulent because there was never any intention by defendants Madison Capital, Zegen, or Gormley to fund the Fulton Project or to close on the $75 million cross-collateralized loan.

[18] Ted Referred to Ted Nikolov, the project manager for the Fulton Project who first sounded the alarm when defendant Gormley insisted on accompanying Centennial Bank on the walk through of the Fulton Project.

251. In an effort to expedite the long-stalled closing on the $75 million cross-collateralized loan, and to obtain funding for the completion of the Fulton Project, plaintiff Karp arranged to have a meeting with defendants Madison Capital, Zegen, and Gormley at their offices on January 22, 2019. However, that meeting was canceled by defendants Madison Capital, Zegen, and Gormley.

252. On January 24, 2019, plaintiff Karp sent defendant Gormley another text message stating the following:

> We need to get Fulton funded I need the project ready for April rentals.

253. With a non-committal response from defendant Gormley about the funding for the Fulton Project, on January 25, 2019, plaintiff Karp sent another text message to defendant Gormley stating that "[w]e need to get Fulton going."

254. As before, the response by defendant Gormley was more false representations that funding was imminent and promises to "call later."

255. With still no funding by defendant Madison Capital for the Fulton Project forthcoming and becoming increasingly desperate, on January 29, 2019, plaintiff Karp sent yet another text message to defendant Gormley stating, "[p]lease push Fulton. Everything is a big loss."

256. Not even this desperate plea for funding of the Fulton Project caused any action on the part of defendants Madison Capital, Zegen, and Gormley. Later, on January 29, 2019, unable to explain the reason that defendants Madison Capital, Zegen, and Gormley were delaying funding for the completion of the Fulton Project, plaintiff Karp sent a very poignant text message to defendant Gormley stating the following:

> I'm not feeling the love anymore. Please tell me, did I do something wrong?

257. To allay plaintiff Karp's concerns and suspicions, defendant Gormley responded with a text message in which he stated the following:

> No
> I's dealing with it all trust me (Emphasis added).
> I'll call you shortly
> All love

258. This was all nonsense. There was no love from defendant Gormley, but instead, there was greed and callousness.

259. In fact, in the very email in which defendant Gormley was falsely representing to plaintiff Karp that he should trust him, defendant Gormley was not concerned that plaintiff Karp was about to lose the Fulton and Lenox buildings to his partners since he could not come up with the $10 million payment within the 90 days because defendants Madison Capital, Zegen and Gormley were deliberately and systematically delaying the closing of the $75 million cross-collateralized loan.

260. Rather, defendant Gormley was more concerned about getting a nice quotation from plaintiff Karp about defendant Madison Capital for a public relations article which defendant Zegen had arranged for defendant Madison Capital.

261. As indicated to plaintiff Karp by defendant Gormley, defendant Zegen was busy starting a new fund, and if plaintiff Karp provided a nice quotation about defendant Madison Capital that defendant Zegen could publish as part of the PR campaign for defendant Madison Capital, defendant Zegen would be very appreciative and would accelerate the funding for the Fulton Project.

262. Therefore, defendant Gormley in a text message to plaintiff Karp on January 29, 2019 instructed him to "just email that back to Raphael."[19]

263. On January 30, 2019, with half of the 90 days for the completion of the buyout of his partners in the Fulton and Lenox Projects already passed, and with no funding for the Fulton Project, and with the delay causing plaintiff Karp stress on all of his projects, he again sent a text message to defendant Gormley stating the following:

> Did I do something wrong? Please tell me. We had a clear understanding At the time of Flatbush closing that we will continue to fund Fulton, so the project will be completed by the buyout. I notified all subs that will get funding beginning of January & now it's hurting me everywhere because most subs are the same in other projects. Besides I needed Fulton to become income producing ASAP.
>
> I can't hang in limbo.
>
> If you don't like me as a client anymore please tell me now so I can move on. When you want something I know you can move at lightning speed so the fact that I'm continuing to chase you & getting nowhere is a Clear sign you're not interested anymore.

264. By this time, plaintiff Karp had still not received a term sheet for the $75 million cross-collateralized loan, and there were 45 days remaining before he would have to pay his partners $10 million if he did not want to lose the Fulton and Lenox buildings and the deposit of $3.2 million which he had paid towards the buyout from the loan on the Flatbush Project.

265. With time running out on the 90 days by which plaintiff Karp had to pay the $10 million to buy out his partners, and his repeated requests for a term sheet for the $75 million cross-collateralized loan persistently being ignored by defendants Madison Capital, Zegen and

[19] The reference to "Raphael" is to Raphael Chejade-Bloom, defendant Madison Capital's senior vice president overseeing its "marketing, events, and business development initiatives" as indicated on defendant Madison Capital's webpage.

Gormley, on February 5, 2019, plaintiff Karp decided to make a visit to the offices of defendant Madison Capital to see what the delay was all about.

266. At that unscheduled meeting, defendants Zegen and Gormley represented to plaintiff Karp that everything was fine and that he would shortly receive a term sheet for the $75 million cross-collateralized loan.

267. After the meeting on February 5, 2019, plaintiff Karp and defendant Gormley exchanged a series of text messages which provided, in relevant part, as follows:

> [Plaintiff Karp]: Thanks for taking the time to meet me today. Let me know as soon as you have the term sheet ready.
>
> [Defendant Gormley]: Of course, I'll reach out tomorrow. Thanks for stopping by.
>
> [Plaintiff Karp]: I need it. You told me I'll have it tonight. I really need it.

268. No term sheet was sent to plaintiff Karp by defendant Gormley on February 5, 2019, even though plaintiff Karp had made an unscheduled visit to the offices of defendant Madison Capital and was promised in person by defendant Gormley that the term sheet would be sent to plaintiff Karp that very night.

269. The next morning, February 6, 2019, plaintiff Karp sent a text message to defendant Gormley at 9:35 a.m. requesting the term sheet and stating the following:

> I need the term sheet now. Please.

270. Defendant Gormley responded by text message at 3:45 p.m. on February 6, 2019, I am "[s]ending you right now.

F. The New Deal Sheet For The $75 Million Cross-Collateralized Loan Was Another Bait-and-Switch

271. On February 6, 2019, at 4:22 p.m., defendant Gormley finally sent plaintiff Karp the long-awaited "new" deal sheet for the $75 million cross-collateralized loan.

272. This new deal sheet for the $75 million cross-collateralized loan was materially different from the deal sheet which defendants Madison Capital, Zegen, and Gormley had sent plaintiff Karp on November 29, 2018. (See Exhibit "K" annexed hereto).

273. In the first instance, the amount of the interest reserve in the new deal sheet was lowered from $3,500,000.00 to $1,924,337.00 to ensure that plaintiff Karp ran out of funds to make the monthly interest payments before the loan matured.

274. In addition, the new deal sheet increased the amount of plaintiff Karp's equity or gap contribution from $2,479,436.00 to $3,738,711.00 even though defendants Madison Capital, Zegen, and Gormley knew that plaintiff Karp was not able to come up with the extra more than one million dollars in equity funding because, among other things, they had delayed the funding for the completion of the Fulton Project. (A copy of the new deal sheet for the $75 million cross-collateralized loan which was sent to plaintiff Karp on February 6, 2019 is annexed hereto as Exhibit "L").

275. Defendants Madison Capital, Zegen, and Gormley callously sent plaintiff Karp a deal sheet on November 29, 2019, agreeing to provide him with a $75 million cross-collateralized loan that supposedly would provide plaintiff Karp with the $10 million that would be necessary for him to buy out his partners in the Fulton and Lenox Projects; fund the completion of the Fulton Project; and that would refinance the loans on the Fulton and Lenox Projects when they knew that they had absolutely no intention to close on that cross-collateralized loan.

276. All this time, defendants Madison Capital, Zegen, and Gormley were charging plaintiff Karp default interest rate of 24% on the loans for the Fulton and Lenox Projects.

G. Defendant Madison Acquired The Loan on The Nostrand Project

277. By the time that defendants Madison Capital, Zegen and Gormley provided plaintiff Karp on February 6, 2019 with the new deal sheet for the 75 million cross-collateralized loan, they knew that no lender would provide plaintiff Karp with a loan in that amount within 5 weeks to refinance the loans on the Fulton, Lenox and Flatbush Projects and to provide him with the $10 million which he needed to buy out his partners so as not to lose the Fulton and Lenox buildings.

278. Having put plaintiff Karp over a barrel, defendants Madison Capital, Zegen and Gormley ruthlessly went after his biggest and most spectacular property, which is the Nostrand Project.

279. Defendants Madison Capital, Zegen, and Gormley suggested that to save the Fulton Project, which they had single-handedly financially jeopardized, plaintiff Karp should put a mezzanine loan on the Nostrand Project to complete the Fulton Project.

280. Under the guise of due diligence for the mezzanine loan on the Nostrand Project, defendants Madison Capital, Zegen, and Gormley requested various financial documents on the project, which plaintiff Karp provided to them, and they also requested to make several site visits which they were permitted to do.

281. However, in a massive double-cross and as part of their fraudulent scheme of loan to own, rather than closing on a mezzanine loan for the Nostrand Project, on or about June 7, 2019, defendant Madison Capital purchased from Prophet Mortgage, the loan on the Nostrand Project.

282. After purchasing the loan on the Nostrand Project, defendants Madison Capital, Zegen and Gormley stopped the funding of the Nostrand Project, declared the loan in default and started charging backdated default interest of 24% on the loan, as discussed in detail above.

H. The Madison Pirates Prevented Plaintiff Karp From Escaping Their Clutches With A Loan From Greystone Services Corporation, Inc.

283. In the meanwhile, with the 90-day deadline fast approaching for him to buy out his partners in the Fulton and Lenox Projects, and with the Fulton Project not yet completed because defendants Madison Capital, Zegen and Gormley had refused to fund the project, plaintiff Karp decided that he had to do something to at least refinance the loan on the Lenox Project because, unlike the Fulton Project, that was a completed building for which it would be much easier to obtain a loan.

284. Accordingly, plaintiff Karp entered into discussions with Greystone Service Corporation, Inc. ("Greystone"), for a $30 million loan to refinance the loan on the Lenox Project, which was owned by defendant Madison Capital, and to buy out his partners in the Lenox Project.

285. On February 22, 2019, Greystone provided plaintiff Karp with a term sheet for a $30 million loan on the Lenox Project.

286. The terms on which Greystone was prepared to provide plaintiff Karp with the $30 million loan were extremely good. The rate of interest on the loan would be 5.50%, and the loan would be for a term of 24 months, with the option for two 6-month extensions. (A copy of the February 22, 2019 term sheet of the Greystone $30 million loan for the Lenox Project is annexed hereto as Exhibit "M").

287. The most critical aspect of the Greystone loan for plaintiff Karp is that it would have allowed him to refinance out of the loan on the Lenox Project with defendant Madison

Capital, on which he was being charged default interest, and to escape from the clutches of the Madison Pirates. However, defendants Madison Capital, Zegen, and Gormley were having none of this.

288. Therefore, to induce and defraud plaintiff Karp to forego the attractive $30 million loan on the Lenox Project from Greystone, defendants Madison Capital, Zegen, and Gormley on or about February 22, 2019 falsely represented to plaintiff Karp that if he refinanced the loan on the Lenox Project with defendant Madison Capital, they would promptly close on the $75 million cross-collateralized loan covering the Fulton, Lenox and Flatbush Projects which would provide the funding needed to complete the Fulton Project.

289. Unbeknownst to plaintiff Karp, defendants Madison Capital, Zegen, and Gormley, false representations about closing on the $75 million cross-collateralized loan were designed to deceive and did deceive him into foregoing the Greystone loan for a far more expensive loan with defendant Madison Capital because defendants Madison Capital, Zegen, Gormley had no intention of closing on the $75 million cross-collateralized loan.

290. In furtherance of the fraudulent scheme of defendants Madison Capital, Zegen, and Gormley to keep plaintiff Karp trapped in a high interest rate loan with defendant Madison Capital, they insisted that plaintiff Karp should first close on the refinancing of the loan on the Lenox Project, and then right after there would be a closing on the $75 million cross-collateralized loan.

291. In reliance upon the false and fraudulent representations of defendants Madison Capital, Zegen, and Gormley that shortly after the closing on the refinance of the loan on the Lenox Project, there would be a closing on the $75 million cross-collateralized loan, plaintiff

Karp decided to forego the attractive Greystone $30 million loan on the Lenox Project, a completed building, and to go with a loan from defendant Madison Capital.

292. The loan which defendants Madison Capital, Zegen, and Gormley offered plaintiff Karp on the Lenox Project had a high rate of interest for a completed building.

293. Specifically, as compared to the loan that Greystone offered plaintiff Karp on the Lenox Project, the loan which defendants Madison Capital, Zegen, and Gormley offered plaintiff Karp had an interest rate of 11% as compared with 5.5% for the Greystone $30 million loan; a lock-in period of seven months and the amount of the interest reserved was reduced to only four months.

294. Manifestly, defendants Madison Capital, Zegen, and Gormley designed the loan with the seven-month lock-in period and the reduced amount of the interest reserve to cover only four months to make sure that plaintiff Karp would exhaust the interest reserve before the lock-in period expired so he would default on the loan.

295. Added to this poison pill of a loan, defendants Madison Capital, Zegen, and Gormley included $1million of default interest; closing costs totally $1 million, and they demanded that the loan should include $1 million to pay down the loan on the Flatbush Project.

296. All total, the loan ballooned from $30 million, which was the amount of the Greystone loan, to over $33 million to refinance the loan that was on the Lenox Project.

297. Defendants Madison Capital, Zegen, and Gormley knew that plaintiff Karp was desperate to close on the $75 million cross-collateralized loan so that he could buy out his partners in the Fulton and Lenox Projects, and they used this desperation to defraud plaintiff Karp into foregoing the generous Greystone loan, and to stay trapped in a high-interest rate loan with defendant Madison Capital.

298. The day before the closing on the Lenox Project refinance loan, defendants Madison Capital, Zegen, and Gormley refused to approve the payment to the general contractor on the Project of the $1million that was owed to it, and which was previously agreed would be paid to the contractor from the loan, but instead, they insisted that this $1 million should be used to pay down the loan on the Flatbush Project.

299. In keeping with their predatory lending practices, defendants Madison Capital, Zegen, and Gormley waited until just before the closing to spring on plaintiff Karp the worst aspects of defendant Madison Capital's refinancing loan on the Lenox Project. This way, it would be too late for plaintiff Karp to back out of the loan.

300. Accordingly, just before the closing, defendants Madison Capital, Zegen, and Gormley reduced the interest reserve for the loan and added the lock-in period of seven months for the loan.

301. In anticipation that the terms of the Lenox Project refinancing loan would result in a default by plaintiff Karp, defendants Madison Capital, Zegen, and Gormley required that plaintiff Karp additionally secured the loan with a pledge of his shares in the Lenox Project. A pledge by plaintiff Karp of his shares in the Lenox Project, which was insisted upon by defendants Madison Capital, Zegen, and Gormley, was something that Greystone did not require for its far more generous refinancing loan on the project.

302. In any event, the only reason that plaintiff Karp took the overpriced Lenox Project refinancing loan from defendant Madison Capital instead of the more attractive Greystone loan was because, based upon the false and fraudulent representations of defendants Madison Capital, Zegen, and Gormley, plaintiff Karp believed that after the closing of the Lenox Project

refinancing loan, there would be a closing of the $75 million cross-collateralized loan so he would not lose the Fulton Project to his partners.

303. Plaintiff Karp, in anticipation of the closing on the $75 million cross-collateralized loan so he could save the Fulton Project, on March 15, 2019, before the closing on the Lenox Project refinancing loan, sent a text message to defendant Gormley stating the following:

> Can I meet Josh after the Closing on Monday to discuss Fulton & Nostrand?

304. Defendant Gormley responded by text message stating the following:

> Yes Lets get this closed and talk on those.
> Push Ted to get me the stuff but I think we are in good shape. (Emphasis added).

305. From the refinancing of the loan on the Lenox Project with defendant Madison, plaintiff Karp was able to obtain the balance of $7,640,657.53 to buy out his partners in the Lenox Project, but he could have achieved the same outcome with the $30 million loan from Greystone with a lower rate of interest and without the millions in added interests, costs, fees, and default interests.

I. Plaintiff Karp Loss The Fulton Building Because of The False And Fraudulent Representations of The Defendants

306. Plaintiff Karp so believed that defendants Madison Capital, Zegen, and Gormley would close on the $75 million cross-collateralized loan right after the closing of the refinancing of the loan on the Lenox Project, and that he would be able to buy out his partners in the Fulton Project and not lose that building, that ahead of the time of the essence scheduled closing of March 25, 2019 to buy out his partners in the Fulton Project, he had his attorney send to the attorney for his partners in the Fulton Project, Daniel J. Barkin, Esq., a proposed closing statement complete with wiring instructions at Valley National Bank where the funds to pay his

partners would be wired. (A copy of the proposed closing statement of March 25, 2019 is annexed hereto as Exhibit "N").[20]

307. In response, Mr. Barkin returned the proposed closing statement for the March 25, 2019 scheduled closing of the Fulton Project buyout with his marked-up changes. (A copy of the marked-up changes by Mr. Barkin to the proposed closing statement of March 25, 2019 is annexed hereto as Exhibit "O").

308. On March 17, 2019, defendant Gormley sent plaintiff Karp a text message inquiring how much time was left before the closing on the buyout on the Fulton Project, and plaintiff Karp specifically informed defendant Gormley that the closing was scheduled for March 25, 2019, time being of the essence.

309. Defendant Gormley responded, in a text message, "Ok, Speak tomorrow."

310. On March 18, 2019, plaintiff Karp had a meeting with defendants Zegen and Gormley at the offices of defendant Madison Capital, and during that meeting, defendants Zegen and Gormley represented to plaintiff Karp that defendants Madison Capital, Zegen, and Gormley would be able to close on the $75 million cross-collateralized loan before the March 25, 2019 scheduled buyout of plaintiff Karp's partners in the Fulton Project.

311. During the March 18, 2019 meeting with plaintiff Karp, defendants Zegen and Gormley represented to him that they would add a small pledge to the Nostrand Project and proceed with the closing of the $75 million cross-collateralized loan.

312. When plaintiff Karp reminded defendants Zegen and Gormley that there were only seven days remaining before the time of the essence closing on the buyout in the Fulton Project, defendants Zegen and Gormley represented to plaintiff Karp that they could close the $75

[20] The account numbers and other personal information on the March 25, 2019 proposed closing statement have been redacted for confidential purposes.

million cross-collateralized loan within two days since they already had the notes on the Fulton, Lenox, and Flatbush Projects.

313. Defendants Zegen and Gormley further represented to plaintiff Karp at the March 18, 2019 meeting that all that was necessary for the closing was for defendant Feuerstein to determine how to structure the closing.

314. These representations by defendants Zegen and Gormley were false and fraudulent in that defendants Madison Capital, Zegen and Gormley never had any intention to close on the $75 million cross-collateralized loan, and these representations were made to defraud and did defraud plaintiff Karp.

315. Plaintiff Karp believed these representations to be true and relied upon them to his detriment and suffered damages.

316. By March 21, 2019, plaintiff Karp still had no idea whether or not there would be a closing on the $75 million cross-collateralized loan.

317. Accordingly, on March 21, 2019, at 10:26 p.m., plaintiff Karp sent the following text message to defendant Gormley:

Do we have a decision?

318. Defendant Gormley did not respond to that text message, and, therefore, on March 22, 2019, at 10:00 a.m., plaintiff Karp sent defendant Gormley the following text message:

Let me know.

319. A little more than an hour later, defendant Gormley responded by text message, on March 22, 2019, at 11:12 a.m., stating the following:

On a flight.

320. Plaintiff Karp responded almost immediately by text message at 11:12 a.m., asking the following question:

Do you have an answer for Fulton?

321. Over an hour later, at 12:34 p.m., on March 22, 2019, defendant Gormley responded to plaintiff Karp's text message stating the following:

I'll call when I land.

322. Defendant Gormley never called plaintiff Karp when he landed on March 22, 2029, and on March 24, 2019, at 1:53 p.m., almost two days later, plaintiff Karp sent defendant Gormley another text message stating the following:

Did you land?

323. In response, almost a full day later, on March 25, 2019, at 11:24 a.m., defendant Gormley sent plaintiff Karp another bogus text message in which he stated the following:

On a call, give me a minute.

324. Defendant Gormley never called plaintiff Karp on March 25, 2019, the date for the time of the essence closing on the buyout of plaintiff Karp's partners in the Fulton Project, and defendants Madison Capital, Zegen and Gormley never closed on the $75 million cross-collateralized loan, and plaintiff Karp was not able to close on the buyout of his partners in the Fulton Project.

325. As a result, plaintiff Karp loss the Fulton Project to his partners, and he also loss the $1.3 million non-refundable deposit which he paid his partners in that project, plus the millions of dollars of capital contributions that he made to the project and his expected profits from the Fulton Project.

326. It was all a scam so that the Madison lending pirates could get plaintiff Karp to take out a mezzanine loan on the Nostrand Project and pledge his shares in the Flatbush and Lenox Projects so that they could get their hooks into the Fulton, Lenox, and Flatbush Projects, and the real prize the Nostrand Project, by dangling the prospect of the shiny object of the $75 million cross-collateralized loan in front of plaintiff Karp.

J. Plaintiff Karp's Partners And The Madison Pirates Acted In Concert To Cause Him To Lose The Fulton Project

327. At the time that defendants Madison Capital, Zegen, and Gormley were refusing to close on the $75 million cross-collateralized loan so that plaintiff Karp would have the $10 million to buyout his partners in the Fulton Project, defendants Madison Capital, Zegen, and Gormley did not disclose to plaintiff Karp that they were also, upon information and belief, in agreement with his partners that after he lost the building, defendants Madison Capital, Zegen, and Gormley would provide his partners with funding to refinance the loan on the Project, which was owned by defendant Madison Capital.

328. Indeed, upon information and belief, the refusal of defendant Gormley to respond to plaintiff Karp's urgent pleas days before the time of the essence closing on the buyout of his partners in the Fulton Project, and on the closing date, March 25, 2019, was part of a concerted fraudulent scheme between defendants Madison Capital, Zegen, Gormley, and plaintiff Karp's partners to cause plaintiff Karp to lose the Fulton Project for their common financial aggrandizement.[21]

329. Specifically, after fraudulently refusing to close on the $75 million cross-collateralized loan, and deliberately causing plaintiff Karp to lose the Fulton Project to his

[21] The publicly available information does not reveal whether or not defendants Madison Capital, Zegen, and Gormley became partners with plaintiff Karp's partners in the Fulton Project.

partners, on June 27, 2019, defendant Madison Capital, Zegen, and Gormley, acting through defendant Fulton Street Lender, another shell company of defendant Madison Capital, entered into two mortgage and note severance agreements with 1520 Fulton LLC, the company through which plaintiff Karp's partners were operating after he lost the Fulton Project to them. (A copy of the June 27, 2019 mortgage and note severance agreements is annexed hereto as Exhibit "P").

330. Based upon the two mortgage and note severance agreements, it appears that defendants Madison Capital, Zegen, and Gormley, acting through defendant Fulton Lender, eliminated millions of dollars in default interest on the Fulton Project loan and provided plaintiff Karp's partners with a mezzanine loan on the project in the amount of $3 million.

331. Significantly, at the same time that defendants Madison Capital, Zegen, and Gormley were in agreement with plaintiff Karp's partners in June 2019, to provide them with funding on the Fulton Project, after they acted in concert to cause him to lose the Fulton Project, defendants Madison Capital, Zegen, and Gormley were steadfastly refusing to provide plaintiff Karp with any funding for the Nostrand Project.

332. Also, at that same time, defendants Madison, Zegen, and Gormley were declaring plaintiff Hello Nostrand in default on the loan for the Nostrand Project and backdating the default to July 1, 2019, at the default interest rate of 24%.

333. Apparently, defendants Madison Capital, Zegen, and Gormley had no concern about the material conflict of interest between refusing to provide plaintiff Karp with the funding needed to buy out his partners in the Fulton Project while, upon information and belief, at the same time being in agreement with those very same partners to provide them with funding after plaintiff Karp loss the Fulton Project.

334. However, the relationship of plaintiff Karp with defendants Madison Capital, Zegen, and Gormley has been infected by a series of conflicts of interests on their part.

335. Defendants Madison Capital, Zegen, and Gormley used information obtained from plaintiff Karp, in many instances confidential business information such as rental projections, among others, to purchase the loan on the Nostrand Project from Prophet Mortgage, to purchase the loan on the Fulton Project from Centennial Bank, and to purchase the loan on the Lenox Project from Investors Bank.

K. Greystone Came Back To Rescue Plaintiff Karp On The Lenox Project Loan From The Madison Pirates

336. Even though plaintiff Karp had gone with defendant Madison Capital's far more expensive refinancing loan on the Lenox Project than the more attractive $30 million Greystone loan, with a lower interest rate, and which did not require him to pledge his shares in the Lenox Project and did not have a seven-month lock-in period, after that period had expired, Greystone came back to rescue plaintiff Karp from his oppressive loan with defendant Madison Capital.

337. On September 13, 2019, Greystone gave plaintiff Karp a term sheet for a $35 million loan at a rate of interest of 5.25% to refinance the Lenox Project loan which he had with defendant Madison Capital (hereinafter the "Greystone $35 Million Loan").

338. The interest rate of 5.25% on the Greystone $35 Million Loan was even lower than the earlier $30 million Greystone loan which plaintiff Karp had rejected, and the interest rate was less than half of the interest rate of 11% which defendant Madison was charging plaintiff Karp on the Lenox Project refinancing loan. (A copy of the September 13, 2019 term sheet for the Greystone $35 Million Loan is annexed hereto as Exhibit "Q").

339. On or about November 1, 2019, after the closing on the Greystone $35 Million Loan, plaintiff Karp was able to payoff defendant Madison Capital on the Lenox Project

refinancing loan, have the pledge against his shares in that project released by defendant Madison Capital, and escape the clutches of the lending pirates, defendants Madison Capital, Zegen and Gormley.

340. However, based upon the predatory lending practices of defendant Madison Capital and its business model of loan to own, defendants Madison Capital, Zegen, and Gormley have already ended up collecting millions of dollars in default interests, fees, and costs from plaintiff Karp and having purchased the loan on the Nostrand Project from Prophet Mortgage, they have now turned their fraudulent designs to that project.

341. With the purchase of the loan on the Nostrand Project, the circle of fraud perpetrated upon plaintiff Karp by defendants Madison Capital, Zegen, and Gormley was completed.

V. The Madison Shell Companies Are Mere Instrumentalities of Defendant Madison Capital Which Has Used Them To Commit Fraud And Breach of Contract

342. Defendants 1580 Nostrand Ave, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, 271 Lenox Lender, and Fulton Street Lender are shell companies and alter egos of defendant Madison Capital.

343. Accordingly, defendants 1580 Nostrand Avenue, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, and Fulton Street Lender are mere instrumentalities of defendant Madison Capital.

344. Defendant Madison Capital has dominated and controlled defendants 1580 Nostrand Avenue, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, and Fulton Street Lender, and has ignored any corporate formalities.

345. Rather than constituting going concerns, defendants 1580 Nostrand Avenue, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, and Fulton Street Lender merely are shell

entities that were formed to hold the mortgages and notes which were acquired by defendant Madison Capital on the Nostrand, Flatbush, Fulton, and Lenox Projects.

346. These shell companies of defendant Madison Capital have no separate corporate offices or employees and act through defendants Madison Capital, and they were formed in order to attempt to shield defendant Madison Capital from liability for its fraudulent and other tortious conduct and its breach of contract as alleged herein.

347. Indeed, defendant Madison has purposely undercapitalized defendants 1580 Nostrand Avenue, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, and Fulton Street Lender to avoid liability for its fraudulent and other tortious conduct and its breach of contract as alleged herein.

348. Defendant Madison Capital has used its control and domination of defendants 1580 Nostrand Avenue, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, and Fulton Street Lender to commit fraud and other tortious acts, and breach of contract as alleged herein.

349. As such, equity and good conscience require that the Court pierce the corporate veil of defendants 1580 Nostrand Avenue, 1357 Flatbush Avenue, Brooklyn Three, MCR RE Holdings, and Fulton Street Lender and hold defendant Madison Capital liable for the wrongs perpetrated on the Plaintiffs.

350. Separately, defendants Zegen and Gormley are agents of defendant Madison Capital which is liable for their conduct, and their tortious conduct is attributable to defendant Madison Capital.

VI. The $3,000,000.00 Mezzanine Loan And The UCC Transaction Designed To Legalize The Attempted Predatory Taking of The Nostrand Project

351. The various machinations of defendants Madison Capital, Zegan and Gormley had one central objective which was to gain ownership of plaintiff Karp's largest and most spectacular project. That project is the Nostrand Property.

352. To accomplish this objective, defendants Madison Capital, Zegen and Gormley decided that they would offer plaintiffs Karp and Hello Nostrand a mezzanine loan of $3,000,000.00 which would be secured by 100% of the membership interests in plaintiff Hello Nostrand, the owner of the Nostrand Property.

353. The mezzanine loan transaction also involved a mezzanine promissory note secured by a pledge and security agreement subject to Article 9 of the New York Uniform Commercial Code ("N.Y. U.C.C. Law").

354. On July 14, 2021, defendant 1580 Nostrand Mezz served plaintiff Hello Nostrand, and others, with a Notice of Sale of the Collateral defined as 100% of the membership interests in plaintiff Hello Nostrand. The UCC foreclosure sale was scheduled for September 2, 2021.

355. In response on August 17, 2021, plaintiff Hello Nostrand, among others, commenced an action in the Supreme Court, Rockland County entitled *Hello Living Developer Nostrand, LLC and Hello Nostrand, LLC v. 1580 Nostrand Mezz, LLC and Madison Realty Capital, L.P.*, Index No. 034885/2021, alleging, among other things, that the UCC foreclosure sale was commercially unreasonable and seeking injunctive relief under UCC-625.

356. On August 24, 2021, the Supreme Court, Rockland County issued a temporary restraining order ("TRO") enjoining the UCC foreclosure sale which was scheduled for

September 2, 2021. (A copy of the TRO which was issued by the Supreme Court, Rockland County is annexed hereto as Exhibit "R").

357. A hearing on the motion for a preliminary injunction enjoining the UCC foreclosure sale is scheduled by the Supreme Court, Rockland County for October 18, 2021.

AS FOR A FIRST CAUSE OF ACTION
(Fraud Against Defendants
Madison Capital, Zegen and Gormley)

358. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 357 as if fully set forth herein.

359. On July 1, 2019, during a meeting at defendant Madison Capital offices, defendants Madison Capital, Zegen, and Gormley represented to plaintiff Karp that they would assist him in completing the Nostrand Project, would work with him to upsize the Loan, and would provide him with requested loan advances.

360. These representations by defendants Madison Capital, Zegen and Gormley were false and fraudulent, and they knew that they were false and fraudulent because they had no intention of working with plaintiffs Karp to upsize the Loan, provide him with requested loan advances, or assisting him with completing the Nostrand Project.

361. Instead, defendants Zegen and Gormley intended to engage in a fraudulent scheme of delaying the funding of the Nostrand Project to prevent its timely completion to manufacture an alleged default by plaintiff Hello Nostrand on the Loan; to trigger millions of dollars in default interests at the default interest rate of 24%; and ultimately to obtain ownership of the building with the commencement of a foreclosure proceeding.

362. These representations were made by defendants Madison Capital, Zegen, and Gormley to induce plaintiff Karp to rely upon them, and he believed them to be true and he did rely upon them to his detriment.

363. Following defendant Madison Capital's purchase of the loans on the Fulton and Lenox Projects, and after plaintiff Karp had received a term sheet for a loan from LoanCore to refinance the two loans, defendant Madison, Zegen, and Gormley represented to plaintiff Karp that they wanted to make things work and they would be sending him pre-negotiation letters so that the default interest on the two loans could be lowered.

364. Further, defendants Zegen and Gormley represented to plaintiff Karp that if he stayed with defendant Madison Capital to refinance the loans on the Fulton and Lenox Projects, defendant Madison Capital would work out a forbearance agreement that would reduce the default interest rate, and the amount in default interest that plaintiff Karp would have to pay on both loans on the Fulton and Lenox Projects, and that they would promptly fund the refinancing of both loans, and the completion of the Fulton Project.

365. However, defendants Madison Capital, Zegen, and Gormley knew that these representations were false because they had no intention to promptly provide any refinancing to plaintiff Karp for the loans on the Fulton and Lenox Projects because they wanted to have the default interest on those loans mount so that plaintiff Karp could not refinance out of the loans.

366. Further, the representations by defendants Zegen and Gormley that if plaintiff Karp did not refinance the loans for the Fulton and Lenox Projects with LoanCore, but instead with defendant Madison Capital, there would be a forbearance on the default interest rate on those loans and that the default interest rate would be reduced, were false and fraudulent and

were made with the intent to induce plaintiff Karp into foregoing the refinancing of the loans with LoanCore.

367. However, at the time these representations were made, defendants Zegen and Gormley had no intention to refinance the loans for the Fulton and Lenox Projects or to enter into any forbearance agreement to lower the default rate of interest on those loans.

368. These representations by defendants Madison Capital, Zegen, and Gormley were made with the intent to deceive plaintiff Karp, and he believed that these representations were true, and relied upon them to forego refinancing of the loans on the Fulton and Lenox Projects with LoanCore to his detriment.

369. On or about November 25, 2018 when plaintiff Karp informed defendants Madison Capital, Zegen, and Gormley that he had an opportunity to buyout his partners in the Fulton and Lenox Projects, they represented to plaintiff Karp that defendant Madison Capital would be able to provide him with the $3.3 million for the non-refundable deposit on the buyout of his partners in the Fulton and Lenox Projects and that defendant Madison Capital would be able to close on the remaining $10 million within 90 days so that plaintiff Karp could fully buy out his partners and would not have to lose the Fulton and Lenox buildings to his partners.

370. These representations by defendants Madison Capital, Zegen, and Gormley were false and fraudulent in that defendants Madison Capital, Zegen and Gormley had no intention to fund the buyout by plaintiff Karp of his partners in the Fulton and Lenox Projects, but defendants Madison Capital, Zegen, and Gormley, intended to use the pretext of providing funding to plaintiff Karp to buy out his partners to attempt to gain control of the Flatbush Project.

371. Indeed, unbeknownst to plaintiff Karp, at the very time that defendants Madison Capital, Zegen, and Gormley were making false and fraudulent representations to plaintiff Karp that they would provide him with the funding needed to buy out his partners in the Fulton Project, upon information and belief, they were in agreement with his partners that after he lost the building, defendants Madison Capital, Zegen, and Gormley would provide his partners with funding to refinance the loan on the Fulton Project.

372. Further, at the time, defendants Madison Capital, Zegen, and Gormley, upon information and belief, were working in concert to avoid providing the funding to plaintiff Karp to buyout his partners in the Fulton Project so that he would be unable to buyout his partners and would lose the Fulton Project plus the $1.3 million non-refundable deposit which he paid his partners in that project, plus the millions of dollars of capital contributions which he made to the project, and his expected profits from the Fulton Project.

373. Defendants Madison Capital, Zegen, and Gormley knew that these representations were false, and they made them with the intention to induce plaintiff Karp to rely upon them, and he did rely upon them to his detriment.

374. On or about February 22, 2019, after plaintiff Karp received a term sheet from Greystone for a $30 million refinance loan on the Lenox Project, defendants Madison Capital, Zegen, and Gormley represented to plaintiff Karp that if he refinanced the loan on the Lenox Project with defendant Madison Capital, instead of with Greystone, they would promptly close on the $75 million cross-collateralized loan covering the Fulton, Lenox and Flatbush Projects which would provide the funding needed to complete the Fulton Project.

375. These representations were false and fraudulent, and defendants Madison Capital, Zegen, and Gormley knew that they were false and fraudulent in that they had no intention to close on the $75 million cross-collateralized loan.

376. These representations were made by defendants Madison Capital, Zegen, and Gormley to induce plaintiff Karp to rely upon them, and he did rely upon them to his detriment in foregoing the Greystone loan for a far more expensive loan with defendant Madison Capital.

377. In addition, these false representations by defendants Madison Capital, Zegen, and Gormley were made to induce plaintiff Karp to rely upon them to his detriment by pledging his shares in the Flatbush and Lenox Projects to defendant Madison Capital as part of the fraudulent scheme of defendants Madison Capital, Zegen, Gormley to manufacture a default on the loans on those projects as part of defendant Madison Capital's predatory lending practices and its business model of loan to own.

378. On March 18, 2019, during a meeting at the office of defendant Madison Capital with plaintiff Karp, defendants Madison Capital, Zegen, and Gormley represented to plaintiff Karp that defendant Madison Capital would be able to close on the $75 million cross-collateralized loan before the March 25, 2019 scheduled buyout of plaintiff Karp's partners in the Fulton Project.

379. Defendants Madison Capital, Zegen, and Gormley knew that these representations were false in that they had no intention to close on the $75 million cross-collateralized loan so that plaintiff Karp could buy out his partners in the Fulton and Lenox Project.

380. Plaintiff Karp believed these representations to be true, and they were made by defendants Madison Capital, Zegen, and Gormley with the intent to induce plaintiff Karp to

rely upon them, and he did rely upon them to forego other sources of funding to buy out his partners in the Fulton Project to his detriment.

381. As a result, plaintiff Karp was defrauded and seeks damages in an amount to be determined at trial but is believed to be in excess of $200 million, plus punitive damages in the amount of $500 million to deter defendants Madison Capital, Zegen, and Gormley in the future from engaging in the egregious tortious conduct alleged herein, which was gross and morally reprehensible and demonstrated wanton dishonesty.

AS FOR A SECOND CAUSE OF ACTION
(For Aiding and Abetting Fraud Against
Defendants Feuerstein, Kriss & Feuerstein,
Zwick, and Zwick & Associates)

382. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 381 as if fully set forth herein.

383. As more fully alleged above, using predatory lending practices as part of their scheme to obtain ownership of plaintiff' Karp's buildings, including specifically the Nostrand Building, defendants Madison Capital, Zegen, and Gormley have defrauded the plaintiffs with the intent and purpose of manufacturing defaults by the plaintiffs on the loans which are owned by defendants Madison Capital, and its various shell companies.

384. Specifically, defendants Madison Capital, Zegen, and Gormley represented to plaintiff Karp that they would assist him in completing the Nostrand Project, would work with him to upsize the Loan, and would provide him with requested loan advances.

385. These representations by defendants Madison Capital, Zegen and Gormley were false and fraudulent, and they knew that they were false and fraudulent because they had no intention of working with plaintiffs Karp to upsize the Loan, provide him with requested loan advances, or assisting him with completing the Nostrand Project.

386. Instead, defendants Zegen and Gormley intended to engage in a fraudulent scheme of delaying the funding of the Nostrand Project to prevent its timely completion to manufacture an alleged default by plaintiff Hello Nostrand on the Loan; to trigger millions of dollars in default interests at the default interest rate of 24%; and ultimately to obtain ownership of the building with the commencement of a foreclosure proceeding.

387. On or about November 25, 2018 when plaintiff Karp informed defendants Madison Capital, Zegen, and Gormley that he had an opportunity to buy out his partners in the Fulton and Lenox Projects, they represented to plaintiff Karp that defendant Madison Capital would be able to provide him with the $3.3 million for the non-refundable deposit on the buyout of his partners in the Fulton and Lenox Projects and that defendant Madison Capital would be able to close on the remaining $10 million within 90 days so that plaintiff Karp could fully buy out his partners and would not have to lose the Fulton and Lenox buildings to his partners.

388. These representations by defendants Madison Capital, Zegen, and Gormley were false and fraudulent in that defendants Madison Capital, Zegen and Gormley had no intention to fund the buyout by plaintiff Karp of his partners in the Fulton and Lenox Projects, but defendants Madison Capital, Zegen, and Gormley, intended to use the pretext of providing funding to plaintiff Karp to buy out his partners to attempt to gain control of the Flatbush Project.

389. These representations were made by defendants Madison Capital, Zegen, and Gormley to induce plaintiff Karp to rely upon them, and he did rely upon them to his detriment in foregoing the Greystone loan for a far more expensive loan with defendant Madison Capital.

390. In addition, these false representations by defendants Madison Capital, Zegen, and Gormley were made to induce plaintiff Karp to rely upon them to his detriment by pledging his shares in the Flatbush and Lenox Projects to defendant Madison Capital as part of the fraudulent scheme of defendants Madison Capital, Zegen, Gormley to manufacture a default on the loans on those projects as part of defendant Madison Capital's predatory lending practices and its business model of loan to own.

391. Defendants Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates had knowledge of the fraud which defendants Madison Capital, Zegen, and Gormley had perpetrated upon the plaintiffs.

392. Defendants Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates aided and abetted the fraud which had been perpetrated upon the plaintiffs by defendants Madison Capital, Zegen, and Gormley by providing substantial assistance to defendants Madison Capital, Zegen, and Gormley in the achievement of the fraud.

393. Specifically, defendants Feuerstein, Kriss & Feuerstein provided substantial assistance in the achievement of the fraud by sending on February 14, 2020 a false and fraudulent default letter to plaintiffs Karp and Hello Nostrand which illicitly backdated the alleged default on the Loan to July 1, 2019, thereby charging plaintiff Hello Nostrand default interest of 24% starting on July 1, 2019 and making plaintiff Hello Nostrand falsely and fraudulently liable for millions of dollars in default interest on the Loan at the default interest rate of 24%.

394. In addition, defendants Feuerstein, Kriss & Feuerstein provided substantial assistance to defendants Madison Capital, Zegen, Gormley in the achievement of the fraud by

sending on March 2, 2020 another false and fraudulent default letter to plaintiffs Karp and Hello Nostrand which purportedly corrected the false and fraudulent February 14, 2020 letter.

395. The false and fraudulent Correct Default letter purported to charge plaintiff Hello Nostrand millions of dollars in default interests.

396. Additionally, defendants Feuerstein, Kriss & Feuerstein provided substantial assistance in the achievement of the fraud by fraudulently providing blank signature pages for execution by plaintiffs Karp and Hello Nostrand in connection with the closing of the Forbearance Agreement and the related agreements.

397. Defendants Zwick and Zwick & Associates aided and abetted the fraud which had been perpetrated upon the plaintiffs by defendants Madison Capital, Zegen, and Gormley by providing substantial assistance to defendants Madison Capital, Zegen, and Gormley in the achievement of the fraud.

398. Specifically, defendants Zwick & Zwick Associates, in conspiracy with defendants Madison Capital, Zegen, Gormley, Feuerstein, and Kriss & Feuerstein fraudulently permitted and directed plaintiffs Karp and Hello Nostrand to execute blank signature pages in connection with the closing of the Forbearance Agreement and the related agreements.

399. As a result of the aiding and abetting of fraud by defendants Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates, the plaintiffs have been damaged in an amount to be determined at trial but is believed to be in excess of $200 million.

AS FOR A THIRD CAUSE OF ACTION
(For conspiracy To Commit Fraud Against Defendants Madison Capital, Zegen, Gormley, Feuerstein, Kriss & Feuerstein Zwick and Zwick & Associates)

400. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 399 as if fully set forth herein.

401. As more fully alleged above, using predatory lending practices as part of their scheme to obtain ownership of plaintiff' Karp's buildings, including specifically the Nostrand Building, defendants Madison Capital, Zegen, and Gormley have defrauded the plaintiffs with the intent and purpose of manufacturing defaults by the plaintiffs on the loans which are owned by defendants Madison Capital, and its various shell companies.

402. Upon information and belief, there was a conspiracy between defendants Madison Capital, Zegen, Gormley, Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates to defraud the plaintiffs.

403. Defendants Madison Capital, Zegen, Gormley, Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates have each taken an overt act, as alleged above, in furtherance of the conspiracy against the plaintiffs.

404. Defendants Madison Capital, Zegen, Gormley, Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates have each intentionally participated in the furtherance of the plan and purpose of the conspiracy to manufacture defaults by the plaintiffs on loans owned by defendant Madison Capital, and its various shell companies, using predatory lending practices to gain ownership of the buildings owned by the plaintiffs.

405. As a result of defendants Madison Capital, Zegen, Gormley, Feuerstein, Kriss & Feuerstein, Zwick, and Zwick & Associates conspiracy to commit fraud, the plaintiffs have

been damaged in an amount to be determined at trial but is believed to be in excess of $200 million.

AS FOR A FOURTH CAUSE OF ACTION
(Breach of Contract Against Defendants
Madison and 1580 Nostrand Ave)

406. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 405 as if fully set forth herein.

407. The Loan documents, including the Senior Loan, Project Loan, and Building Loan, as well as the corresponding notes and mortgages, constitute valid and binding contracts, supported by consideration.

408. Defendants 1580 Nostrand Ave became the current holder of the Senior Note, the Building Note, and the Project Note, and purports to be the assignee of the mortgages related to the Loan when on or about June 7, 2019, defendant Madison Capital purchased the Loan from Prophet Mortgage.

409. Accordingly, the Loan Documents, including the Senior Loan, Project Loan, and Building Loan, as well as the corresponding notes and mortgages, became a valid contract between plaintiff Hello Nostrand and 1580 Nostrand Ave.

410. Plaintiff Hello Nostrand complied with its obligations under the Loan Documents.

411. Defendant 1580 Nostrand Ave breached the Loan Documents by, among other things, the following:

(i) wrongfully declaring that plaintiff Hello Nostrand defaulted under the Loan on February 14, 2020 based on an alleged failure to make monthly installment payments to defendant 1580 Nostrand Ave due on July 1, 2019 and thereafter;

(ii) wrongfully declaring that plaintiff Hello Nostrand defaulted under the Loan on March 2, 2020 based on an alleged failure to make monthly installment payments to defendant 1580 Nostrand Ave due on November 1, 2019 and thereafter;

(iii) improperly charging default interest on the Loan at a rate of 24% per annum based on alleged Events of Default that did not exist and instead were manufactured by defendant 1580 Nostrand Ave, and backdating that default interest to July 1, 2019;

(iv) failing to automatically disburse funds from the Loan's Payment Reserve Account as necessary on behalf of plaintiff Hello Nostrand to make the monthly installment payments due under the Loan documents; and

(v) failing to ensure that the balance of funds in the Loan's Payment Reserve Account remained equal to the Minimum Payment Reserve Balance of $1,500,000.00.

412. Defendant 1580 Nostrand Ave is a shell company of defendant Madison Capital which has exercised complete control and domination over defendant 1580 Nostrand Ave.

413. Defendant Madison Capital has used defendant 1580 Nostrand Ave to breach the contract with plaintiff Hello Nostrand and, therefore, the corporate veil of defendant 1580 Nostrand Ave should be pierced, and defendant Madison Capital should be jointly and severally liable for the breach of contract by defendant 1580 Nostrand Ave.

414. As a result of the breach of contract by defendants 1580 Nostrand Ave and defendant Madison Capital, plaintiff Hello Nostrand has been damaged in an amount to be determined at trial but is believed to be in excess of $50 million.

AS FOR A FIFTH CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing
Against Defendants 1580 Nostrand Ave and Madison Capital)

415. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 414 as if fully set forth herein.

416. Implied in every contract is a covenant of good faith and fair dealing that imposes upon the parties thereto a duty of good faith and fair dealing, which requires that the parties not do anything to deprive each other of the benefits of the contract.

417. After defendant Madison Capital purchased the Loan on or about June 7, 2019, from the Original Lender, through its shell company, defendant1580 Nostrand Ave, it stopped funding of the Loan so as to frustrate the ability of plaintiff Hello Nostrand to complete the Nostrand Project.

418. Despite repeated requests, by August 2020, it had been nine months since defendants Madison Capital and 1580 Nostrand Ave last provided any funding for the completion of the Nostrand Project, and the Nostrand Project could not be completed on schedule.

419. Consequently, the purpose of the Loan Agreement was frustrated, and plaintiff Hello Nostrand was injured in its rights to obtain the fruits of the agreement, and the purpose of the agreement was frustrated by the conduct of defendants Madison Capital and 580 Nostrand Ave.

420. As result of the breach of the implied covenant of good faith and fair dealing, plaintiff Hello Nostrand has been damaged in an amount to be determined at trial but is believed to be in excess of $100 million.

AS FOR A SIXTH CAUSE OF ACTION
(Legal Malpractice Against Defendants Malpractice Against Defendants Zwick and Zwick & Associates)

421. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 420 as if fully set forth herein.

422. Defendants Zwick & Zwick and Associates were retained by plaintiffs Karp and Hello Nostrand to represent them in connection with the closing of the Forbearance Agreement and the related agreements.

423. Defendants Zwick and Zwick & Associates were paid a significant amount in legal fees to represent plaintiffs Karp and Hello Nostrand to represent them in connection with the closing of the Forbearance Agreement and the related agreements.

424. In connection with the closing of the Forbearance Agreement and the related agreements, defendants Zwick and Zwick & Associates directed plaintiffs Karp and Hello Nostrand to sign blank signature pages which were prepared by defendants Feuerstein, Kriss & Feuerstein, without discussing or explaining the terms and conditions of those agreements.

425. In particular, defendants Zwick and Zwick & Associates did not discuss or explain to plaintiffs Karp and Hello Nostrand that the Forbearance Agreement contained a waiver and release and the scope and coverage of such a waiver and release.

426. The failure of defendants Zwick and Zwick & Associates to discuss the waiver and release with plaintiff Karp prevented him from making an intentional relinquishment of a known right under the wavier and release.

427. By having plaintiffs Karp and Hello Nostrand sign blank signature pages in connection with the closing of the Forbearance Agreement and related agreements, and not discussing or explaining the waiver and release contained in the Forbearance Agreement, defendants Zwick and Zwick & Associates failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession.

428. If defendants Zwick and Zwick & Associates had discussed and explained to plaintiffs Karp and Hello Nostrand the terms and conditions of the Forbearance Agreements and

the related agreements, plaintiffs Karp and Hello Nostrand would not have signed the Forbearance Agreement and the related agreements.

429. Accordingly, but for the negligence of defendants Zwick and Zwick & Associates, plaintiffs would not have suffered any ascertainable damages as a result of the execution of the Forbearance Agreement and the related agreements.

420. As a result of the legal malpractice of defendants Zwick and Zwick & Associates, plaintiffs Karp and Hello Nostrand have sustained damages in an amount to be determined at trial but is believed to be in excess of $200 million.

AS FOR A SEVENTH CAUSE OF ACTION
(Breach of Fiduciary Duty Against
Defendants Zwick
and Zwick & Associates)

421. The plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 420 as if fully set forth herein.

422. Defendants Zwick and Zwick & Associates owed a fiduciary duty to plaintiffs Karp and Hello Nostrand in representing them in the closing of the Forbearance Agreement and the related agreements.

423. Defendants Zwick and Zwick & Associates breached that fiduciary duty by aiding and abetting the fraud, which was perpetrated upon the plaintiffs by defendants Madison Capital, Zegen and Gormley and by conspiring with the other defendants to defraud the plaintiffs.

424. As a result of the breach of their fiduciary duty by defendants Zwick and Zwick & Associates, plaintiffs Karp and Hello Nostrand have been damaged in an amount to be determined at trial but is believed to be in excess of $200 million.

WHEREFORE, Plaintiffs demand judgment on their first cause of action for fraud in an amount to be determined at trial but is believed to be in excess of $200 million, and punitive

damages of $500 million; on their second cause of action for aiding and abetting fraud in an amount to be determined at trial but is believed to be in excess of $200 million; on their third cause of action of conspiracy to commit fraud in an amount to be determined at trial but is believed to be in excess of $200 million; on their fourth cause of action for breach of contract in an amount to be determined at trial but is believed to be in excess of $200 million; on their fifth cause of action for breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial but is believed to be in excess of $100 million; on their sixth cause of action for legal malpractice in an amount to be determined at trial but is believed to be in excess of $200 million; and on their seventh cause of action breach of fiduciary duty in an amount to be determined at trial but is believed to be in excess of $200 million, plus the costs and disbursements of this action, including attorneys' fees, and such other and further relief as to the Court seems just and proper.

Dated: New York, New York
October 14, 2021

Law Offices of Victor A. Worms
Attorneys for plaintiffs Eli Karp, Hello Nostrand LLC, 271 Lenox LLC and Hello Flatbush LLC

By: _____
Victor A. Worms
48 Wall Street, Suite 1100
New York, New York 10005
(212) 374-9590

VERIFICATION

I, Eli Karp, because of my religious beliefs which do not permit me to swear, affirm the following:

I am a plaintiff in the above-captioned action, and that I am the principal of plaintiffs Hello Nostrand, LLC, 271 Lenox LLC, and Hello Flatbush LLC. I have read the foregoing amended complaint, and the same is true to my personal knowledge, except as to matters alleged upon information and belief, and as to those matters, I believe them to be true.

Dated: Monsey, New York
October 14, 2021

Eli Karp

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
EAST VILLAGE PROPERTIES LLC, *et al.*	Case No. 17-22453 (RDD)
Debtors	(Jointly Administered)

OBJECTION OF THE NEW YORK ATTORNEY GENERAL AS A PARTY IN INTEREST TO THE FINAL CONSENT ORDER (I) AUTHORIZING AND DIRECTING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363(c) (II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. § 361, AND (III) GRANTING RELATED RELIEF

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The People of the State of New York, by their attorney, ERIC T. SCHNEIDERMAN, Attorney General of the State of New York ("NYAG"), submit this objection (the "Objection") and the Declaration of Mark Ladov ("Ladov Declaration") and exhibits thereto, in opposition to the *Final Consent Order (I) Authorizing and Directing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c), (II) Granting Adequate Protection Pursuant to 11 U.S.C. § 361 and (III) Granting Related Relief* (the "Consent Order").[1] In support of this Objection, the NYAG respectfully represents and alleges the following:

PRELIMINARY STATEMENT

1. This bankruptcy proceeding is part of an ongoing property flipping scheme, which started in September 2015 when an inexperienced and unscrupulous landlord named Raphael Toledano ("Toledano") purchased fifteen rent-stabilized apartment buildings in Manhattan's East Village (the "East Village Portfolio" or the "Portfolio")[2], using financing provided by Madison Realty Capital ("Madison").[3]

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[1] All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

[2] *See* First Hearing Transcript at 8. At the time the Debtors purchased the Portfolio, Toledano was the principal in all of these LLCs. According to documents filed by the Debtors, Toledano currently controls 2% of the shares of East Village Properties LLC, which owns and manages all of the other single-asset LLCs in these proceedings. The other current shareholders are GC Realty Advisors LLC ("GCRE") and Yonah Halton. The Debtors have also represented that GCRE, through its manager David Goldwasser, took control of the Debtors from Toledano shortly before filing the current Chapter 11 bankruptcy petitions on March 28, 2017. Accordingly, for the purposes of this filing, the NYAG refers to the Debtors interchangeably as either "Toledano" or "Debtors" when discussing matters that occurred prior to March 28, 2017, when the Debtors were under Toledano's management and control.

[3] Madison's loans were made through an LLC whose name was later changed to EVF 1 LLC, the Secured Creditor in these proceedings.

2. New York State has enacted the Rent Stabilization Code, which covers many of New York City's large apartment buildings such as those in the Portfolio, in order "to prevent the exaction of unjust, unreasonable and oppressive rents and rental agreements, and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare." 9 N.Y.C.R.R. § 2520.3. In order to achieve these goals, the Code includes a number of protections for covered tenants, including a guaranteed right to a renewal lease, *see* 9 N.Y.C.R.R. § 2524.1, and limitations on a landlord's ability to increase rents, *see* 9 N.Y.C.R.R. § 2522.1, *et seq*. Toledano and Madison sought to profit from the elimination of these protections in the Portfolio.

3. At the time Toledano struck this deal with Madison, he was a 25-year-old real estate broker who had just started using his relationships in the real estate industry, and a willingness to engage in misrepresentations and fraud, to build up a small portfolio of individual multi-family properties. Despite his limited holdings, Toledano had already developed an outsized reputation for harassing tenants. Toledano's tactics quickly led to complaints from tenants and local elected officials, as well as multiple lawsuits (including a tenant harassment case that later settled for over $1 million).

4. In response to such complaints, the NYAG and the Tenant Protection Unit (TPU) of the New York State Division of Housing and Community Renewal (DHCR) opened a joint investigation into Toledano's misconduct, including violations of New York's rent stabilization code and other tenant protection laws. That investigation has since expanded to review Toledano's financial misconduct, and to examine the role of Toledano's lenders and financial partners, including Madison, in facilitating his schemes to harass tenants and avoid rent regulation laws.

5. The prior landlord, the Tabak family, had owned these buildings for decades under a traditional model: the landlord collects rents from tenants, uses that money to operate the building, and keeps whatever is left as profit. Madison's loan terms instead required Toledano to embark on a hyper-aggressive plan to drive up the rents in these buildings. Within only two years of closing on the Portfolio, pursuant to his plan with Madison, Toledano intended to evict or buy out half of the tenants in these buildings, including those protected by New York's affordable rent regulation laws; renovate their apartments, often without regard to applicable housing and safety laws; pass his construction costs on to new tenants via increased rents; and increase rents as quickly as possible above the threshold (currently $2700 per month under New York law) that allows a landlord to apply to remove an apartment from rent stabilization or rent control. Madison's loan terms, which required repayment of the Debtors' mortgage loan in full after 24 months, mandated Toledano's accelerated and unrealistic timetable.

6. Madison knew or should have known this plan could not be executed without disregarding tenants' rights and Toledano's obligations as their landlord. As a consequence, during Toledano's brief tenure as manager, these properties accumulated dozens of regulatory violations, as well as over $1 million in unpaid bills for taxes, insurance, utilities and other costs that are standard for a New York City landlord.

7. Toledano's plan, however, was doomed from the start, because it was impossible to satisfy the terms of the loans he used to buy these properties. Toledano purchased the East Village Portfolio for $97 million, and acquired over $124 million in cash and lines of credit from Madison to finance the purchase and planned buyout and construction costs. Madison's loan terms ensured that the Debtors' property income could *never* cover the required monthly interest

payments on these loans. As a result, Toledano was destined to default (as he did less than 10 months after purchase) when a reserve fund covering initial interest payments ran out.

8. After Toledano defaulted by missing the interest payment due on July 1, 2016, his interest rate on all these loans jumped to Madison's default interest rate of 24%. Madison now claims a secured debt of over $145 million, far more debt than the Portfolio can cover based on the current rent rolls.

9. Although post-petition financing is necessary to ensure that the Debtors can continue business operations, preserve the value of estate assets, and maintain the properties for current tenants, the Consent Order as proposed is overreaching, and grants the Debtors and Secured Creditor too much discretion to continue their plans for these properties without regard to tenants' rights or the public interest.

10. Madison provided financing to Toledano that was known from the outset the Debtors would be unable to repay, and that resulted in Toledano's mismanagement of the Debtors' properties. The proposed Consent Order and Property Management Agreement ("PMA") in turn will maximize Madison's own profits and secure for itself all of the Debtors' valuable assets at the expense of the general unsecured creditors, including tenants. GCRE will similarly benefit from the Consent Order by securing its profits from the Debtors' affairs, without regard to the proper administration of this bankruptcy proceeding or the other claims on these properties.

11. Madison's position as the secured creditor is preventing the Debtors from pursuing an alternative restructuring, such as a sale to a new owner who would correct the unlawful conduct that has characterized the Debtors' management of these properties to date. The proposed Consent Order will curtail the ability of other creditors and parties in interest to

participate in an honest and fair bankruptcy process and chills any serious competitive offers for the Debtors' assets.

12. In fact, although Madison is seeking to obtain adequate protection through cross-collateralized liens and super priority claims, and to control the outcome of this case by a Plan and Agreements that have not been filed with this Court, there do not appear to have been prepetition efforts to obtain financing on more favorable terms. The Debtors have not addressed whether they vigorously sought post-petition financing during the pre-petition period. There also do not appear to have been sufficient pre-petition efforts to market the Debtors for sale. The Debtors have only spoken generally about two sale offers that they rejected. One was rejected at least in part because it "would have eaten into an agreement with [Madison]."[4] It is not surprising that the Debtors, having no other options and no negotiating leverage, were ultimately forced to seek refuge in the bankruptcy court and strike a deal with Madison. However, Madison's outsized position in this case stems from its own misconduct in making a predatory "loan to own" deal with the Debtors. The Court should require this case to proceed in a manner that will allow other potential buyers to come forward and in a manner dictated by the lawful needs of these rent-stabilized apartment buildings, rather than by Madison's position as the secured creditor.

13. The proposed Consent Order hinges on an extremely aggressive timetable that does not allow sufficient time to scrutinize how the Plan will be implemented and who stands to profit from it. In fact, the Debtors here have not even filed the Plan that, pursuant to the Interim Stipulation, was due on May 4, 2017. The NYAG asks the Court not to approve any financial

[4] *See* First Hearing Transcript at 12.

arrangements that will limit the State's ability to seek appropriate relief for the unlawful conduct that has taken place in the financing and management of these properties to date.

14. For these reasons, the NYAG objects to, among other things, the manner in which the PMA and the Consent Order have been linked and the aggressive and unreasonable milestone requirements being imposed in these cases. The NYAG requests that the Court deny the Consent Order, or alternatively, direct modification of the proposed Consent Order, including modifications to de-link the Consent Order and the PMA and to extend the timeframe of the milestones, so as to address the objections set forth herein.

JURISDICTION

15. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

16. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

THE NYAG'S INTEREST IN THIS PROCEEDING

17. The NYAG is an interested party in this proceeding. Fed. R. Bankr. P. 2018(b) authorizes the NYAG to appear and be heard on behalf of consumer creditors in a Chapter 11 case when the intervention is in the public interest. Under New York Executive Law 63(12), the NYAG is authorized to investigate and take remedial action against any person or business that engages in repeated or persistent fraudulent business practices. The NYAG, along with the Tenant Protection Unit (TPU) of the New York State Division of Housing and Community Renewal (DHCR) is currently investigating the parties involved in this bankruptcy proceeding. As such, the NYAG has a clear interest in redressing the harm to affected tenants' health, safety

and legal rights and ensuring that terms by which this bankruptcy proceeding unfolds and are ultimately resolved are fair and equitable.

PROCEDURAL BACKGROUND

18. On the Petition Date, each of the Debtors filed voluntary petitions for reorganization under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). This Court has entered an order directing the joint administration of these cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' cases.

19. The Debtors consist of fifteen single-asset entities that were created to purchase and own a set of fifteen rent-stabilized multi-family apartment buildings in Manhattan's East Village, as well as a holding company that is the owner of the fifteen single-asset LLCs. At the time of their initial incorporation, Toledano was the principal of each single-asset LLC.

20. According to documents filed by the Debtors, Toledano currently controls 2% of the shares of East Village Properties LLC, which owns and manages all of the other single-asset LLCs in these proceedings. The other current shareholders are GCRE and Yonah Halton. The Debtors have also represented that GCRE, through its manager, David Goldwasser, took control of the Debtors from Toledano shortly before filing the current Chapter 11 bankruptcy petitions on March 28, 2017. The circumstances surrounding Goldwasser's takeover of the Debtors have not been disclosed. It is not clear who Goldwasser or Yonah Halton are or what their role was with respect to the Debtors prepetition.

21. On April 12, 2017 the Debtors filed the Motion for Entry of an Order Approving the Interim Stipulation and Order (A) Authorizing and Directing the Use of Cash Collateral, (B) Granting Adequate Protection, and (C) Granting Related Relief [Docket No. 20] (the "Motion") and the Court entered an Order to Show Cause that same day setting an interim hearing on April 14, 2017 to consider whether to approve the Interim Stipulation (the "First Hearing").

22. On April 14, 2017, the First Hearing on the approval of the Motion was held before the Honorable Sean H. Lane, at which time, counsel for the Debtors, Madison, the Office of the United States Trustee ("UST"), the NYAG, and counsel to certain tenants represented by the Urban Justice Center ("UJC") appeared.

23. On April 24, 2017, a second interim hearing on the approval of the Motion was held before the Honorable Sean H. Lane (the "Second Hearing"), at which hearing counsel for the Debtor, Madison, the UST, the NYAG, and UJC appeared.

24. On April 27, the Court so ordered the Interim Stipulation and set a final hearing to be held on May 16, 2017.

25. Upon information and belief, the United States Trustee was unable to form a committee of unsecured creditors.

26. The Interim Stipulation required that on May 4, 2017, the Debtors file their Plan of Reorganization (the "Plan") and Disclosure Statement (the "Disclosure Statement") pursuant to an agreement (the "Agreement") between Madison and the Debtors. As of the date of this Objection, they have not filed any of these.

FACTUAL BACKGROUND

I. Madison Realty Capital's Mortgage Loan to Toledano is Consistent with a Predatory "Loan to Own" Business Model

27. Madison is a private equity firm that has developed a reputation for high-cost equity-based loans, made based on the value of the collateral but without regard to the ability of the borrower to repay the loan terms. *See* Mark Maurer, "Friend to Some, Foe to Others," *The Real Deal* (Sept. 1, 2016), available at https://therealdeal.com/issues_articles/friend-to-some-foe-to-others/. In addition, Madison purchases its own portfolio of distressed property assets, which it manages through its Silverstone Property Group ("Silverstone") property management arm, in order to resell the buildings for significant profit. *See id.*

28. Madison has presented itself in these proceedings as the party best positioned to clean up the mess created by Toledano and his company Brookhill Properties. *See, e.g.*, Decl. of Phillip G. Lavoie, Doc. 56-2, ¶¶ 13-15 (describing steps that Silverstone will take to correct Toledano's failure to staff properties properly; clean up waste and debris from vacant apartments; and address property code violations). However, Madison shares responsibility for Toledano's misconduct.

29. As the evidence described below shows, when Madison advanced funds for the purchase of the Portfolio in September 2015, it was evident from the loan and underwriting documents that the loans would soon go into default. It was clear that the two-year loan term set impossible targets; that increasing the cash flow and value of these properties would never

happen quickly enough to cover the required debt payments; and that these events would trigger the 24% default interest rate as soon as approximately nine months after origination.[5]

30. Toledano's efforts to meet Madison's loan terms forced him to defer routine maintenance and property costs needed to operate the buildings, thus violating tenants' leases and disturbing their right to quiet enjoyment of their homes. Madison and Toledano's plan also anticipated that Toledano would rely on unlawful conduct, including construction plans that violated New York City law; aggressive and sometimes allegedly frivolous litigation against tenants; and plans to charge illegal rents.

31. Madison's willingness to take over properties in default, as it is seeking to do through these bankruptcy proceedings, is consistent with reports that Madison engages in predatory "loan to own" deals with unaffordable terms that it expects to result in a foreclosure and property acquisition. *See* Mark Maurer, "Friend to Some, Foe to Others," *The Real Deal* (Sept. 1, 2016), available at https://therealdeal.com/issues_articles/friend-to-some-foe-to-others/. According to this real estate industry news report, "limited liability companies affiliated with

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[5] Debtors' counsel has conceded that Toledano lacked the financial resources to execute the parties' agreed-upon plan to increase property values; cover ongoing debt payments to Madison; pay other ordinary operating expenses such as property taxes; and meet the Debtors' obligations to tenants. *See* Transcript of April 14, 2017 Hearing at 24:

> Mr. Greene: Your Honor, these buildings were purchased by Mr. Toledano as the principal of the debtor entities. In the course of running these properties, he vacated a lot of apartments through buyouts and so on. So we ended up reducing the rent-rolls to the extent that he needed extra money to continue to do the renovations and the repairs necessary at the property. The rent-rolls were insufficient to satisfy the payments due the secured creditors and to pay the real estate taxes.
>
> As such, it started to snowball as he -- it's a classic, Your Honor, attempt when you're not capitalized sufficiently[.]

Madison filed at least 50 foreclosure proceedings on more than 70 New York City properties since 2012." *See id.*

32. Other lenders recognize that this is Madison's business model. Signature Bank, for example, has engaged in numerous transactions with Madison, including by purchasing a $70 million share of Madison's debt on the East Village Portfolio. According to internal documents provided to the NYAG, Signature agreed to accept Madison's loan to Toledano as collateral for its own $70 million loan to Madison, in part because Signature recognized that Madison "would have no problem foreclosing and or owning" the Portfolio when the loan to Toledano entered into default. *See* Signature Bank Loan Data File, Email from Joseph Fingerman to Brian Twomey (April 27, 2016, 3:35 PM), attached as Ladov Decl. Exhibit 3. Signature also observed that Madison had significant experience with the type of scheme proposed by this deal, and that with many of the buildings Madison owned it had "purchased the buildings, gut renovated units and re-leased them at substantially higher rents." *See* Signature Bank Corporate Credit Offering Memorandum at 6 (Aug. 18, 2015), attached as Ladov Decl. Exhibit 4.

II. Madison was Aware of Toledano's Record of Tenant Harassment and Unlawful Conduct

33. Madison knew when Toledano sought funding for the purchase of this large, fifteen-building portfolio of multi-family apartment buildings that he was an inexperienced property manager with a reputation for harassing tenants and engaging in fraud and misrepresentations.

34. Madison's background research showed that Toledano was a 25-year-old convicted felon, who had been sentenced to two years' probation for a felony of aggravated assault in 2012, as well as arrested in 2009 on felony charges (later dismissed) of "theft by

deception" for an alleged scheme to fraudulently withdraw money from a bank. *See* EGS Financial Investigative Services, Report on Raphael Toledano (Aug. 17, 2015), attached as Ladov Decl. Exhibit 5. Madison's mortgage contracts with the Debtors nonetheless represented that "no Guarantor or member of Mortgagor have ever been convicted of a felony criminal offense." *See* East Village Portfolio, Mortgage and Security Agreement § 57 (Sept. 10, 2015), attached as Ladov Decl. Exhibit 6.

35. Madison also likely knew that Toledano had engaged in misrepresentations in the course of his real estate business. Among other practices, Toledano repeatedly misrepresented himself as an attorney, and as an agent for established real estate developers, in his efforts to drum up possible real estate deals. For example, in correspondence dated from March 2014, Toledano falsely represented to the owner of property located at 444 East 13th Street in Manhattan that he was a lawyer with the Weissman Law Firm; that he represented Josh Zegen (one of Madison's founders and principals); and that he was seeking a 1031 exchange deal on Zegen's behalf. *See* Correspondence from Raphael Toledano (March 2014), attached as Ladov Decl. Exhibit 7. News reports later quoted Zegen as denying that Toledano had ever represented him in such a capacity. *See* Hiten Samtani, "Raphael Toledano, Esq.?: Investor may be tied to fake law firm," *The Real Deal* (published Dec. 14, 2015, 10:10 a.m.), available at https://therealdeal.com/2015/12/14/raphael-toledano-esq-investor-may-be-tied-to-fake-law-firm/.

36. Madison also knew the size of Toledano's existing holdings, which showed he had no experience managing a portfolio this size. At the time this deal closed, Toledano only owned and managed three other multi-family apartment buildings in Manhattan. All three of those properties (at 444 East 13th Street, 97 Second Avenue and 125 West 16th Street) have also been subject to financial strain and mismanagement. Madison is currently foreclosing on 125

West 16th Street. *See 125 West 16th Street LLC v. West 16th Street Owner LLC*, et al., Index No. 850048/2017 (Sup. Ct. N.Y. Cnty, Filed Jan. 30, 2017). Upon information and belief, the other two properties have been the subject of disputes between Toledano's mezzanine creditors, but are now under the control of Big Greene RE LLC, a Delaware limited liability company with a mailing address at "c/o Robinson, Brog, Leinwand, Greene, Genovese & Gluck P.C.," the same law firm that is counsel for the Debtor in these proceedings.

37. Madison, which was the secured mortgage lender for 444 East 13th Street, was aware that Toledano had been accused of harassing tenants, many of whom were immigrant families, at that property in an effort to pressure tenants into surrendering their rent-regulated apartments. On or about May 29, 2015, just a little more than three months before closing on the financing for the East Village Properties, a group of 444 East 13th Street tenants, represented by the UJC, sued Toledano and other responsible parties for tenant harassment and other claims. *See Bello, et al., v. Toledano, et al.*, Index No. HP 1158/2015 (New York City Civil Court, Housing Part B, filed June 30, 2015), Verified Petition attached as Ladov Decl. Exhibit 8. As alleged in the Verified Petition, Toledano engaged in the following tactics: he employed private investigators and others to harass tenants and dig up information that he could use to try to evict them; threatened to file baseless eviction cases against tenants; locked tenants out of their homes; increased their rents without regard to the protections of New York's rent stabilization laws; withheld essential services, including gas, hot water, and heat; rendered the building uninhabitable by performing dangerous construction and demolishing the building; and falsely reported tenants to the police for illegal activities. Tenants ultimately signed a confidential settlement agreement reportedly worth over $1 million with Toledano in or about May 2016. *See* Mark Maurer, "Toledano's Fast and Rocky Ride," *The Real Deal* (June 1, 2016), available at

https://therealdeal.com/issues_articles/toledanos-fast-and-rocky-ride/. Madison has since represented to the NYAG that it loaned $1.1 million to Toledano to pay this harassment settlement pursuant to a fifth mortgage loan placed against the East Village Portfolio that is the subject of this bankruptcy proceeding. That fifth mortgage loan on the Portfolio was dated June 24, 2016, a mere week before Toledano defaulted on all of his loans on these properties. *See* East Village Portfolio Payoff Letters, Doc. 56-1, Exhibit A to Interim Stipulation ("Payoff Letters"), at 5.

III. The Loan Terms for the East Village Portfolio Were Unaffordable and Impossible to Meet

38. Toledano purchased the East Village Portfolio pursuant to a Purchase and Sale agreement executed on or about May 27, 2015 between Toledano (as managing member of East Village Owners Group LLC) and the property owners (which were three separate LLCs controlled by members of the Tabak family). *See* East Village Portfolio, Purchase and Sale Agreement (May 27, 2015) ("EVP Purchase Agreement"), attached as Ladov Decl. Exhibit 9.

39. When Madison made its mortgage loan for the Portfolio in September 2015, Raphael Toledano was the principal in all of the LLCs that purchased and held the East Village Portfolio properties, and that appear as Debtors in the current bankruptcy proceedings. Although Toledano purchased the portfolio from its prior owners for $97 million (less the cost for 95 East 7th Street, a sixteenth property originally included in the Portfolio but ultimately bought by Toledano's family member and former business partner Aaron Jungreis),[6] his initial mortgage

[6] According to legal papers, Toledano was sued by his uncle Aaron Jungreis, who alleged that he was supposed to be Toledano's partner in this Portfolio but that Toledano cut him out of the promised deal following the execution of the May 2015 contract of sale. Under a settlement

loans from Madison included cash and lines of credit totaling nearly $124 million, significantly more debt than was needed to purchase the properties. *See* EVP Purchase Agreement. These funds and credit lines were divided up among four separate notes and mortgages, all of which were due to be fully repaid to Madison at the end of only 24 months:

a. A First Loan of $89,667,660.00, which initially accrued interest at a rate of 9.00%, with interest payments of 6% due on an ongoing basis and 3% due on maturity, *see* First Loan Note, attached as Ladov Decl. Exhibit 10;

b. A Second Loan of $20,000,000 which initially accrued interest at a rate of 20.00%, *see* Second Loan Note, attached as Ladov Decl. Exhibit 11;

c. A Building Loan of up to $10,068,000, which could be drawn down for construction and other "hard costs," and which initially accrued interest at a rate of 9.00%, with interest payments of 6% due on an ongoing basis and 3% due on maturity, *see* Building Loan Note, attached as Ladov Decl. Exhibit 12; and

d. A Project Loan of up to $4,249,340, which could be drawn down for tenant buyout payments and other "soft costs," and which initially accrued interest at a rate of 9.00%, with interest payments of 6% due on an ongoing basis and 3% due on maturity, *see* Project Loan Note, attached as Ladov Decl. Exhibit 13.

40. Presumedly because Toledano could not afford to make monthly mortgage payments from the outset, the loan documents set aside a Prepaid Interest fund of slightly more than $4 million. *See* East Village Portfolio, Prepaid Interest Agreement (Sept. 10, 2015), attached as Ladov Decl. Exhibit 15. These funds were taken from the interest-bearing proceeds provided by Madison to the Debtors under the First Loan and the Project Loan. *See id.* These interest-bearing loan proceeds were retained by Madison and used to pay for the Debtors' initial monthly interest payments. *See id.*

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agreement included in Madison's loan files, Toledano and Jungreis agreed that Jungreis would purchase one of the properties (95 East 7th Street) that was originally part of the Portfolio for $6,015,000. *See* Settlement Agreement between Raphael Toledano and Aaron Jungreis (September 2015), attached as Exhibit 14.

41. Madison's loan terms ensured that Toledano would default after this interest reserve ran out, because the Net Operating Income (NOI)[7] generated by these properties would be insufficient to cover Toledano's monthly interest payments within the two-year term of the loan. *See* Expert Report of Prof. David Reiss ("Reiss Report"), attached as Ladov Decl. Exhibit 1.

42. Madison's $89.7 million first mortgage required monthly interest payments at a minimum of 6% annual interest rate (while accruing additional interest at a 3% annual rate which would be due at the end of loan term). *See* First Loan Note. These loan terms required monthly interest payments of at least $448,000. Monthly interest payments could increase to as much as approximately $520,000 per month if Toledano also drew down funds set aside in the Building Loan and Project Loan for "hard costs" (such as construction) and "soft costs" (such as tenant buyouts). *See* Building Loan Note; Project Loan Note. However, according to Signature Bank's analysis of Madison's loan, the rent rolls for these properties only produced an NOI of around $260,000 per month at the outset, far less than was needed to cover these monthly payments. *See* Signature Bank Loan Data File, attached as Ladov Decl. Exhibit 3 (identifying Net Operating Income based on "In place Rent Roll" as $3,116,000 per year). Madison's estimates of NOI based on the in-place rent rolls were not much higher, coming in at less than $285,000 per month.

[7] Net Operating Income (NOI) is a term used in the real estate industry to represent the income that is left after gross income (i.e., the total income generated by property rents) is reduced by the Net Operating Expenses (i.e., operating costs such as property management, taxes, insurance, repairs, utilities, etc.) required to run a building properly and according to applicable laws and regulations. In other words, NOI represents that cash flow that would be left for the landlord at the end of the month to cover the property's debt payments and any other costs (or profits) not associated with the day-to-day management of the buildings.

43. The actual shortfall was likely even greater, given that the lenders' analyses over-estimated the rental income coming into these buildings and under-stated the true costs of running the Portfolio.

44. As the New York City Department of Housing Preservation & Development (HPD) explains in its attached analysis, the projected income used for the NOI during underwriting ignored the simple fact that "where there is projected renovation of vacant units there should be a corresponding deduction for lost rent during the period these units are undergoing renovation." *See* NYC Department of Housing Preservation and Development, Evaluation of East Village Portfolio Investment Memorandum (May 11, 2017) ("HPD Evaluation"), attached as Ladov Decl. Exhibit 2. Instead, the underwriting relied upon a 2% vacancy rate that is unrealistically low even for a property that is not undergoing high turnover and significant construction. *See* Reiss Report at 12-14. In reality, the vacancy rate generated by this scheme was far higher than that. According to documents provided by Toledano's counsel to the NYAG, 82 out of 291 units (28%) of the Portfolio's apartments are currently vacant. These documents indicate that 39 of those vacant units were rendered uninhabitable because Toledano demolished the interiors but has not completed renovations.

45. The underwriting also drastically underestimated the true costs of operating these properties for existing tenants. *See* HPD Evaluation at 2. For example, the deal terms imagined that Toledano would only spend $75,000 per year to hire maintenance staff for all 15 buildings, whereas HPD estimates that the true cost would be nearly four times that. *See id.* This shortfall helps explain the absence of legally-mandated supers in these buildings during Toledano's management.

46. The Prepaid Interest reserve of approximately $4 million initially masked the unaffordability of the monthly payments due to Madison. *See* Reiss Report at 12. However, Madison's loan terms required Toledano to increase the NOI generated by these properties to somewhere between $448,000 to $520,000 per month during this brief grace period of approximately nine months. After that, Toledano would be expected to pay interest on these loans out of the Debtors' own proceeds.

47. Increasing the Portfolio's rent rolls by over 50% in approximately nine months was an impossible goal, especially considering that the parties' scheme required Toledano to *decrease* rent rolls while apartments were being vacated and renovated. *See* HPD Evaluation at 2; Reiss Report at 12-14. This is precisely what happened. Toledano defaulted on his loan by missing the interest payment due July 1, 2016. *See* Payoff Letters.

48. In addition, Toledano's unaffordable monthly interest payments were only the tip of the iceberg. Besides the 6% interest due monthly, the First Mortgage, Building Loan and Project Loan each also accrued an additional 3% each month to be paid upon maturity. *See* First Loan Note; Building Loan Note; Project Loan Note. The $20,000,000 second mortgage accrued interest at an incredible 20% interest rate, all of which was due upon maturity. *See* Second Loan Note. Even if Toledano did not default on his loan terms, by the time the loan term expired after 24 months, he would owe approximately $150 million in principal and interest, most of which was due when the loan term concluded.

49. In reality, the impossibility of making the 6% monthly payments increased arrears even further, by triggering a 24% default interest rate that is applicable to *all* of the Debtors' debt with Madison. *See* Payoff Letters. As a result, the total debt on this property at the time this Chapter 11 was filed, a mere year and a half after loan origination, had ballooned to over $145

million on a principal balance of $117 million. *See id.* Pursuant to the terms of the Proposed Final Order, these loans continue to accrue default interest at a rate of 24%; according to the per diem rate in the Payoff Letters, this results in a daily addition of $77,935.57 to the existing debt.

50. These figures stand in stark contrast to HPD's valuation of the Portfolio based on its rent rolls when purchased in September 2015, which concluded that Madison and Toledano had overstated the value of the Portfolio by approximately 40 percent. *See* HPD Evaluation at 3. According to HPD:

> HPD has "As-Is" Appraisal Guidelines that appraisers must follow for projects financed by HPD. By applying the guidelines to the "In-Place" Net Operating Income shown [in Madison's Investment Memorandum], and using the 3.25% capitalization rate that was referenced [in that memo], HPD estimates the as-is value of the property at $104,736,861, significantly less than the as-is value of $147,433,000 indicated [by Madison].

IV. Toledano and Madison's Impossible "Plan" for Increasing Property Values Relied on Unlawful Conduct and Tenant Harassment

51. In order to attempt to meet the debt obligations, Madison and Toledano agreed upon a hyper-aggressive plan to buy out tenants; renovate units; and increase rents in a manner that would remove apartments from rent stabilization and rent control. *See* Reiss Report at 7-8. This plan was doomed to fail financially, as explained above. In addition, Madison and Toledano's plan required unlawful conduct that would, and did, harm the tenants living in these properties. As explained below, this unlawful conduct and harassment included improperly inducing tenants to accept buyout agreements; illegally adding bedrooms to existing apartments; unsafe construction practices; and failing to comply with the Debtors' legal obligations to tenants.

A. Fraudulent Inducement and Unpaid Buyouts

52. Madison and Toledano's plan required an unrealistic increase in the turnover rate in these rent-stabilized buildings. Madison's investment memo assumed that Toledano would vacate, renovate and reconfigure nearly half of the units in the Portfolio within the first two years. In some buildings the required turnover rate was as high as 80-100%. *See* Reiss report at 9.

53. Madison and Toledano's agreed-upon business plan initially targeted tenants who were listed in the prior landlord's rent rolls as not protected by rent stabilization or rent control, and therefore not statutorily entitled to a renewal lease. Toledano began negotiating buyouts with these tenants even before he had closed on the properties. *See* May 12, 2017 Affidavit of Zoe Lake ("Lake Aff.") ¶ 4, attached as Ladov Decl. Exhibit 22.[8] Although Toledano was responsible for negotiating these buyouts, Madison funded, supervised and approved these buyouts and surrender agreements. *See* Tenant Buy Out Agreement (Sept. 10, 2015) ("Buy Out Agreement"), attached as Ladov Decl. Exhibit 16.

54. In addition to requiring every one of the "fair market" tenants to vacate their apartments, the hyper-aggressive targets set by Madison's loan also required that Toledano buy

[8] The prior landlord represented that approximately 76 of the 281 residential units in the Portfolio were not subject to rent stabilization or rent control at the time of the sale to Toledano. *See* Reiss report. The in-place rents for these "market rate" units at the time Toledano bought the portfolio averaged $2,019, according to Madison's underwriting documents. This figure, which was below the threshold for high rent vacancy allowances under rent-stabilization rules, on its face raises questions about whether these units had been removed from rent-stabilization improperly by the prior landlord. In fact, some of the tenants in such units have successfully challenged the Debtors' representations that their apartments were not protected by rent-stabilization. *See* Lake Aff. ¶ 9 n.2.

out approximately one-third of the Portfolio's rent regulated tenants within two years of purchase. *See* Reiss Report at 8.

55. The parties, however, did not budget nearly enough money to meet these targets. Madison's loans to Toledano only budgeted $50,000 (or up to $100,000 for the properties on East 5th Street) for tenant buyouts. *See* Buy Out Agreement. This amount turned out to be far less than was needed to buy out the Portfolio's tenants, especially those rent-stabilized tenants who knew their rights and were not unduly pressured or harassed.

56. As a result of Toledano's lack of funds, and his need to turn over units at an unrealistic pace, Toledano embarked on a strategy of fraudulently inducing tenants into signing surrender agreements that he had no intention of satisfying, a scheme that was recently the subject of a report in the New York Times. *See* Ronda Kaysen, "Tenants Offered Buyouts Are Left in the Lurch," *N.Y. Times* (Apr. 28, 2017), available at https://www.nytimes.com/2017/04/28/realestate/tenants-offered-buyouts-are-left-in-the-lurch.html.

57. At the time of the Bankruptcy Petition filing, over a dozen tenants were owed funds by the Debtors. Toledano produced a list of unpaid buyouts to a possible buyer of this portfolio representing that thirteen tenants were owed over $1.9 million. The average unpaid buyout, according to this list, was nearly $150,000, substantially more than Madison and Toledano had budgeted for such payments.

58. Tenants have complained to NYAG that Toledano fraudulently induced them to sign buyout and surrender agreements with the Debtors LLCs, and caused these tenants to rely on the expected payment of these buyout funds, even though the Debtors lacked the funds to satisfy these contracts. *See* May 12, 2017 Affidavit of Jessica Lee ("Lee Aff.") ¶¶ 19-21,

attached as Ladov Decl. Exhibit 23. This misconduct violates New York City's tenant harassment law, which forbids landlords from seeking buyouts while threatening or intimidating tenants, or while "knowingly falsifying or misrepresenting any information provided" to the tenant. *See* N.Y.C. Admin. Code § 27-2004(48)(f-3).

59. Toledano also resorted to harassment and frivolous litigation tactics in order to increase his turnover rate, much as he had done at 444 East 13th Street. For example, multiple tenants have complained to NYAG that Toledano and his agents wrongly accused them of not living in these apartments as primary residences. In such cases, Toledano and his agents threatened, or actually filed, holdover cases seeking to evict such tenants.

60. Toledano also repeatedly failed to provide written notices to tenants when he offered buyouts. *See* Lee Aff. ¶ 8 ¶ 11; May 13, 2017 Affidavit of Joanna Sanchez ("Sanchez Aff.") ¶¶ 10-12, attached as Ladov Decl. Exhibit 24; Lake Aff. ¶ 14. Since December 2015, New York City law has forbidden landlords from offering buyouts to tenants unless the property owner discloses *in writing* the tenant's rights, including the right to reject the offer and seek legal advice. *See* N.Y.C. Admin. Code § 27-2004(48)(f-2).

B. Unlawful Renovations

61. After vacating apartments, in the manner described above, Toledano planned to renovate and reconfigure these units in order to increase rents. Madison and Toledano agreed on an aggressive construction plan that would carve up apartments by adding 1, 2 or even 3 new bedrooms, essentially turning long-standing and desirable housing for families and long-time East Village residents into dormitories for students or transient white collar workers. *See* Reiss Report at 10-11.

62. In fact, many of the proposed renovation plans violated New York City law, as both Toledano and Madison knew or should have known, because they created rooms without windows or less than the minimum size for a bedroom under New York City law. *See* Reiss Report at 10-11. As the architectural renderings for these renovations acknowledged, the units often described as "bedrooms" were actually windowless rooms that may not be legally advertised and rented as bedrooms in New York City. *See* Proposed Architectural Layouts for East Village Portfolio, attached as Ladov Decl. Exhibit 17.

63. Madison went so far as affirming in its Investment Memo for this deal that "MRC's in-house design director has reviewed all layouts to confirm that the renovated layouts conform to all codes and will allow the unit to command current market pricing." The assertion that the planned layouts "conform to all codes" is simply false.

64. Toledano intended to rent out these apartments as 2BR, 3BR and 4BR dwellings, and Madison and Toledano based rental projections on those assumptions. *See* Reiss Report at 10-11. However, Madison and Toledano's underwriting analysis failed to acknowledge that these planned multi-bedroom apartments were cramped, illegal units, and that their comparisons to legal multi-bedroom apartments in the East Village thereby substantially inflated the projected rental income. *See* Reiss Report *id*.

C. Unsafe Construction Practices

65. Toledano repeatedly used the threat and reality of constant and unsafe construction work in his efforts to harass and coerce tenants into vacating these properties. *See* Lake Aff. ¶¶ 4, 6, 8; Lee Aff. ¶¶ 4-5, 12; Sanchez Aff. ¶ 12. Tenants have complained that they were told by Toledano and his agents that construction would make these properties

uninhabitable, and that they should accept offers to vacate in response. *See* Lake Aff. ¶¶ 4, 6, 8; Lee Aff. ¶¶ 5, 12; Sanchez Aff. ¶ 12.

66. Toledano and his agents repeatedly engaged in unsafe construction practices, and failed to comply with the protections required by city, state and federal law when construction work is undertaken in an occupied building. In particular, tenants have complained about exposure to lead-contaminated dust generated by demolition and construction work in their homes.

67. For example, tenant complaints prompted the New York City Department of Health and Mental Hygiene (DOHMH) to send inspectors to review construction at 233 East 5th Street, 235 East 5th Street and 514 East 12th Street in March 2016. *See* Letter from East Village Elected Officials to DOHMH (May 4, 2016), attached as Ladov Decl. Exhibit 18; Lead Testing Results (March 2016), attached as Ladov Decl. Exhibit 19. Lead testing at all three building found that tenants were being exposed to construction dust contaminated with lead; dust collected at all three building displayed lead levels above the threshold (40 micrograms per square foot) that State and Federal environmental agencies consider an unacceptably hazardous level. *See id.*

68. Lead-contaminated dust continues to be a problem at the properties. On April 14, 2017, DOHMH collected a series of dust samples at 514 East 12th Street, where tenants reported to the NYAG that Silverstone had removed plastic sheeting from apartment doors during its inspection of "dumpster apartments" filled with construction debris. DOHMH's environmental test found dust in one hallway with lead contamination of 82 micrograms/square foot, which is twice the threshold (40 micrograms/square foot) defined by the EPA as hazardous. *See* Lead

Testing Results for 514 East 12th Street (collected April 14, 2017), attached as Ladov Decl. Exhibit 20.

69. In addition, on April 21, 2017, DOHMH took samples at 233 East 5th Street, where dust from cleaning out these apartments was reportedly left in a hallway by cleanup crews. One of the two dust samples taken showed lead concentrations of 58 micrograms per square foot, again above the legally-defined threshold for hazardous contamination. *See* Lead Testing Results for 233 East 5th Street (collected April 21, 2017), attached as Ladov Decl. Exhibit 21.

D. Lack of Adequate Operating Funds

70. Madison and Toledano's plan also ignored the ordinary costs required to operate these properties in compliance with a landlord's legal obligations and the needs of existing tenants. *See* HPD Evaluation at 2; Reiss Report at 14-15. Madison and Toledano were primarily focused on spending money to increase the rent rolls of these properties, so they never properly budgeted for the operating costs of these buildings. *See id.*

71. HPD concluded that this plan's operating expenses were only slightly more than half of what HPD would require, when underwriting a deal to ensure that projected cash flow would be sufficient to support debt service. HPD Evaluation at 2. The underwriting shortfalls included a failure to budget for adequate maintenance staff, repairs and utility payments. *See id.*

72. Similarly, the proposed operating funds failed to provide a realistic assessment of real estate taxes. As Professor Reiss observes, Madison and Toledano only budgeted for a 3% increase in real estate taxes for the Portfolio, while the actual year-to-year increases were much higher. *See* Reiss Report at 14-15. The failure to budget for real estate taxes is reflected in the fact that these bills were all past due when this bankruptcy commenced.

73. The failure to create a proper operating budget is consistent with the Debtors' mismanagement of these buildings. As the accounting documents so far submitted to the Bankruptcy Court by the Debtors and Madison illustrate, by the time the Petition was filed, the Debtors had accrued well over $ 1 million in unpaid bills for such basic operating expenses as taxes, insurance, and utilities payments.

74. The Debtors' unpaid bills prompted numerous complaints from tenants, who contacted NYAG around the time of the filing of these Petitions to complain repeatedly about lack of heat and hot water, utility shutoff notices, lack of supers, and inadequate repairs and services at the buildings. *See, e.g.*, Lee Aff. ¶ 15. These shortcomings are also documented by the numerous property violations that have accumulated on these buildings.

OBJECTIONS TO THE PROPOSED CONSENT ORDER

I. The Consent Order as Submitted is Not Fair, Reasonable or Adequate

75. A bankruptcy court is a court of equity. *Cornwall Press, Inc. v. Ray Long & Richard R. Smith. Inc.*, 75 F.2d 277 (2d Cir. 1935) ("as a court of equity [the bankruptcy court] may protect itself from being used as an instrument of fraud"). As such, the Court should take into account both Madison's bad faith in making the loans to Toledano, its role in creating and perpetuating the illegal and hazardous conditions for tenants, as well as the lack of transparency to date as to how David Goldwasser, the manager of GCRE, came to control the Debtors.

76. The Court must review the terms of a debtor-in-possession facility to determine whether those terms are fair, reasonable and adequate given the circumstances of the debtor and the proposed lender. *In re Tenney Vill. Co.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (DIP financing terms must not "pervert the reorganizational process from one designed to accommodate

all classes of creditors and equity interests to one specially crafted for the benefit of" the secured creditor); *In re Aqua Assoc.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (citing *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (holding that proposed financing should be fair and reasonable); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) (the court should focus on terms of proposed financing to determine whether they are reasonable); *In re Mid-State Raceway*, 323 B.R. 40, 60 (Bankr. N.D.N.Y. 2005). The Consent Order as proposed is neither fair, reasonable nor adequate.

77. The Court has the power to deny or modify the relief requested where, as here, the parties come to the Court with unclean hands. *See, e.g*, *Balaber-Strauss v. Murphy (In re Murphy)*, 331 B.R. 107, 135 (Bankr. S.D.N.Y. 2005) ("A party seeking equitable relief from the bankruptcy court "must come with clean hands if relief is to be granted.") (internal citations omitted); *Dunlop-McCullen v. Local 1-S*, 149 F.3d 85, 90 (2d Cir. 1998) (a party applying for relief must have "acted fairly and without fraud or deceit as to the controversy in issue") (internal citation omitted); *Estate of Lennon v. Screen Creations, Ltd.*, 939 F. Supp. 287, 293-94 (S.D.N.Y. 1996).

78. As the above facts demonstrate Madison is coming to the Court with unclean hands. Madison created a deal with Toledano that – even when taking Madison and Toledano's assumptions about income, operating expenses and the cost and pace of renovations at face value – ensured that the Debtors would default on these loans at the earliest possible date, because there was not enough income coming into these properties to cover the monthly debt servicing obligations of the loan. In reality, the unaffordability of these loans was even greater than the underwriting suggested, because Madison and Toledano exaggerated the income that these

buildings could possibly generate during the loan term, while dramatically understating the true costs of operating these properties for tenants.

79. Madison's plan from the outset assumed that the Debtors would engage in unlawful conduct in an effort to meet Madison's loan terms. The Debtors' unlawful conduct – including, but not limited to, illegal and unsafe construction; tenant harassment; and the failure to operate these properties properly for tenants who chose not to vacate – was a consequence of these unaffordable loan terms.

80. Madison's conduct also constitutes tortious interference with pre-existing tenant contracts. When Madison entered into its loan agreement with the Debtors, the plan was for the Debtors to violate numerous provisions of New York law, including letting the Portfolio fall into disrepair – a breach of the warranty of habitability – in order to meet the impossible terms of the loan agreement. Under New York Law, "[t]ortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." *Cohane v. NCAA*, 612 F. App'x. 41 (2d Cir. 2015) (internal citation omitted). Madison's financing scheme assured that the Debtors would fail under its loan agreement, the loan agreement was the "but-for" cause of the breach of the tenants' contracts, and tenants suffered considerable harm.

II. The Court Should Reject the Proposed Timeframes and Events of Default That Give Madison an Unfair Advantage to the Detriment of Other Parties

81. The proposed Consent Order establishes extremely aggressive deadlines and onerous Events of Default that effectively cede control of the Debtors' estate to Madison to the detriment of unsecured creditors and tenants. The Court should extend these deadlines and

eliminate onerous Events of Default in order to allow other potential buyers to evaluate the Portfolio, and to ensure that Madison cannot condition its post-petition financing on the absence of any challenges or oversight from other parties.

82. The Debtors have already missed the May 4, 2017 deadline for filing the Plan that was included in the Interim Stipulation, demonstrating from the outset the aggressiveness of the proposed timeframes. The Consent Order now provides that the Plan must be filed by June 15, 2017. However, the deadline for confirmation of the Plan is still September 15, 2017. Failure to meet these milestones is treated as an Event of Default. The NYAG objects to the shortened timeframe for confirmation of the Plan and requests that the Court extend the September 15, 2017 confirmation deadline.

83. Moreover, the Plan, Disclosure Statement and the Agreement have not been filed, making it impossible to determine the full meaning and requirements of the Consent Order.

84. The Consent Order also provides for other onerous Events of Default, which allow Madison to cut off its post-petition financing if the Court issues an order which Madison deems to limit its rights as the Secured Creditor:

a. "The Bankruptcy Court enters an order authorizing the sale of all, or substantially all of the Debtors' assets that does not provide for the payment in full to the Secured Creditor of its claims in cash upon the closing of the sale;" and

b. "A Chapter 11 trustee, an examiner, or any other responsible person or officer of the Court with similar powers is appointed by order of the Bankruptcy Court."

85. As the only secured creditor and the owner of Silverstone, which is being paid by the Debtors to manage these properties, Madison effectively controls the Debtors and is attempting to use the aggressive deadlines and Events of Default in the Consent Order to maximize its own profits and secure for itself all of the Debtors' valuable assets at the expense of the general unsecured creditors, including tenants. The cases are on a "breakneck" pace that will preclude any meaningful role for any party in interest and will chill any serious competitive offers for the Debtors' assets. Such aggressive milestones leave insufficient opportunity to review the prepetition efforts to obtain alternative financing arrangements, evaluate potential restructuring alternatives, perform an appropriate valuation of the Debtors or investigate the Debtors' prepetition affairs and transactions, including those of GCRE and Madison, before moving forward with any proposed plan of reorganization.

86. Moreover, the Consent Order provides no realistic alternatives for the Debtors. If the Debtors do not assume the PMA, they will lose access to Madison's protective advances, which are needed to clear up the many property violations and unpaid bills left deferred by Toledano, and to operate these buildings in compliance with tenants' leases and all applicable laws.

87. The Debtors should not be permitted by virtue of the Consent Order to cede control to Madison to the detriment of unsecured creditors and tenants. *See Resolution Trust Co. v. Official Unsecured Creditors Comm. (In re Defender Drug Stores, Inc.),* 145 B.R. 312, 317 (9th Cir. BAP 1992) ("[B]ankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender.") (citing *In re Tenney Village Co.,* 104 Bankr. at 567-570); *In re FCX, Inc.,* 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985) ("[T]he court should not

ignore the basic injustice of an agreement in which the debtor, acting out of desperation, has compromised the rights of unsecured creditors.") (citing *In re B & W Tractor Co., Inc.*, 38 B.R. 613 (Bankr. E.D. N.C. 1984).

88. The accelerated timeframe will be a deterrent to any potential buyer because there is insufficient time for the due diligence required. Such due diligence should consider the actual costs and obligations of lawfully operating the Portfolio in a manner that has not been done to date by Madison and the Debtors. For the same reasons the Court should be skeptical of the Debtors and Madison's valuation representations.[9]

89. As explained above, the speculative valuation of the Portfolio has harmed tenants and the public interest. Tenants were harmed because the debt to Madison has always been above the amount the rent rolls could support, there was insufficient money available for operating expenses and the Debtors could not even support the monthly interest that was due. Tenants and the public interest were also harmed because these loan terms anticipated that Toledano would take a variety of unlawful and harmful actions in order to attempt to increase the value of the Portfolio.

90. It is in the tenants' interest and the public interest that the rent rolls be reviewed for potential improprieties to ensure proper valuation of the properties. The properties should then be marketed for sale to an appropriate buyer who will protect tenant health and safety and properly comply with laws designed to protect affordable housing.

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[9] As noted above, *see supra* ¶ 50, HPD's appraisal of the Portfolio based on the rent roll at time of loan origination found that Madison's underwriting overstated the Portfolio's value by over $40 million. DHCR is currently auditing those rent rolls, pursuant to a notice sent to Debtors on April 3, 2017. The NYAG also continues to investigate whether apartments in the Portfolio were removed from rent stabilization improperly or unlawfully.

III. The Court Should Limit the Debtors' Expenditures Only to the Remediation of Violations and Operation of the Properties for the Benefit of Current Tenants

91. The Court should limit the Debtors' expenditures to only those necessary to maintain the health and safety of the current tenants and not permit the Debtors to fund efforts that may harm the estate.

92. The NYAG previously argued, at the First Hearing and Second Hearing, that the Debtors and Madison should not be permitted to spend money on the Portfolio other than to address current needs of existing tenants. The NYAG's position has been that funds should only be spent to ensure that all violations on these properties are cleared; all taxes and other arrears are paid up; and that tenants' health, safety and repair needs are fully addressed moving forward.

93. At the First Hearing, the Court was unwilling to give the Debtors and Madison unfettered discretion over expenditures, such as capital improvements, given the large volume of issues at the Portfolio related to tenants' health and safety.[10]

94. The NYAG asks the Court to revisit its ruling at the Second Hearing that the Debtors and Madison should be permitted to advance funds for tenant buyouts and renovation of vacant apartments so long as such payments do not impair their ability to simultaneously meet tenants' current needs.

95. As described above, health and safety issues persist in these buildings, including SPG's failure to protect tenants from lead-contaminated dust during waste removal and failure to hire the legally required number of superintendents. Since taking over the management of the Portfolio, Madison, SPG and the Debtors have demonstrated that tenants' health and safety take a back seat to capital improvements to the Portfolio.

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[10] *See* First Hearing Transcript at 57 – 83.

96. The language of the proposed Consent Order demonstrates that Madison and the Debtors seek to improve the value of the Portfolio without much regard, if any, to tenant health and safety. In fact, the Consent Order is devoid of any mention of "health" or "safety,"[11] and instead focuses on tenant buyouts (Consent Order, paragraph 12), capital expenditures and capital improvements (Consent Order, paragraphs 11 and 15).[12]

97. The Court should take into account the fact that some of the unoccupied units in these properties may have been vacated improperly. The Consent Order should not permit the Debtors and Madison to drive up rents in these properties while the audits of the Portfolio's rent rolls are pending. The results of the audit will clarify whether there have been violations of rent regulations or other laws.

98. As explained above, much of the construction planned for this Portfolio by Madison and Toledano violated New York City building code requirements. No construction should move forward in these properties until proper oversight can determine whether units have been, or will continue to be, improperly renovated and marketed as multi-bedroom units in violation of the law.

99. In addition, Madison should not be allowed to negotiate new tenant buyouts or perform new construction in these properties because under the current terms of the Consent

[11] Paragraph 44 of the Consent Order purports to neither "impair nor diminish the effectiveness of any [of] the provisions of" the Interim Stipulation. Nonetheless, it goes on to state that the Consent Order controls to the extent that any conflict exists between the Interim Stipulation and the Consent Order. Paragraph 44 is insufficient as a means of incorporating the Court's prior emphasis on the importance of tenant health and safety.

[12] Footnote 4 of the Consent Order grants Madison and the Debtors unfettered discretion over expenditures "in accordance with [an] Agreement" that has not been made available to anyone.

Order Madison is entitled to a super-priority lien for all of its protective advances.[13] Madison should not be allowed to profit post-petition from its pre-petition bad faith and unfair dealing.

100. Moreover, these activities would potentially drive up the price of the Portfolio, which would impede the Debtors' ability to receive offers from potential purchasers who wish to operate the buildings profitably while maintaining the affordability of these rent-stabilized properties.

101. The Consent Order currently provides that SPG will make "good faith efforts" to comply with legal requirements to hire a sufficient number of superintendents at these properties (Consent Order, paragraph 13). However, this requirement was discussed at the past hearings and should have been met by now. The proposed Consent Order should impose an immediate deadline for installing and retaining the legally-mandated superintendents and janitorial services, if it has not yet been met.

A. The Proposed Section 506(c) Waiver is Inappropriate

102. The NYAG objects to the waiver of the Debtors' rights to recover the reasonable, necessary costs and expenses of preserving or disposing of property securing an allowed secured

[13] Pursuant to the Interim Stipulation, the NYAG has been receiving a "five-day notice" from Madison's counsel when Madison seeks to "consummate buyout agreements and/or surrender agreements" with tenants who are represented by counsel. The NYAG has been contacting these tenants' attorneys to conduct due diligence on these proposed buyouts. At least one attorney has represented to the NYAG that he and his client had not reached out to Madison to seek payment of the buyout; that there was, in fact, no unpaid buyout agreement, because the prior contract had been rescinded by the parties; and that his client does not currently want to vacate the apartment or be contacted about buyout agreements. These facts are contrary to Madison's representation that it is only seeking to satisfy buyout agreements that were breached by Toledano and where the tenants are asking for payment. *See, e.g.*, Second Hearing Transcript at 38:13-16 (statement by Mr. Feuerstein that "Madison would like the ability not to have to engage in litigation now with respect to some of these tenant buyouts which have existed and actually tenants are actually calling and saying where's my money.").

claim of a pre-petition secured party and to any waiver of section 506(c) rights with respect to Madison.

103. Eliminating the ability to surcharge Madison's collateral pursuant to 506(c) of the Bankruptcy Code will foist all of the costs associated with the Chapter 11 process onto the estates and unsecured creditors. Congress' intent in enacting Section 506(c) was to ensure that the debtor-in-possession would be entitled to recover expenses from its secured lender to the extent that those expenses are necessarily and reasonably associated with preserving or disposing of the lender's collateral. Section 506(c) is "designed to prevent a windfall to the secured creditor at the expense of the claimant." *Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325-26 (3d Cir. 1995). The rule "shifts to the secured party, who has benefitted from the claimant's expenditure, the costs of preserving or disposing of the secured party's collateral, which costs might otherwise be paid from the unencumbered assets of the bankruptcy estate, providing that such unencumbered assets exist." *Id.*

104. Moreover, such waivers have been found unenforceable on the basis that they provide a windfall to the secured creditor at the expense of unsecured claimants. *See e.g., In re Lockwood Corp.*, 223 B.R. 170, 176 (B.A.P. 8th Cir. 1998); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) (section 506(c) of the Bankruptcy Code exists so that unsecured creditors do not have to shoulder the cost of protecting collateral that is not theirs "and to require the secured party to bear the costs of preserving or disposing of its own collateral"); *In re Ridgeline Structures, Inc.*, 154 B.R. 831, 832 (Bankr. D. N.H. 1993) (waiver of rights pursuant to 506(c) of the Bankruptcy Code without regard to party's action or inaction "is against public policy and unenforceable *per se*"); *McAlpine v. Comerica Bank-Detroit (In re Brown Bros, Inc.)*, 136 B.R. 470, 474 (W.D. Mich. 1991) (cash collateral order unenforceable to

the extent its provisions attempted to immunize postpetition lender from surcharge payment obligations pursuant to section 506(c) of the Bankruptcy Code). Given the fact that the Debtors have not demonstrated any extraordinary circumstance justifying a section 506(c) waiver, this Court should not permit such waiver.

B. Fees Should Be Limited

105. The Court should not permit the Debtors to pay $10,000 a month to GCRE (Consent Order, paragraph 19) because it is not clear how or when Toledano's equity partners entered the picture or whether they should, like Toledano, be held responsible for the Debtors' unlawful and inequitable conduct.

106. The Consent Order allots $10,000 per month to GCRE as "manager of the Debtors, responsible for all legal and financial matters." The NYAG objects to the fees that will benefit GCRE, given that there is no explanation as to what "all legal and financial matters" would entail, there has been no transparency as to how GCRE took control of the Debtors and GCRE through its manager David Goldwasser had no management experience with respect to the Debtors or the Portfolio prior to March 28, 2017.

IV. The NYAG Should Receive Notice and Must Have an Opportunity to Challenge the Findings in the Consent Order

107. The Consent Order establishes various obligations of the Debtors, Madison and Silverstone to provide certain notices and financial reporting to specified parties that do not always include the NYAG. The NYAG requests that the Consent Order be amended to include a requirement that all notices and financial reporting required under the Consent Order also be provided to the NYAG at the same time as such notice and/or financial reporting is provided to

any other party.[14] In addition, to the extent that the Debtors and Madison have agreed that other creditors and their counsel may receive such notices from the NYAG, that permission should be expressly stated in the Consent Order.

108. Due to the NYAG's serious concerns regarding Madison's pre-petition conduct, the NYAG requests that the Consent Order specifically provide that the NYAG may bring an "appropriate proceeding" during the Challenge Period to "investigate and challenge the Pre-Petition Obligations, Pre-Petition Liens, and Loan Documents and any of the other acknowledgements, representations, warranties, agreements, waivers and findings made" in the Consent Order. (Consent Order, paragraph 25). The terms of the Consent Order should also specifically state that the Consent Order is not binding on the NYAG. (Consent Order, paragraph 34).

[14] In paragraph 8 of the Consent Order the Debtors propose a 48-hour delay in transmitting the weekly disbursements notice to the NYAG. There is no reason why the NYAG cannot be copied on every notice at the same time as the notice is sent to another party.

CONCLUSION

WHEREFORE, for all of the above-stated reasons, the NYAG respectfully requests that the Court (i) deny the Consent Order, or (ii) alternatively, (a) direct modification of the proposed form of the Consent Order, including modifications to de-link the Consent Order and PMA; extend the timeframe of the milestones; eliminate any Event of Default that would result if the PMA is not approved or is terminated or the Debtors do not pursue a plan acceptable to Madison; limit the Debtors' and Madison's expenditures only to the remediation and operation of the properties for the benefit of current tenants; reject the Debtors' proposed waiver of section 506(c) rights with respect to Madison; eliminate inappropriate proposed fees; and ensure that the NYAG receives adequate notices and may pursue appropriate investigation and other actions during the proposed Challenge Period, so as to address the objections set forth herein, and (b) grant the NYAG such other and further relief as is just and proper.

* * *

Dated: May 15, 2017
New York, New York

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EXHIBIT “B”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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SYLVESTER SMOLARCZYK; JOZEF SMOLARCZYK; 3 SUTTON, LLC; 5 SUTTON, LLC; 673 MEEKER, LLC; 669 MEEKER AVENUE, LLC; 667 MEEKER, LLC; 661 MEEKER, LLC; 657 MEEKER, LLC; 553 MEEKER, LLC; KINGSMEEK REALTY, INC; and SMK PROPERTIES II, LLC.,

Plaintiffs,

- against -

MADISON REALTY CAPITAL, LLP; JOSH ZEGAN; KRISS & FEUERSTEIN, LLP; JEROLD C. FEUERSTEIN, ESQ.; SDFS, LLC; SDF61 MEEKER 1, LLC; and SDF61 MEEKER 2, LLC.,

Defendants.

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Index No.: _____/2015

SUMMONS

TO THE ABOVE NAMED DEFENDNATS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff s attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the State, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Kings County as the place of trial.

Dated: August 26, 2015
Brooklyn, New York

By: _____
SYLVESTER SMOLARCZYK
On behalf of Plaintiff's
Sylvester Smolarczyk, Jozef Smolarczyk, 3 Sutton, Llc, 5 Sutton, Llc, 673 Meeker, Llc, 669 Meeker Avenue, Llc, 667 Meeker, Llc, 661 Meeker, Llc, 657 Meeker, Llc, 553 Meeker, Llc, Kingsmeek Realty, Inc, and SMK Properties II, Llc., pro se
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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SYLVESTER SMOLARCZYK; JOZEF SMOLARCZYK; 3 SUTTON, LLC; 5 SUTTON, LLC; 673 MEEKER, LLC; 669 MEEKER AVENUE, LLC; 667 MEEKER, LLC; 661 MEEKER, LLC; 657 MEEKER, LLC; 553 MEEKER, LLC; KINGSMEEK REALTY, INC; and SMK PROPERTIES II, LLC.,

Plaintiffs,

Index No.: _____/2015

- against -

VERIFIED COMPLAINT
JURY TRIAL DEMANDED

MADISON REALTY CAPITAL, LLP; JOSH ZEGAN; KRISS & FEUERSTEIN, LLP; JEROLD C. FEUERSTEIN, ESQ.; SDFS, LLC; SDF61 MEEKER 1, LLC; and SDF61 MEEKER 2, LLC.,

Defendants.

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Plaintiffs SYLVESTER SMOLARCZYK; JOZEF SMOLARCZYK; 3 SUTTON, LLC; 5 SUTTON, LLC; 673 MEEKER, LLC; 669 MEEKER AVENUE, LLC; 667 MEEKER, LLC; 661 MEEKER, LLC; 657 MEEKER, LLC; 553 MEEKER, LLC; KINGSMEEK REALTY, INC; and SMK PROPERTIES II, LLC., pro se, as and for their complaint against defendants MADISON REALTY CAPITAL, LLP; JOSHUA B. ZEGEN; KRISS & FEUERSTEIN, LLP; JEROLD C. FEUERSTEIN, ESQ.; SDFS, LLC; SDF61 MEEKER 1, LLC; and SDF61 MEEKER 2, LLC., allege, upon knowledge as to themselves and otherwise upon information and belief, as follows:

PRELIMINARY STATEMENT

1. Plaintiffs SYLVESTER SMOLARCZYK, JOZEF SMOLARCZYK, 3 SUTTON, LLC, 5 SUTTON, LLC, 673 MEEKER, LLC, 669 MEEKER AVENUE, LLC, 667 MEEKER, LLC, 661 MEEKER, LLC, 657 MEEKER, LLC, 553 MEEKER, LLC, KINGSMEEK REALTY,

INC and SMK PROPERTIES II, LLC ("Plaintiffs"), bring this action to recover the losses suffered at the hands of defendants MADISON REALTY CAPITAL, LLP ("Madison"), JOSHUA B. ZEGEN ("Zegan") KRISS & FEUERSTEIN, LLP and JEROLD C. FEUERSTEIN, ESQ. ("Feuerstein"), SDFS, LLC; SDF61 MEEKER 1, LLC; and SDF61 MEEKER 2, LLC., ("SDF's"), for compensatory damages, special damages, punitive damages, as well as injunctive relief and declaratory judgment as set forth in detail below.

PARTIES

2. Plaintiff SYLVESTER SMOLARCZYK, is a citizen of New Jersey with their principal place of business in Brooklyn, New York.

3. Plaintiff JOZEF SMOLARCZYK, is a citizen of New Jersey with their principal place of business in Brooklyn, New York.

4. Plaintiff 3 SUTTON, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

5. Plaintiff 5 SUTTON, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

6. Plaintiff 673 MEEKER, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

7. Plaintiff 669 MEEKER AVENUE, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

8. Plaintiff 667 MEEKER, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

9. Plaintiff 661 MEEKER, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

10. Plaintiff 657 MEEKER, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

11. Plaintiff 553 MEEKER, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

12. Plaintiff KINGSMEEK REALTY, INC, is a corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

13. Plaintiff SMK PROPERTIES II, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in Brooklyn, New York.

14. Upon information and belief, defendant MADISON REALTY CAPITAL, LLP, is a limited liability partnership organized under the laws of the State of New York, with its principal place of business in New York, New York.

15. Upon information and belief, defendant JOSHUA B. ZEGEN, is a managing principle at Madison, member of SDFS, LLC, SDF61 MEEKER 1, LLC, SDF61 MEEKER 2, LLC and a citizen of New York.

16. Upon information and belief, defendant KRISS & FEUERSTEIN, LLP, is a limited liability partnership organized under the laws of the State of New York, with its principal place of business in New York City, New York.

17. Upon information and belief, defendant JEROLD C. FEUERSTEIN, ESQ, is an attorney admitted to practice in the state of New York and a managing principle at Feuerstein with their principal place of business in New York, New York.

18. Upon information and belief, defendant SDFS, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in New York, New York.

19. Upon information and belief, defendant SDF61 MEEKER 1, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in New York, New York.

20. Upon information and belief, defendant SDF61 MEEKER 2, LLC, is a limited liability corporation organized under the laws of the State of New York, with its principal place of business in New York, New York.

JURISDICTION AND VENUE

21. The Court has jurisdiction over this matter pursuant to Article 3 of the New York Civil Practice Rules ("CPLR ").

22. This court has jurisdiction pursuant to CPLR §§ 301 and 302.

23. Venue is proper in this County pursuant to CPLR § 503(a) because Plaintiffs principle office is located in Kings County, New York.

24. Venue is proper in this County pursuant to CPLR § 507, because the real property that is the subject of loan agreements at issue in this action, the SMK Portfolio, is located in Kings County.

FACTUAL BACKGROUND

25. On or about December 6, 2011 Madison and Zegan purchased (7) distressed mortgage notes in plaintiff's portfolio from New York Community Bank for an assignment sum of $10.00 each under an entity known as FTBK Investor II Llc, Trustee (see Exhibit 1). Shortly

thereafter plaintiff's where served with (7) foreclosure complaints via hard copies that where maliciously tossed on the floor of the lobby at each property.

26. Plaintiff's had then contacted a Mr. Vincent E. Giovinco at New York Community Bank with whom they had a strong working relationship with for many years to ask why the bank did not disclose a sale of the said mortgage notes. Plaintiff's also told Mr. Giovinco that the they had made every effort to work with the bank in paying arrears, in fact all (7) mortgage loans had been reinstated twice with continued communications that securing a refinance had been initiated and additional investors could have bought the notes as well.

27. Mr. Giovinco confided with the plaintiff's and had said that it was no surprise that the notes were sold to the defendants in that manner for a considerable discount since they had aligned themselves with the banks Vice President successfully by means of bribery and it was not a secret either. Thus establishing that Madison and Zegan had in fact acted with corrupt influence.

28. Madison and Zegan had acquired these (7) notes by unlawful means with the banks aid with the intentions of executing a full-fledged land grab or worst case cash in on a significant profit to be made from the default interest and per diem. Once their land grab scheme was called out in open court on June 3, 2013 before Justice: Bernard J. Graham all (7) foreclosure complaints had been disposed by order of the Supreme Court County of Kings on June 25, 2013 (see Exhibit 2).

29. Thereafter defendants were ordered to settle the remaining dispute with Madison, Zegan and Feuerstein whereby they strong armed them into entering forbearance agreements with exuberant amounts of both default interest and per diem being pilled on daily.

30. Plaintiff's resumed securing financing to pay off the (7) mortgage notes held by Madison and Zegan. Since the (7) properties had a substantial amount of accrued debt, plaintiffs began focusing on financing their entire real estate portfolio which totaled (10) commercial properties and provided more equity.

31. While working with Mr. Joseph Failla of Failla Funding ("Failla"), a licensed NYS mortgage broker, plaintiffs were then introduced to Mr. Jefforey Bell of CLS Inc ("CLS"), who presented themselves as a commercial lender. CLS claimed to have the capacity in providing a commercial bridge loan whereby capital would be allocated by their investors. Upon review of financial documents prepared by the plaintiff's and Failla, CLS then provided a term sheet (see Exhibit 3).

32. There was a clear transparency present and mutual understanding from the beginning regarding partial releases for all (10) properties so plaintiffs could either successfully secure refinancing and/or sell off a number of properties to pay off the proposed loan, this was again acknowledged in the term sheet provided. Only after the fact that the term sheet was executed by the plaintiff's, CLS disclosed that their so called investors were in fact Madison and Zegan who would be providing the capital. Furthermore, CLS stressed the importance of a quick 2-4 week closing in favor of an attractive $10.75% rate and guaranteed funding by their so called investors.

33. This was clearly a misrepresentation by CLS claiming to be the lender when in fact Madison and Zegan were the actual lenders. Plaintiffs recall at one point after executing the said term sheet, CLS had joked by asking if it wasn't going to be a problem to secure financing through their so called investors, Madison and Zegan due to the fact that part of the capital would be used to pay off (7) mortgage notes held by the same investors. Plaintiffs were

not ignorant to the scheme being presented to them, but rather had ran out if time in search of capital and were conscious of the fact that every day a per diem was being accrued and agreed to move forward.

34. During the pre-closing period from September 30, 2013 to November 1 & 4, 2013, plaintiffs worked with their closing attorney Mr. Elliot Martin, Esq. ("Martin"), Failla, CLS, Madison, Zegan and Feuerstein on closing items. Plaintiffs had yet again stressed the importance of partial release clauses for each of the (10) properties to be financed so that they may refinance and/or sell to eventually pay off the proposed loan. This request is evident in the Term Sheet provided discussed earlier.

35. Being seasoned real estate developers, plaintiffs were surprised to learn that none of the 4 third party reports listed in the Tem Sheet were actually being performed prior to closing. Apparently not even an appraisal was needed, which is one of the basic underwriting reports used by lenders in all real estate transactions. Drafts of loan documents had also been somehow not been presented fully and an opinion letter was not formally completed until time of closing by Martin.

36. Along with the very generous proposed interest rate of merely 10.75% which was well below the hard money market rate, this all seemed a little too easy. But then again as discussed earlier, Madison and Zegan had already completed their due diligence on the majority of said properties when they purchased the mortgage notes on or about December 6, 2011 so it was assumed they had already established a good valuation on their own.

37. Furthermore, it again did seem odd that a lender/investor who had purchased such distressed/defaulted mortgage notes and obviously knew about the plaintiff's "the borrower's" history of default would agree to fund a multimillion dollar loan. Clearly

establishing that Madison and Zegan where in fact engaging in some form of predatory lending practices. Since the plaintiffs had no time to debate such questions with daily per diems over their heads due to Madison and Zegan, they proceeded to move towards closing.

38. On November 1 & 4, 2013 plaintiffs, Martin, Failla, CLS along with Madison, Zegan, Feuerstein and SDF's executed the closing of hard money bridge loan at the offices of Feuerstein who was the attorney representing Madison, Zegan and SDF's.

39. The closing was executed in an unconventional manner whereby not all parties involved with closing were at one table rather the plaintiffs, Martin and Failla were placed in a small room with the door closed.

40. Feuerstein remained in a separate room and did not appear once throughout the entire closing.

41. The title closer was kept in a separate room throughout the entire closing.

42. Madison and Zegan were not physically present but had numerous telephone conversations with Feuerstein throughout the entire closing.

43. CLS had entered the room multiple times throughout the entire closing, again firmly asserting his belief that Madison and Zegan were his so called investors and not the lender.

44. In reality the transaction was essentially originated by CLS who posed as a Lender and provided plaintiffs with a Letter Of Interest/Term Sheet. Later shedding his snake skin and exposing himself as being a broker/correspondent who was paid commission from the loan proceeds. CLS was actually nothing more than a front man for Madison and Zegan who was used to execute a classic bait-and-switch on the plaintiffs.

45. By using CLS to originate the loan which plaintiffs had already invested time and money to do so, Madison and Zegan were able to pull off their well planned scheme of successfully becoming the lender for all of plaintiff's assets.

46. Closing documents were then brought into the room by Feuerstein's various staff members piece by piece. The documents did not appear to have been stapled/bound together, but rather loose. Each set of documents had a specific places for signatures as all legal binding documents but it appeared that as plaintiffs were being presented with these documents to execute only the last page was designated for signatures with no continuation of legal language running onto them. Those last pages of each set of documents were the only part signed by the plaintiffs, no initialing on any other pages was requested as many lenders often do with core loan documents for a large loan amount.

47. Martin did not seem concerned nor did he object to any of the unconventional things going on, rather he would frequently leave the room and walk over to Feuerstein's office. This seemed rather odd since plaintiffs had a solid working relationship with Martin and knew him of a serious demeanor, a stickler for due process and pledging by the book. As Martin would make his rounds back and forth from Feuerstein's office he seemed less and less concerned with anything of the sort. In fact Martin became almost fixated with a simple fee disagreement that evolved between plaintiffs, Failla and CLS to the extent that he diverged attention away from the closing itself to referee.

49. Both plaintiffs and Failla had reviewed each set of documents that would be delivered to the room piece by piece over the span of 2 long business days. Once the closing had finished plaintiffs were then handed a check for a small cash out amount from the proceeds and told everything was finished.

50. Plaintiffs looked upon very puzzled then verbally asked both Martin and Feuerstein's staff members in the presence of Failla about their set of closing documents. Which then they were told that since there was "a lot of paperwork/documents generated from the closing" there was no time to make a set for everyone and a set of original loan/closing documents would be forwarded to them shortly thereafter. After spending 2 long days in a small confined room, stressed out and exhausted they obliged and went home.

51. Post closing of the loan plaintiffs had made all interest payments in a timely manner, began marketing (4) of the (10) properties via MLS just one moth thereafter (See Exhibit 4) and commenced searching for a conventional "bank" / agency "capital markets" refinancing within a few months. The missing loan/closing documents were not delivered to Martin until several months had passed by.

52. These documents which were to be of original hard copy format as discussed earlier, had been instead electronically scanned and copied onto a compact data disk "CD".

53. While the plaintiffs had been hard at work from both angles of potentially selling a portion of the assets or securing complete and/or partial refinancing as planned, Madison, Zegan, Feuerstein and SDF's, had been building their framework of fraud and deception. The first sign came when plaintiffs had requested to exercise their initial six month extension in a timely manner whereby Madison and SDF's began stalling the process intentionally then finally agreed to provide the extension but adding an additional 1% fee which naturally was being justified due to the plaintiffs allegedly not meeting the required time frame in their request.

54. Following this debacle plaintiffs finally demanded the compact data disk "CD" from their attorney and began reviewing the closing documents for the first time. A shocking revelation of never seen documents came to surface such as a modified partial release of assets

with a schedule showing considerably large amounts added onto each property due to lender from a potential sale (See Exhibit 5).

55. No mention of any release amounts were listed for a potential refinance.

56. The plaintiffs being in complete disbelief that something of this nature could have not caught their attention at the closing since being experienced/seasoned real estate developers with a history of successful closings under their belt reached out to Failla who was present at the closing as discussed earlier, in the same room and reviewed all documents put forth. Failla confirmed that he had not seen any documents containing the said clause and agreed to voluntarily be witness thereof if ever needed.

57. A couple months thereafter plaintiffs had secured an Agency term sheet from working with Prudential Capital ("Prudential") for a proposed Freddie Mac refinancing at a very low/attractive interest rate with capability to pay off the entire bridge loan (See Exhibit 6).

58. An attorney on behalf of the Prudential requested a copy of the closing documents. Yet another revelation of never seen documents came to surface such as a First Right Of Refusal (See Exhibit 6).

59. Due to this finding, plaintiffs lost interest of Prudential and an opportunity to take advantage of a quality agency Freddie Mac deal that would have successfully paid of SDF's entire loan amount. Not to mention finally getting back on the road to conventional lending and exiting the long awaited hard money bridge loan of high interest rates, lender fees and short term maturity. After all, every private/hard money lender calls for this type of exit strategy while underwriting/originating a loan.

60. Once that second unforeseen issue had surfaced the plaintiffs were advised that the current bridge loan was in fact problematic and a clean re-bridge would have to be put in

place by another private money lender. The First Right Of Refusal was a deliberate roadblock put in place to create a hardship for the plaintiffs when seeking refinancing. Furthermore, these types of underhanded tactics are well known to be used by "lend to own" lenders to make it nearly impossible for a borrower to get out from under their grip.

61. Due to the circumstances mentioned the plaintiffs commenced to secure a clean re-bridge with yet another new lender in hopes that it would help them transition into a conventional/agency refinance in the near future. But for that to have been possible, a new lender would've needed to present more favorable terms than the present loan in place as per the First Right Of Refusal clause.

62. Again plaintiffs went to work on finding such lender through various sources and time consuming meetings, conference calls, countless emails, submittal of loan packages each tailored specifically to every lender. Finally a new lender was found, site inspection completed, loan package reviewed/analyzed, additional financial reports updated/submitted, face to face meetings and a term sheet was issued specifically to present more favorable terms.

63. As everything else this was not a freebie, a $50,000 deposit was given and a final term sheet was executed by both parties, which then was sent to the Madison, SDF's and Feuerstein in accordance with the First Right Of Refusal (See Exhibit 5).

64. As plaintiffs and new lender waited underwriting had moved forward, title reports ordered/delivered/reviewed and survey updates ordered. The new lender raised a red flag with respect to a large amount of back property taxes owed and water/sewer charges, whereby the initial loan amount had to be raised.

65. As the plaintiffs realized of the problematic loan in place which led them to discover three serious unforeseen issues already, they commenced on doing a thorough and

careful review of the entire closing documents. From the review they had unveiled layers of deception and fraud evident as black and white could be.

66. Since no original hard copies of the closing documents had been provided to plaintiffs as discussed earlier, the review had to be done using electronically scanned documents instead.

67. Nevertheless, the first questionable item was found by simple exploration of each PDF file and its properties which showed that they were not created until November 21, 2013, a total of (13) business after the closing (See Exhibit 6).

68. Second was the last pages which contained plaintiffs signatures as part of the documents that had come in question discussed earlier, seemed to have been stapled, separated by removal of staples then attached by re stapling but still did not match up to the staple marks on the entire set allegedly part of. (See Exhibit 7).

69. Third was a review of the loan settlement statement whereby plaintiffs discovered that a total of $649,671.22 proceeds from the closing had been escrowed for the purpose of SDF's in paying Real Property Taxes and Water/Sewer Charges 18 months forward as the lender on plaintiffs behalf as discussed and agreed upon (See Exhibit 8).

70. But in contrary plaintiff has since learned that no Real Property Taxes had in fact been paid forward since the day of the closing as mentioned earlier and was forced to execute agreements with the NYCDOF to avoid sale of liens while having to incur additional 18% interest penalty (See Exhibit 9).

71. Yet another disturbing/questionable layer of deception and fraud was unveiled by plaintiffs while reviewing the most recent title report on the properties in connection with the proposed re-bridging financing. The title report had shown that the SDF's recorded a document

at only one of the properties with reference to the second loan of $1,800,000 which they guaranteed to a financial institution in trade of some type of unknown benefit obviously directly on their behalf (See Exhibit 10).

72. This was done and recorded by the defendants with any prior oral, written or electronic notification to the plaintiffs and most importantly with no such said provision in the note (See Exhibit 11).

73. As mentioned/discussed earlier Madison, Zegan, Feuerstein and SDF's had knowingly and maliciously put roadblocks in place to prevent the plaintiffs from successfully exiting/paying off the current bridge loan in place.

74. This was achieved by first purchasing 7 out of 10 mortgage notes on the portfolio giving them an unfair leverage by holding majority of the debt.

75. Second was the predatory bridge loan offering using CLS which took advantage of the plaintiff's vulnerability in wrapping their arms around the entire debt of the portfolio.

76. Third was the fraudulent First Right Of Refusal, denial/exclusion of any partial release clauses for refinancing, exorbitant fees due for any exercised option to sell making it impractical/impossible in executing any such, withholding escrowed funds from being applied to any forward Real Estate Taxes thereby passing on the burden to the plaintiff and increasing the total amount of new capital needed to pay off the current bridge loan in place, forcing plaintiffs to go into default.

77. Thereby using the default status to increase the exit fee and capitalize on charging 24% default interest (See Exhibit 12). Madison, Zegan, Feuerstein and SDF's have also deliberately stalled deliverance of pay off statements, all negotiations and demanded both forebance agreements and waivers of foreclosure defense from plaintiff (See Exhibit 13) in

hopes of chasing the current new lender away so they could ultimately complete their land grab scheme by commencing foreclosure proceedings.

FIRST CAUSE OF ACTION

Against Madison and Zegan

(Commercial bribery)

78. Plaintiffs repeat and re allege the allegations set forth in paragraphs 25 through 28 of the Complaint as if fully set forth here.

79. Defendants acted with proof of corrupt influence, had given a bribe to induce a Vice President of an FDIC institution, where favored in some improper or unusual way, being provided preferential treatment.

80. Defendants were insiders to the transaction, acquired (7) discounted mortgage notes, non-disclosed publically and recorded the transaction and concealed the purchase price as a $10 assignment.

81. Defendants actions were willful, intentional, knowing, and malicious.

82. Plaintiffs suffered damages as a direct and proximate result of the commercial bribery.

SECOND CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Negligent Misrepresentation)

83. Plaintiffs repeat and re allege the allegations set forth in paragraphs 31 through 33 and 73 through 77 of the Complaint as if fully set forth here.

84. Defendants engaged in negligent misrepresentation.

85. Defendants actions were willful, intentional, knowing, and malicious.

86. Plaintiffs suffered damages as a direct and proximate result of the negligent misrepresentation.

THIRD CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Misrepresentation of Material Facts)

87. Plaintiffs repeat and re allege the allegations set forth in paragraphs 34 through 50, 60 through 63 and 73 through 77 of the Complaint as if fully set forth here.

88. Defendants engaged in Misrepresentation of Material Facts.

89. Defendants actions were willful, intentional, knowing, and malicious.

90. Plaintiffs suffered damages as a direct and proximate result of the Misrepresentation of Material Facts.

FOURTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Unjust Enrichment)

91. Plaintiffs repeat and re allege the allegations set forth in paragraphs 25 through 30, 34 through 37, 53, and 71 through 77 of the Complaint as if fully set forth here.

92. Defendants engaged in Unjust Enrichment.

93. Defendants actions were willful, intentional, knowing, and malicious.

94. Plaintiffs suffered damages as a direct and proximate result of the Unjust Enrichment.

FIFTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Breach of Contract)

95. Plaintiffs repeat and re allege the allegations set forth in paragraphs 38 through 50, 53 and 71 through 77 of the Complaint as if fully set forth here.

96. Defendants engaged in Breach of Contract.

97. Defendants actions were willful, intentional, knowing, and malicious.

98. Plaintiffs suffered damages as a direct and proximate result of the Breach of Contract.

SIXTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Fraudulent Misrepresentation)

99. Plaintiffs repeat and re allege the allegations set forth in paragraphs 38 through 50, 54 through 63 and 73 through 77 of the Complaint as if fully set forth here.

100. Defendants engaged in Fraudulent Misrepresentation.

101. Defendants actions were willful, intentional, knowing, and malicious.

102. Plaintiffs suffered damages as a direct and proximate result of the Fraudulent Misrepresentation.

SEVENTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Fraud)

103. Plaintiffs repeat and re allege the allegations set forth in paragraphs 38 through 50, 54 through 59 and 73 through 77 of the Complaint as if fully set forth here.

104. Defendants engaged in Fraud.

105. Defendants actions were willful, intentional, knowing, and malicious.

106. Plaintiffs suffered damages as a direct and proximate result of the Fraud.

EIGHT CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Aiding And Abetting Fraud)

107. Plaintiffs repeat and re allege the allegations set forth in paragraphs 38 through 50, 54 through 59 and 73 through 77 of the Complaint as if fully set forth here.

108. Defendants engaged in Aiding And Abetting Fraud.

109. Defendants actions were willful, intentional, knowing, and malicious.

110. Plaintiffs suffered damages as a direct and proximate result of the Aiding And Abetting Fraud.

NINTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Fraudulent Concealment)

111. Plaintiffs repeat and re allege the allegations set forth in paragraphs 38 through 50, 54 through 59 and 73 through 77 of the Complaint as if fully set forth here.

112. Defendants engaged in Fraudulent Concealment.

113. Defendants actions were willful, intentional, knowing, and malicious.

114. Plaintiffs suffered damages as a direct and proximate result of the Fraudulent Concealment.

TENTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Civil Conspiracy to Commit Fraud)

115. Plaintiffs repeat and re allege the allegations set forth in paragraphs 38 through 50 and 73 through 77 of the Complaint as if fully set forth here.

116. Defendants engaged in Civil Conspiracy to Commit Fraud.

117. Defendants actions were willful, intentional, knowing, and malicious.

118. Plaintiffs suffered damages as a direct and proximate result of the Civil Conspiracy to Commit Fraud.

ELEVENTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Interference With, Or Conversion Of, Corporate/Business Opportunities)

119. Plaintiffs repeat and re allege the allegations set forth in paragraphs 54 through 63 and 73 through 77 of the Complaint as if fully set forth here.

120. Defendants engaged in Interference With, Or Conversion Of, Corporate/Business Opportunities.

121. Defendants actions were willful, intentional, knowing, and malicious.

122. Plaintiffs suffered damages as a direct and proximate result of the Interference With, Or Conversion Of, Corporate/Business Opportunities.

TWELFTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Conversion)

123. Plaintiffs repeat and re allege the allegations set forth in paragraphs 64, 69 through 70 and 71 through 77 of the Complaint as if fully set forth here.

124. Defendants engaged in Conversion.

125. Defendants actions were willful, intentional, knowing, and malicious.

126. Plaintiffs suffered damages as a direct and proximate result of the Conversion.

THIRTEENTH CAUSE OF ACTION

Against Madison, Zegan, Feuerstein and SDF's

(Fraud And Constructive Fraud)

127. Plaintiffs repeat and re allege the allegations set forth in paragraphs 65 through 68 and 73 through 77 of the Complaint as if fully set forth here.

128. Defendants engaged in Fraud And Constructive Fraud.

129. Defendants actions were willful, intentional, knowing, and malicious.

130. Plaintiffs suffered damages as a direct and proximate result of the Fraud And Constructive Fraud.

FOURTEENTH CAUSE OF ACTION

Against Madison, Zegan, and SDF's

(Extortion)

131. Plaintiffs repeat and re allege the allegations set forth in paragraph 77 of the Complaint as if fully set forth here.

132. Defendants engaged in Extortion.

133. Defendants actions were willful, intentional, knowing, and malicious.

134. Plaintiffs suffered damages as a direct and proximate result of the Extortion.

FIFTEENTH CAUSE OF ACTION

Against Feuerstein

(Aiding And Abetting Extortion)

131. Plaintiffs repeat and re allege the allegations set forth in paragraph 77 of the Complaint as if fully set forth here.

132. Defendants engaged in Aiding And Abetting Extortion.

133. Defendants actions were willful, intentional, knowing, and malicious.

134. Plaintiffs suffered damages as a direct and proximate result of the Aiding And Abetting Extortion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court award judgments in its favor as follows:

(a) Enjoin Defendants from either commencing or proceeding with any foreclosure actions against plaintiffs before this complaint is resolved;

(b) Enjoin Defendants from advertising, marketing or promoting the sale of Plaintiff's assets in a false, materially misleading or deceptive manner in New York State under N.Y. Gen. Bus. Law § 350-e;

(c) Order Defendants to return all documents to Plaintiffs and, at the conclusion of this litigation, remove from Defendants' files all of Plaintiffs' personal and financial information;

(d) Declare that the corporate veils of all Madison's, SDF's entities, and all related, affiliated, or incorporated entities are pierced and that individual Defendants are liable for the conduct and debts of all relevant corporate entities;

(e) Declare that the corporate veils of all Madison's, SDF's, and all related, affiliated, or incorporated entities are pierced and that the assets of all such related corporate entities are available to satisfy all claims against any other corporate entity;

(f) On the First and Fourth Cause of Action, declaratory judgment to invalidate the fraudulent assignments of (7) mortgage notes and award the amount of at least $ 8,224,306.46, representing the aggregate amount compensation due Plaintiff for paying off such invalid notes, plus other actual and consequential damages in an amount to be determined at trial;

(g) On the Second, Third, Fifth and Sixth Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award compensatory damages for the amount of at least $ 17,594,958.68, plus other actual and consequential damages in an amount to be determined at trial;

(h) On the Seventh Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award the amount of at least $150,000,000.00, representing the maximum amount compensation due Plaintiff for acts of Fraud, plus other actual and consequential damages in an amount to be determined at trial;

(i) On the Eight Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award the amount of at least $150,000,000.00, representing the maximum amount compensation due Plaintiff for acts of Fraud, plus other actual and consequential damages in an amount to be determined at trial;

(j) On the Ninth Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award the amount of at least $150,000,000.00, representing the maximum amount compensation due Plaintiff for acts of Fraud, plus other actual and consequential damages in an amount to be determined at trial;

(k) On the Tenth Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award the amount of at least $150,000,000.00, representing the maximum amount compensation due Plaintiff for acts of Fraud, plus other actual and consequential damages in an amount to be determined at trial;

(l) On the Eleventh and Twelfth Cause of Action, declaratory judgment to invalidate the $1,800,000 mortgage note and award the amount of at least $2,499,671.22, representing the aggregate amount compensation due Plaintiff;

(m) On the Thirteenth Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award the amount of at least $150,000,000.00, representing the maximum amount compensation due Plaintiff for acts of Fraud to be determined at trial;

(n) On the Fourteenth Cause of Action, declaratory judgment to invalidate the $1,800,000 and $13,200,000 mortgage notes and award the amount of at least $150,000,000.00, representing the maximum amount compensation due Plaintiff for acts of Fraud, plus other actual and consequential damages in an amount to be determined at trial;

(o) Granting such other and further relief as the Court deems just and proper.;

Dated: August 26, 2015
Brooklyn, New York

By: 

SYLVESTER SMOLARCZYK
On behalf of PLAINTIFS SYLVESTER SMOLARCZYK, JOZEF SMOLARCZYK, 3 SUTTON, LLC, 5 SUTTON, LLC,
673 MEEKER, LLC, 669 MEEKER AVENUE, LLC, 667 MEEKER, LLC, 661 MEEKER, LLC, 657 MEEKER, LLC, 553 MEEKER, LLC, KINGSMEEK REALTY, INC, and SMK PROPERTIES II, LLC., pro se
55 North Henry Street
Brooklyn NY 11222
Tele: 646-630-4551
Email: s.smolarczyk@yahoo.com

EXHIBIT "C"

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument.The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

2018101200979001005EBB62

RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 5**

Document ID: 2018101200979001 Document Date: 09-28-2018 Preparation Date: 11-01-2018
Document Type: ASSIGNMENT, MORTGAGE
Document Page Count: 4

PRESENTER:
KENSINGTON VANGUARD NATIONAL LAND SERVICES
39 W37TH STREET
TITLE NO.842756(F-NY-CP-KV)
NEW YORK, NY 10018
212-532-8686

RETURN TO:
KRISS & FEUERSTEIN LLP JEROLD C. FEUERSTEIN, ESQ
360 LEXINGTON AVENUE, SUITE 1200
NEW YORK, NY 10017

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	1864	14	Entire Lot	1520 FULTON STREET

Property Type: APARTMENT BUILDING

CROSS REFERENCE DATA

CRFN: 2015000146264

PARTIES

ASSIGNOR/OLD LENDER:
CENTENNIAL BANK
12 EAST 49TH STREET, 28TH FLOOR
NEW YORK, NY 10017

ASSIGNEE/NEW LENDER:
FULTON STREET LENDER LLC
C/O MADISON REALTY, CAPITAL 825 THIRD AVENUE, 37TH FLOOR
NEW YORK, NY 10022

FEES AND TAXES

Mortgage :

Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00
Recording Fee:	$	57.00
Affidavit Fee:	$	0.00

Filing Fee: $ 0.00
NYC Real Property Transfer Tax: $ 0.00
NYS Real Estate Transfer Tax: $ 0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 11-01-2018 11:52
City Register File No.(CRFN): **2018000364349**

City Register Official Signature

ASSIGNMENT OF MORTGAGE

Made by

CENTENNIAL BANK

To

FULTON STREET LENDER LLC

Dated:	as of September 28, 2018
Location:	1520 Fulton Street & 407 Herkimer Street Brooklyn, New York
County:	Kings
Block:	1864
Lot:	14 & 54

Please record and return to:

Jerold C. Feuerstein, Esq.
Kriss & Feuerstein LLP
360 Lexington Avenue, Suite 1200
New York, NY 10017

ASSIGNMENT OF MORTGAGE

THIS ASSIGNMENT OF MORTGAGE (this "Assignment") is made and executed as of September 28, 2018 by CENTENNIAL BANK, having an address 12 East 49th Street, 28th Floor, New York, New York 10017 ("Assignor") to FULTON STREET LENDER LLC, having an address c/o Madison Realty Capital, 825 Third Avenue, 37th Floor, New York, New York 10022 ("Assignee").

In consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor does hereby transfer, assign, grant and convey to Assignee all of Assignor's right, title and interest in and to that certain mortgage described in Exhibit A attached hereto and made a part hereof (the "Mortgage");

TOGETHER WITH the note or bond secured by the Mortgage and the monies due and payable thereon (the "Note").

TO HAVE AND TO HOLD the Mortgage and the Note unto Assignee, its successors, legal representatives and assigns forever.

This Assignment is made to Assignee without any representation, warranty or recourse, express or implied, of any kind whatsoever, except that Assignor represents and warrants that (i) Assignor is the present owner and holder of the Mortgage and (ii) the undersigned is authorized to execute and deliver this Assignment on behalf of Assignor.

[SIGNATURE PAGE FOLLOWS]

THIS ASSIGNMENT IS NOT SUBJECT TO THE REQUIREMENTS OF SECTION 275 OF THE REAL PROPERTY LAW BECAUSE IT IS AN ASSIGNMENT WITHIN THE SECONDARY MORTGAGE MARKET.

IN WITNESS WHEREOF, this Assignment has been executed by Assignor as of the date first above written.

CENTENNIAL BANK

By: _____
Name: Michael Walsh
Title: Managing Director

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

On the 27th day of September, 2018, before me, the undersigned, a notary public in and for said state, personally appeared Michael Walsh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

OLENA WINSHIP
NOTARY PUBLIC-STATE OF NEW YORK
No 01WI6195964
Qualified In New York County
My Commission Expires 11-03-2020

EXHIBIT A

Mortgage

1. Mortgage Assignment of Leases and Rents and Security Agreement dated March 25, 2015 in the principal sum of $4,800,000.00, made by Hello Fulton LLC, as mortgagor, to Knighthead SSRE REIT, Inc., as mortgagee, and recorded on May 1, 2015, in the Office of the City Register of the City of New York (the "Register's Office") as CRFN 2015000146264.

   Which Mortgage was collaterally assigned pursuant to that certain Collateral Assignment of Loan and Loan Documents dated July 31, 2015, made by Knighthead SSRE REIT, Inc., as assignor, to Pacific Western Bank, as assignee, and recorded on October 16, 2015 in the Register's Office as CRFN 2015000371224.

   Which Mortgage was further collaterally assigned pursuant to that certain Assignment of Mortgage and Loan Documents dated August 24, 2016, made by Pacific Western Bank, as assignor, to Knighthead SSRE REIT, Inc., as assignee, and recorded on September 12, 2016 in the Register's Office as CRFN 2016000315653.

   Which Mortgage was assigned pursuant to that certain Assignment of Mortgage dated August 24, 2016, made by Knighthead SSRE REIT, Inc., as assignee, to Aristone 1520 Fulton Lender LLC, as assignee, and recorded on September 12, 2016 in the Register's Office as CRFN 2016000315654.

   Which Mortgage was modified and extended pursuant to that certain Mortgage Modification and Extension Agreement dated August 24, 2016, made by and among Hello Fulton LLC, as mortgagor; Centennial Bank, as administrative agent and mortgagee; and Aristone 1520 Fulton Lender LLC, as lender, and recorded on September 12, 2016 in the Register's Office as CRFN 2016000315655

EXHIBIT “D”

investors Bank

Via Certified Mail, RRR and Regular First Class Mail

271 Lenox LLC
925 Pacific Street, Unit 202
Brooklyn, NY 11238

Jacob Gold
1069 58th Street
Brooklyn, NY 11219

Eli Karp
1335 47th Street
Brooklyn, NY 11219

Chaim Nash
579 Crown Street
Brooklyn, NY 11213

Re: Building Loan in the principal amount of $17,900,000.00, made by Investors Bank to 271 Lenox LLC, as evidenced by, inter alia, that certain Building Loan Mortgage Note dated August 21, 2015

Dear Sir/Madam:

The above captioned Loan, and all related documentation, collateral, etc. has been assigned by Investors Bank to MRC RE HOLDINGS II LLC.

After your receipt of this notice, all loan payments should be made to the order of MRC RE HOLDINGS II LLC. The address of MRC RE HOLDINGS II LLC for payments, correspondence and other communications is:

MRC RE HOLDINGS II LLC
c/o Kriss & Feuerstein LLP
360 Lexington Avenue, Suite 1200
New York, NY 10017

Yours very truly,

INVESTORS BANK

By: _____
Name: Andrew Rohmeyer
Title: Vice President

cc: Romanick & Skolnick, Esqs.
142 Joralemon Street, Suite 5A
Brooklyn, NY 11201
Attn: Seth Romanick, Esq.

EXHIBIT “E”

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument.The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

2018092001086001005E0FBB

RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 6**

Document ID: 2018092001086001 Document Date: 08-30-2018 Preparation Date: 09-24-2018
Document Type: ASSIGNMENT, MORTGAGE
Document Page Count: 5

PRESENTER:
KENSINGTON VANGUARD NATIONAL LAND SERVICES
39 W37TH STREET
TITLE NO.843771(X-NY-SS-KV)
NEW YORK, NY 10018
212-532-8686

RETURN TO:
KRISS & FEUERSTEIN LLP MICHAEL V. CAPELLUPO ESQ.
360 LEXINGTON AVENUE
SUITE 1200
NEW YORK, NY 10017

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	5066	68	Entire Lot	271 LENOX ROAD

Property Type: NON-RESIDENTIAL VACANT LAND

Borough	Block	Lot	Unit	Address
BROOKLYN	5066	66	Entire Lot	279 LENOX ROAD

Property Type: RESIDENTIAL VACANT LAND

CROSS REFERENCE DATA

CRFN: 2015000311277

PARTIES

ASSIGNOR/OLD LENDER:
INVESTORS BANK
101 JFK PARKWAY
SHORT HILLS, NJ 07078

ASSIGNEE/NEW LENDER:
MRC RE HOLDINGS II LLC
C/O KRISS & FEUERSTEIN LLP, 360 LEXINGTON AVENUE SUITE 1200
NEW YORK, NY 10017

FEES AND TAXES

Mortgage :		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00
Recording Fee:	$	65.00
Affidavit Fee:	$	0.00

Filing Fee:	$	0.00
NYC Real Property Transfer Tax:	$	0.00
NYS Real Estate Transfer Tax:	$	0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 09-24-2018 15:08
City Register File No.(CRFN): **2018000318661**

City Register Official Signature

ASSIGNMENT OF MORTGAGE

KNOW THAT THAT INVESTORS BANK, state chartered savings bank organized under the laws of the State of New Jersey with a place of business located at 101 JFK Parkway, Short Hills, New Jersey 07078 ("***Assignor***") in consideration of Ten ($10.00) or more Dollars, paid by MRC RE HOLDINGS II LLC, a limited liability company organized under the laws of the State of Delaware with a place of business located at c/o Kriss & Feuerstein LLP, 360 Lexington Avenue, Suite 1200, New York, New York 10017 ("***Assignee***"), hereby assigns unto Assignee all of its rights, title and interest in and to that certain mortgage more fully described on **Schedule 1** attached hereto and made a part hereof (the "***Mortgage***"), covering the premises commonly known as 271-279 Lenox Road, Brooklyn, New York, designated on the tax map of the County of Kings as Block 5066, Lots 66 & 68 and more particularly described on **Schedule A** attached hereto and made a part hereof.

TOGETHER with the bonds, notes or other obligations described in said mortgages, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE TO ASSIGNOR AND WITHOUT REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND WHATSOEVER BY ASSIGNOR EITHER EXPRESS OR IMPLIED.

The Mortgage(s) assigned hereby has not been further assigned except as set forth herein.

This Assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market.

The word "Assignor" or "Assignee" shall be construed as if it read "Assignors" or "Assignees" whenever the sense of this instrument so requires.

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IN WITNESS WHEREOF, the Assignor has duly executed this Assignment of Mortgage as of the 30th day of August, 2018.

ASSIGNOR:

INVESTORS BANK

By: _____
Name: Andrew Rohmeyer
Title: Vice President

STATE OF NEW JERSEY)
) **ss:**
COUNTY OF MIDDLESEX)

On the 23 day of August, in the year 2018, before me the undersigned, personally appeared ANDREW ROHMEYER, known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the foregoing instrument.

_____
Notary Public TANAYA S. COOPER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 28, 2021

(Affix Notarial Stamp)

Schedule 1
Description of Mortgage

Building Loan Mortgage and Security Agreement (jWith Assignment of Leases and Rents)

Mortgagor	271 Lenox LLC
Mortgagee	Investors Bank
Amount	$17,900,000.00
Dated	August 21, 2015
Recorded	September 4, 2015
CRFN	2015000311277

Schedule A
(Legal Description)

EXHIBIT A

LEGAL DESCRIPTION OF MORTGAGED PREMISES

271 LENOX ROAD, BROOKLYN, NEW YORK 11226

ALL that certain plot piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Lenox Road distant 90 feet 5 inches westerly from the corner formed by the intersection of the northerly side of Lenox Road with the westerly side of Nostrand Avenue;

RUNNING THENCE northerly at right angles to Lenox Road, 200 feet;

THENCE westerly parallel with Lenox Road 50 feet ¼ inch;

THENCE southerly at right angles to Lenox Road 200 feet to the northerly side of Lenox Road;

THENCE easterly along the northerly side of Lenox Road 50 feet 0 Y. inch to the point or place of BEGINNING.

279 LENOX ROAD, BROOKLYN, NEW YORK 11226

ALL that certain plot piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Lenox Road, distant 41 feet westerly from the corner formed by the intersection of the northerly side of Lenox Road with the westerly side of Nostrand Avenue;

RUNNING THENCE northerly parallel with Nostrand Avenue, 115 feet;

THENCE westerly parallel with Lenox Road, 49 feet 1 inch;

THENCE southerly at right angles to Lenox Road, 115 feet, more or less, to the northerly side of Lenox Road;

THENCE easterly along the northerly side of Lenox Road, 49 feet 4½ inches to the point or place of BEGINNING.

EXHIBIT “F”

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument.The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

2018092001086002003EAFFC

RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 7**

Document ID: 2018092001086002 Document Date: 08-31-2018 Preparation Date: 09-24-2018
Document Type: ASSIGNMENT, MORTGAGE
Document Page Count: 5

PRESENTER:
KENSINGTON VANGUARD NATIONAL LAND SERVICES
39 W37TH STREET
TITLE NO.843771(X-NY-SS-KV)
NEW YORK, NY 10018
212-532-8686

RETURN TO:
KRISS & FEUERSTEIN LLP MICHAEL V. CAPELLUPO ESQ.
360 LEXINGTON AVENUE
SUITE 1200
NEW YORK, NY 10017

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	5066	68	Entire Lot	271 LENOX ROAD

Property Type: NON-RESIDENTIAL VACANT LAND

Borough	Block	Lot	Unit	Address
BROOKLYN	5066	66	Entire Lot	279 LENOX ROAD

Property Type: RESIDENTIAL VACANT LAND

CROSS REFERENCE DATA

CRFN: 2015000311277
☒ Additional Cross References on Continuation Page

PARTIES

ASSIGNOR/OLD LENDER:
MRC RE HOLDINGS II LLC
C/O KRISS & FEUERSTEIN LLP, 360 LEXINGTON AVENUE SUITE 1200
NEW YORK, NY 10017

ASSIGNEE/NEW LENDER:
271 LENOX LENDER LLC
C/O KRISS & FEUERSTEIN LLP, 360 LEXINGTON AVENUE SUITE 1200
NEW YORK, NY 10017

FEES AND TAXES

Mortgage :

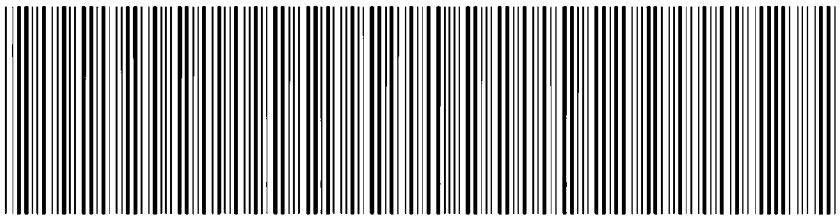
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00
Recording Fee:	$	68.00
Affidavit Fee:	$	0.00

Filing Fee:	$	0.00
NYC Real Property Transfer Tax:	$	0.00
NYS Real Estate Transfer Tax:	$	0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 09-24-2018 15:08
City Register File No.(CRFN): **2018000318662**

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2018092001086002003CAD7C

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) **PAGE 2 OF 7**

Document ID: 2018092001086002 Document Date: 08-31-2018 Preparation Date: 09-24-2018
Document Type: ASSIGNMENT, MORTGAGE

CROSS REFERENCE DATA
Document ID: 2018092001086001

ASSIGNMENT OF MORTGAGE

KNOW THAT THAT MRC RE HOLDINGS II LLC, a limited liability company organized under the laws of the State of Delaware with a place of business located at c/o Kriss & Feuerstein LLP, 360 Lexington Avenue, Suite 1200, New York, New York 10017 ("***Assignor***") in consideration of Ten ($10.00) or more Dollars, paid by 271 LENOX LENDER LLC, a limited liability company organized under the laws of the State of New York with a place of business located at c/o Kriss & Feuerstein LLP, 360 Lexington Avenue, Suite 1200, New York, New York 10017 ("***Assignee***"), hereby assigns unto Assignee all of its rights, title and interest in and to that certain mortgage more fully described on **Schedule 1** attached hereto and made a part hereof (the "***Mortgage***"), covering the premises commonly known as 271-279 Lenox Road, Brooklyn, New York, designated on the tax map of the County of Kings as Block 5066, Lots 66 & 68 and more particularly described on **Schedule A** attached hereto and made a part hereof.

TOGETHER with the bonds, notes or other obligations described in said mortgages, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE TO ASSIGNOR AND WITHOUT REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND WHATSOEVER BY ASSIGNOR EITHER EXPRESS OR IMPLIED.

The Mortgage(s) assigned hereby has not been further assigned except as set forth herein.

This Assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market.

The word "Assignor" or "Assignee" shall be construed as if it read "Assignors" or "Assignees" whenever the sense of this instrument so requires.

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment of Mortgage as of the 31st day of August, 2018.

ASSIGNOR:

MRC RE HOLDINGS II LLC

By:_____
Name: Joshua Zegen
Title: Authorized Signatory

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

On the 31st day of August, in the year 2018, before me the undersigned, personally appeared JOSHUA ZEGEN, known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the foregoing instrument.

Notary Public

(Affix Notarial Stamp)

JIGANASA PARIKH-SILO
Notary Public, State of New York
No. 01PA6179443
Qualified in Richmond County
Certificate on file in New York County
Commission Expires 9/13/2022

Schedule 1
Description of Mortgage

Building Loan Mortgage and Security Agreement (With Assignment of Leases and Rents)	
Mortgagor	271 Lenox LLC
Mortgagee	Investors Bank
Amount	$17,900,000.00
Dated	August 21, 2015
Recorded	September 4, 2015
CRFN	2015000311277
Assignment of Mortgage	
Assignor	Investors Bank
Assignee	MRC RE Holdings II LLC
Dated	August 30, 2018
Recorded	To be recorded
CRFN	To be recorded simultaneously herewith

Schedule A
(Legal Description)

EXHIBIT A

LEGAL DESCRIPTION OF MORTGAGED PREMISES

271 LENOX ROAD, BROOKLYN, NEW YORK 11226

ALL that certain plot piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Lenox Road distant 90 feet 5 inches westerly from the corner formed by the intersection of the northerly side of Lenox Road with the westerly side of Nostrand Avenue;

RUNNING THENCE northerly at right angles to Lenox Road, 200 feet;

THENCE westerly parallel with Lenox Road 50 feet ¼ inch;

THENCE southerly at right angles to Lenox Road 200 feet to the northerly side of Lenox Road;

THENCE easterly along the northerly side of Lenox Road 50 feet 0 Y. inch to the point or place of BEGINNING.

279 LENOX ROAD, BROOKLYN, NEW YORK 11226

ALL that certain plot piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Lenox Road, distant 41 feet westerly from the corner formed by the intersection of the northerly side of Lenox Road with the westerly side of Nostrand Avenue;

RUNNING THENCE northerly parallel with Nostrand Avenue, 115 feet;

THENCE westerly parallel with Lenox Road, 49 feet 1 inch;

THENCE southerly at right angles to Lenox Road, 115 feet, more or less, to the northerly side of Lenox Road;

THENCE easterly along the northerly side of Lenox Road, 49 feet 4½ inches to the point or place of BEGINNING.

EXHIBIT “G”

Department of State

Existing Corporations and Businesses ▸

Corporation & Business Entity Database Search

Selected Entity Name: 271 LENOX LENDER LLC
Selected Entity Status Information

Current Entity Name:	271 LENOX LENDER LLC
DOS ID #:	5402940
Initial DOS Filing Date:	AUGUST 31, 2018
County:	NEW YORK
Jurisdiction:	NEW YORK
Entity Type:	DOMESTIC LIMITED LIABILITY COMPANY
Current Entity Status:	INACTIVE - Dissolution (Nov 29, 2019)

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O KRISS & FEUERSTEIN
360 LEXINGTON AVENUE
SUITE 1200
NEW YORK, NEW YORK, 10017

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
AUG 31, 2018	Actual	271 LENOX LENDER LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

Search Results New Search

EXHIBIT “H”

LOANCORE CAPITAL

55 Railroad Ave, Suite 100
Greenwich, CT 06830

November 9, 2018

SUMMARY OF TERMS

Deal Name:	Hello Lenox & Fulton
Collateral:	Fee simple interest in the 55-unit, 75,871 sf property located at 271 Lenox Road in Brooklyn, NY and in the 50-unit, 53,337 sf property located at 1520 Fulton Street in Brooklyn, NY.
Lender:	LoanCore Capital or its affiliates
Sponsor:	Eli Karp
Total Loan Amount:	$51,000,000 subject to: - 2.8% in-place NOI Debt Yield - 80.0% As-Is LTV - 70.0% Stabilized LTV - 7.0% Stabilized UNCF Debt Yield - Minimum Sponsor equity at risk post-closing of $10.0mm
Initial Loan Term:	2 years
Extension Options:	1, 12-month extension option
Extension Conditions:	The extension period shall be contingent upon (i) No EOD, (ii) extension of the LIBOR cap, (iii) the Property having achieved a minimum underwritten Net Cash Flow debt service coverage ratio at the time of extension equal to or greater than 1.20x (based on the actual interest only payment at the time of such extension)
Amortization:	Interest Only
Spread:	1-month Libor plus 400 bps, subject to a 50-basis point spread increase during the extension period. Spread step to 550 bps if Hello Fulton does not achieve TCO by February 28th, 2019.
Libor Floor / Cap:	2.00% / 3.50%
Prepayment Penalty:	18 months spread maintenance
Origination Fee:	1.00% of the Loan Amount payable at closing
Exit Fee:	0.50% waived if refinanced with LC
Ongoing Tax & Insurance Escrows:	Required
Capital Expenditure Reserve:	$350 per unit per annum
Carry Reserve:	$1,700,000
Renovation Reserve:	$6,500,000 to cover the remaining hard costs to complete Hello Fulton
Cash Management:	Soft lockbox and in-place cash management
Cash Trap:	A cash trap shall commence upon the property failing to maintain a 1.15x DSCR for two (2) consecutive calendar quarters.
Secondary Financing:	Prohibited
Assumability:	Not assumable
Recourse:	Non-recourse except for the payment guarantees noted above, environmental indemnification and Lender's standard carve-outs for "bad acts" which shall be recourse to Borrower and a creditworthy entity acceptable to Lender, on a joint and several basis.

This letter represents only proposed points that may or may not eventually become part of definitive Loan documentation between us and are not binding on either of us. It is not intended that either of us would be bound by any of these proposed terms until both of us agree to and sign formal written Loan documents, and neither of us should rely on any representations inconsistent with this paragraph.

EXHIBIT "I"

825 Third Avenue, 37th Floor
New York, NY 10022
P (888) 261-6234 F (646) 219-5643
www.madisonrealtycapital.com

Term Sheet

November 20, 2018

Hello Living, LLC

Gentlemen:

Following are proposed terms pursuant to which MRC RE Holdings II LLC ("Madison" or "Lender") will consider entering into a loan transaction with Borrower (the "Loan"). This term sheet shall expire seven (7) days from the date hereof.

Borrower: With respect to each Property (as hereinafter defined), a single asset bankruptcy remote entity with independent director(s) acceptable to Madison.

Lender: MRC RE Holdings II LLC and/or its affiliates.

Property: (i) 271-279 Lenox Road, Brooklyn, New York 11226 (the "Lenox Property") and (ii) 1520 Fulton Street, Brooklyn, New York 11216 and 407 Herkimer Street, Brooklyn, New York 11213 (collectively, the "Fulton Property", and together with the Lenox Property, individually and collectively, the "Property").

Loan Amount: With respect to the Lenox Property, (i) Twenty-Five Million Seven Hundred Fifty Thousand and 00/100 Dollars ($25,750,000) (the "Lenox Loan"). With respect to the Fulton Property, (i) Twenty-Five Million and 00/100 Dollars ($25,000,000) (the "Fulton Loan", and together with the Lenox Loan, individually and collectively, the "Loan"). The proceeds of each Loan will be advanced to refinance the existing loans encumbering the Property and to complete the construction of the applicable Property pursuant to a Building Loan Agreement and Project Loan Agreement and otherwise in accordance with the applicable Loan Documents (as defined hereunder). For the avoidance of doubt, there will be separate Loans for each of the Fulton Property and the Lenox Property.

Security: Lenox Loan. With respect to the Lenox Loan, (i) a first mortgage or mortgages and security agreement which shall encumber and be cross collateralized against the Lenox Property and (ii) a second mortgage or mortgages and security agreement which shall encumber and be cross collateralized against the Fulton Property. In addition, an assignment of, and security interest in, all current and future leases, rents and income for the Lenox Property and a UCC-

1 fixture filing perfecting the pledge of all furniture, fixtures and equipment and all other personal property of the Borrower under the Lenox Loan. The mortgage and security interests shall constitute valid first (or second, as applicable) liens, subject to no other liens or encumbrances. No additional senior or secondary financing shall be permitted during the term of the Lenox Loan, either secured or unsecured. Additionally, (i) a portion of the Loan will be secured by a pledge to Lender of a senior security interest in 100% of the ownership/equity in the Borrower under the Lenox Loan and (ii) a portion of the Loan will be secured by a pledge to Lender of a junior security interest in 100% of the ownership/equity in the Borrower under the Fulton Loan. Lender reserves the right to split the Loan into multiple loans or tranches.

Fulton Loan. With respect to the Fulton Loan, (i) a first mortgage or mortgages and security agreement which shall encumber and be cross collateralized against the Fulton Property and (ii) a second mortgage or mortgages and security agreement which shall encumber and be cross collateralized against the Lenox Property. In addition, an assignment of, and security interest in, all current and future leases, rents and income for the Fulton Property and a UCC-1 fixture filing perfecting the pledge of all furniture, fixtures and equipment and all other personal property of the Borrower under the Fulton Loan. The mortgage and security interests shall constitute valid first (or second, as applicable) liens, subject to no other liens or encumbrances. No additional senior or secondary financing shall be permitted during the term of the Fulton Loan, either secured or unsecured. Additionally, (i) a portion of the Loan will be secured by a pledge to Lender of a senior security interest in 100% of the ownership/equity in the Borrower under the Fulton Loan and (ii) a portion of the Loan will be secured by a pledge to Lender of a junior security interest in 100% of the ownership/equity in the Borrower under the Lenox Loan. Lender reserves the right to split the Loan into multiple loans or tranches.

The Fulton Loan and the Lenox Loan shall be cross defaulted.

Loan Term: Twelve (12) months.

Option to Extend: Provided (i) no event of default exists under either Loan and the applicable Loan Documents (as defined hereunder); (ii) all payments are made on time; (iii) there are no prior defaults under the Loan Documents; and (iv) upon a satisfactory credit check, Borrower may extend the Fulton Loan and the Lenox Loan for a single six (6) month period (the "Extension Period"). In consideration for the extension of each Loan, (i) Borrower shall pay to Lender a one percent (1.00%) extension fee on the remaining balance of the principal sum of the Loan, whether advanced or yet to be advanced but committed and (ii) Borrower shall fund to Lender an interest reserve equal to all interest due and payable during the Extension Period. Borrower shall not be permitted to extend the Fulton Loan without extending the Lenox Loan, and vice versa.

Interest Rate: The Loan shall bear interest (the "Interest Rate") at an adjustable rate (adjusted as and when LIBOR changes) of One Month LIBOR + Seven and 25/100 Percent (7.25%) per annum, with a floor of Nine and 55/100 Percent (9.55%)

per annum.

Amortization: Interest only. Interest for the period from and including the date of Closing through the end of the month shall be paid at Closing.

Prepayment: No prepayment of the Loan shall be permitted without the Lender, or its assigns, having received six (6) full months of interest on the Loan Amount of $25,750,000 (with respect to the Lenox Loan) and/or $25,000,000 (with respect to the Fulton Loan), regardless of the amount advanced in connection with the Loan. During the Extension Period, no prepayment of the Loan shall be permitted without the Lender, or its assigns, having received six (6) full months of interest on the Loan Amount of $25,750,000 (with respect to the Lenox Loan) and/or $25,000,000 (with respect to the Fulton Loan), regardless of the amount advanced in connection with the Loan. Borrower shall not be permitted to prepay the Fulton Loan without prepaying the Lenox Loan, and vice versa.

Origination Fee: Upon the closing of the Loan, Borrower shall pay to Madison a fee equal to One Percent (1.0%) of the Loan Amount of $25,750,000 (with respect to the Lenox Loan) and/or $25,000,000 (with respect to the Fulton Loan).

Exit Fee: Borrower shall pay to Madison a fee equal to One Percent (1.0%) of the Loan Amount of $25,750,000 (with respect to the Lenox Loan) and/or $25,000,000 (with respect to the Fulton Loan) on the earlier to occur of the following: (i) the maturity date of the Loan; (ii) prepayment of the Loan (including a pro rata amount on partial payments and (iii) the occurrence of an event of default (as defined in the Loan Documents).

Broker Fee: Borrower shall indemnify, defend and hold Lender harmless for any claims for Broker's commissions in connection with the Loan.

Due Diligence: Due diligence will continue upon Lender's receipt of the executed Term Sheet. The Lender reserves the right to perform and order all reports deemed reasonably necessary in evaluating the Property, the Borrower and the Guarantor (as defined hereunder). These reports shall include a complete review of the financial and credit information of the Borrower and the Guarantor, a complete review of the surrounding market and a complete review of the Property. Borrower shall only be permitted to a receive copy of any such reports if Borrower provides Lender with a commercially reasonably general release and Borrower further agrees to indemnity, defend and hold Lender harmless with respect to the reports.

Construction Documents: The Borrower must provide a proposed construction budget, plans and specifications, permits, lien waivers, construction contracts and other construction related documents, as Lender may require in its sole discretion.

Interest Reserve: To be determined upon the origination of the Loan.

Other Escrows: To be determined by Lender at closing of the Loan. Any escrows held by Lender shall constitute additional collateral security for the Loan and in the event of a default, Lender shall be permitted to apply same to the Loan in such order as Lender shall determine.

Insurance: Borrower shall provide Lender with certificates of insurance evidencing that all insurance required under each Mortgage ("Insurance Policies") is in full force and effect and in form acceptable to Lender in its sole discretion. Borrower shall covenant that the Insurance Policies shall remain in full force and effect throughout the Loan Term. The Borrower shall maintain at all times, at the Borrower's sole cost and expense, policies of liability and property (including business income and terrorism coverage) insurance, builder's risk, law and ordinance insurance and other insurance coverage required by the Lender according to the Loan Documents. The Insurance Policies must be paid for the term of the Loan at closing. Lender, its successors and/or assigns must be listed as mortgagee, loss payee, and additional insured. All Insurance Policies shall be issued by insurance companies satisfactory to Lender having an A.M. Best Key Rating of at least A/IX.

Title & Searches: Borrower must provide the Lender with such searches with respect to the title to the Property, the Borrower and its principals and the Guarantor as Lender may require, including a survey thereof certified to Lender and the applicable title company. The Borrower shall purchase an ALTA title insurance policy for Lender in the amount of the Loan, containing such endorsements as Lender may require in its discretion. The title company shall be selected by Lender. Lender shall also require (i) a UCC policy insuring the equity pledge and (ii) a mezzanine endorsement to Borrower's fee title insurance policy for any portion of the Loan only secured only by a pledge of equity.

Guaranty: Eli Karp, Chaim Nash and Jacob Gold (collectively, the "Guarantor") shall execute a Conditional Guarantee with standard recourse, "bad boy" carve-outs. The recourse "bad boy" carve-outs shall include, without limitation, full recourse in the case of a bankruptcy filed by or against Borrower or Guarantor. Guarantor shall execute an interest carry and property expense guaranty. Guarantor shall also deliver a completion guaranty in connection with the completion of the construction project at the Property and an environmental indemnity.

Lease Approval: Lender shall have the right to approve new leases and amendments to existing leases.

Documentation: Upon acceptance of the fully executed Term Sheet, Madison shall continue its due diligence. Documentation of the Loan shall be on Lender's standard loan documentation, subject to the terms hereof. Loan documents will include, in addition to the provisions that are summarized herein, provisions that, in the sole discretion of Lender, are customary, typical or appropriate for the Loan

(the "Loan Documents").

Closing: On or about ten (10) days from the date of this Term Sheet, at the discretion of Lender.

Exclusivity: Borrower and Guarantor hereby expressly agree and acknowledge that (a) Lender is devoting its personnel and financial resources to the consideration of the Loan; (b) in Lender's industry, business opportunities are limited and extremely competitive; (c) compensation to the Lender, in the event Borrower obtains financing from a source other than Lender, would be extremely difficult to calculate; (d) Lender cannot, as a result of this underwriting and analysis, commit its resources to other potential transactions and may be deprived of business opportunities thereby; and (e) Lender may suffer negative impact in the industry in the event the Borrower does not complete this proposed transaction or obtains financing from a competitor of the Lender. Accordingly, Borrower and Guarantor hereby expressly agrees to work solely with Lender to procure the Loan and agrees not to, and will cause their principals and affiliates not to, obtain or attempt to arrange financing in connection with the Property with any party other than Lender. In the event the Borrower, Guarantor or an affiliate or controlled entity of either (a) obtains financing for the Property from a source other than Lender (including joint venture equity), or (b) sells, assigns or otherwise conveys the Property or its contract to acquire the Property, Borrower and Guarantor shall be obligated to pay and Lender shall be deemed to have earned a break-up fee in the amount of $1,105,000 which break-up fee constitutes a reasonable estimate of Lender's damages and which break-up fee shall constitute liquidated damages. Borrower and Guarantor shall be responsible for Lender's legal fees and costs in connection with the recovery of the break-up fee. This foregoing exclusivity provision is in consideration for Lender issuing this Term Sheet and shall be binding upon Borrower and Guarantor regardless of Lender making a loan offer. This exclusivity provision shall expire on December 31, 2018.

No Commitment: This Term Sheet and the funding of the Loan is subject to, and conditioned upon, completion of all due diligence and execution of legal documentation to the satisfaction of Lender and its counsel in their sole and absolute discretion, including review and approval of all Property-related documents, including, without limitation, title reports, insurance policies and/or certificates, surveys, engineering and property condition reports, environmental reports, construction budgets, construction plans and specifications, permits, construction contracts, operating statements and tenant and lease information. If, prior to the proposed disbursement of the loan proceeds, any fact or circumstance concerning or affecting the Property, the Borrower or any Guarantor varies in the Lender's sole and absolute discretion from information previously submitted to or received by Lender, or if the representations herein prove to be untrue, then Lender shall have the right to refuse to consummate the Loan. Lender shall have no liability to Borrower, its principal, and/or any Guarantor should the Loan fail to close. Handwritten modifications to this Term Sheet will not be

binding upon Lender. Notwithstanding anything to the contrary set forth herein, this Term Sheet is not a commitment by Lender to fund the Loan and Lender shall not be obligated to close the Loan for any reason or no reason in its sole and absolute discretion. This Term Sheet outlines the general terms and conditions under which Lender shall proceed and does not constitute a loan commitment, either express or implied, on behalf of Lender, and does not impose any obligation on Lender to make the Loan.

Forbearance: As a further condition to the making of the Loans, Borrower and Guarantor shall enter into a forbearance agreement acceptable to Lender in its sole discretion, with respect to the maturity defaults (and treatment of interest accrued post-maturity, including default interest) under the existing loans held by Lender on each Property.

Pre-Negotiation Letter: This Term Sheet is subject in all respects to those certain Pre-Negotiation Letters entered into on or about October 11, 2018 by and among Borrower, Guarantor and Lender (or affiliates thereof) with respect to the maturity default under the existing loans at the Property. The terms and conditions of such pre-negotiation letters are hereby incorporated by reference.

Please acknowledge your acceptance of the terms and conditions described herein by transmitting to Madison an executed copy of this letter. Once receipt is confirmed, the due diligence process will commence.

[SIGNATURE PAGE FOLLOWS]

Sincerely,

MRC RE HOLDINGS II LLC

By: _____
Joshua Zegen,
Authorized Person

ACCEPTED AND AGREED:

BORROWER:

HELLO LIVING, LLC

By: _____
Name:
Title:

_____
ELI KARP, as Guarantor

_____
CHAIM NASH, as Guarantor

_____
JACOB GOLD, as Guarantor

EXHIBIT "J"

Madison Realty Capital

825 Third Avenue, 37th Floor
New York, NY 10022
P (888) 261-6234 F (646) 219-5643
www.madisonrealtycapital.com

Term Sheet

October 28, 2018

Hello Flatbush LLC

Gentlemen:

Following are proposed terms pursuant to which MRC RE Holdings II LLC ("Madison" or "Lender") will consider entering into a loan transaction with Borrower (the "Loan"). This term sheet shall expire seven (7) days from the date hereof.

Borrower: A single asset bankruptcy remote entity(s) with independent director(s) acceptable to Madison.

Lender: MRC RE Holdings II LLC and/or its affiliates.

Property: 1357 Flatbush Avenue, Brooklyn, New York (the "Property").

Loan Amount: The lesser of (i) Fourteen Million Five Hundred Thousand and 00/100 Dollars ($14,500,000) and (ii) Sixty-Five Percent (65%) of the aggregate "As Completed" value of the Property. The proceeds of the Loan will be advanced to complete the construction of the Property pursuant to a Building Loan Agreement and/or Project Loan Agreement and otherwise in accordance with the Loan Documents (as defined hereunder).

Security: A first mortgage or mortgages and security agreement which shall encumber and be cross collateralized against the Property. In addition, an assignment of, and security interest in, all current and future leases, rents and income for the Property and a UCC-1 fixture filing perfecting the pledge of all furniture, fixtures and equipment and all other personal property of Borrower and the hotel operator of different than Borrower. The mortgage and security interest shall constitute valid first liens, subject to no other liens or encumbrances. No additional senior or secondary financing shall be permitted during the term of the Loan, either secured or unsecured. Additionally, a portion of the Loan will be secured by a pledge to Lender of a senior security interest in 100% of the ownership/equity in the owner of the Property. Lender reserves the right to split the Loan into multiple loans or tranches. ~~Lender will require a comfort letter from any applicable hotel flag.~~

Loan Term: Twelve (12) months.

Option to Extend: Provided (i) no event of default exists under the Loan and the Loan Documents (as defined hereunder); (ii) all payments are made on time; (iii) there are no prior defaults under the Loan Documents; and (iv) upon a satisfactory credit check, Borrower may extend the loan for a single six (6) month period (the "Extension Period"). In consideration for the extension of the Loan, (i) Borrower shall pay to Lender a one percent (1.00%) extension fee on the remaining balance of the principal sum of the Loan, whether advanced or yet to be advanced but committed and (ii) Borrower shall fund to Lender an interest reserve equal to all interest due and payable during the Extension Period.

Interest Rate: The Loan shall bear interest (the "Interest Rate") at an adjustable rate (adjusted as and when LIBOR changes) of One Month LIBOR + Seven and 75/100 Percent (7.75%) per annum, with an Interest Rate floor of Ten and 05/100 Percent (10.05%) per annum.

Amortization: Interest only. Interest for the period from and including the date of Closing through the end of the month shall be paid at Closing.

Prepayment: No prepayment of the Loan shall be permitted without the Lender, or its assigns, having received six (6) full months of interest on the Loan Amount of $14,500,000, regardless of the amount advanced in connection with the Loan. During the Extension Period, no prepayment of the Loan shall be permitted without the Lender, or its assigns, having received three (3) full months of interest on the Loan Amount of $14,500,000 (on account of the applicable Extension Period), regardless of the amount advanced in connection with the Loan.

Origination Fee: Upon the closing of the Loan, Borrower shall pay to Madison a fee equal to One Percent (1.00%) of the Loan Amount.

Exit Fee: Upon the earlier of the (i) repayment or the Loan (including a pro rata sum on partial payments), (ii) maturity of the Loan; and (iii) an event of default under the Loan, Borrower shall pay Lender an exit fee equal to One Percent (1.0%) of the Loan Amount of $14,500,000 regardless of the amounts advanced under the Loan.

Broker Fee: Borrower shall indemnify, defend and hold Lender harmless for any claims for Broker's commissions in connection with the Loan.

Expense Deposit: Borrower's acceptance of this Term Sheet shall constitute its unconditional agreement to pay all out of pocket fees, costs, charges and expenses with respect to the Loan, including, without limitation, the fees and expenses of Lender's counsel and all recording and filing fees, stamps and taxes. Upon the execution and return of this Term Sheet, the Borrower shall deposit in the form of wire transfer an expense deposit of $50,000 (the "Expense Deposit"). The Expense Deposit is non-refundable and will be applied to closing costs at

Closing. NOTE: Prior to Lender engaging legal counsel in connection with the due diligence and documentation of the Loan, the Borrower shall pay an additional deposit of $7,500 to Lender's counsel Kriss & Feuerstein LLP.

Due Diligence: Due diligence will commence upon Lender's receipt of the executed Term Sheet and payment of the Expense Deposit. The Lender reserves the right to perform and order all reports deemed reasonably necessary in evaluating the Property, the Borrower and the Guarantor (as defined hereunder). These reports shall include a complete review of the financial and credit information of the Borrower and the Guarantor, a complete review of the surrounding market and a complete review of the Property. Borrower shall only be permitted to a receive copy of any such reports if Borrower provides Lender with a commercially reasonably general release and Borrower further agrees to indemnity, defend and hold Lender harmless with respect to the reports.

Construction Documents: The Borrower must provide a proposed construction budget, plans and specifications, permits, lien waivers, construction contracts and other construction related documents, as Lender may require in its sole, but reasonable discretion.

Interest Reserve: To be determined upon the origination of the Loan.

Other Escrows: To be determined by Lender at closing of the Loan. Any escrows held by Lender shall constitute additional collateral security for the Loan and in the event of a default, Lender shall be permitted to apply same to the Loan in such order as Lender shall determine.

Insurance: Borrower shall provide Lender with certificates of insurance evidencing that all insurance required under the Mortgage ("Insurance Policies") is in full force and effect and in form acceptable to Lender in its sole, but reasonable, discretion. Borrower shall covenant that the Insurance Policies shall remain in full force and effect throughout the Loan Term. The Borrower shall maintain at all times, at the Borrower's sole cost and expense, policies of liability and property (including business income and terrorism coverage) insurance, builder's risk, law and ordinance insurance and other insurance coverage required by the Lender according to the Loan Documents. The Insurance Policies must be paid for the term of the Loan at closing. Lender, its successors and/or assigns must be listed as mortgagee, loss payee, and additional insured. All Insurance Policies shall be issued by insurance companies satisfactory to Lender having an A.M. Best Key Rating of at least A/IX.

Title & Searches: Borrower must provide the Lender with such searches with respect to the title to the Property, the Borrower and its principals and the Guarantor as Lender may require, including a survey thereof certified to Lender and the applicable title company. The Borrower shall purchase an ALTA title insurance policy for Lender in the amount of the Loan, containing such endorsements as Lender may require in its discretion. The title company shall be selected by Lender. Lender shall also require (i) a UCC policy insuring the equity pledge and (ii) a mezzanine endorsement to Borrower's fee title insurance policy for any portion

of the Loan only secured only by a pledge of equity.

Guaranty: Eli Karp (the "Guarantor") shall execute a Conditional Guarantee with standard recourse, "bad boy" carve-outs. The recourse "bad boy" carve-outs shall include, without limitation, full recourse in the case of a bankruptcy filed by or against Borrower or Guarantor. Guarantor shall execute an interest carry and property expense guaranty. Guarantor shall also deliver a completion guaranty in connection with the completion of the construction project at the Property and an environmental indemnity.

Lease Approval: Lender shall have the right to approve new leases and amendments to existing leases.

Documentation: Upon acceptance of the fully executed Term Sheet and receipt of the Expense Deposit, Madison shall begin its due diligence. Documentation of the Loan shall be on Lender's standard loan documentation, subject to the terms hereof. Loan documents will include, in addition to the provisions that are summarized herein, provisions that, in the sole discretion of Lender, are customary, typical or appropriate for the Loan (the "Loan Documents").

Closing: On or about ten (10) days from the execution of this Term Sheet and payment of the Expense Deposit, at the discretion of Lender.

Exclusivity: Borrower and Guarantor hereby expressly agree and acknowledge that (a) Lender is devoting its personnel and financial resources to the consideration of the Loan; (b) in Lender's industry, business opportunities are limited and extremely competitive; (c) compensation to the Lender, in the event Borrower obtains financing from a source other than Lender, would be extremely difficult to calculate; (d) Lender cannot, as a result of this underwriting and analysis, commit its resources to other potential transactions and may be deprived of business opportunities thereby; and (e) Lender may suffer negative impact in the industry in the event the Borrower does not complete this proposed transaction or obtains financing from a competitor of the Lender. Accordingly, Borrower and Guarantor hereby expressly agrees to work solely with Lender to procure the Loan and agrees not to, and will cause their principals and affiliates not to, obtain or attempt to arrange financing in connection with the Property with any party other than Lender. In the event the Borrower, Guarantor or an affiliate or controlled entity of either (a) obtains financing for the Property from a source other than Lender (including joint venture equity), or (b) sells, assigns or otherwise conveys the Property or its contract to acquire the Property, Borrower and Guarantor shall be obligated to pay and Lender shall be deemed to have earned a break-up fee in the amount of $290,000, which break-up fee constitutes a reasonable estimate of Lender's damages and which break-up fee shall constitute liquidated damages. Borrower and Guarantor shall be responsible for Lender's reasonable legal fees and costs in connection with the recovery of the break-up fee. This foregoing exclusivity provision is in consideration for Lender issuing this Term Sheet and shall be binding upon Borrower and Guarantor regardless of Lender making a loan offer. This

exclusivity provision shall expire on December 31, 2018.

No Commitment: This Term Sheet and the funding of the Loan is subject to, and conditioned upon, completion of all due diligence and execution of legal documentation to the satisfaction of Lender and its counsel in their sole and absolute discretion, including review and approval of all Property-related documents, including, without limitation, title reports, insurance policies and/or certificates, surveys, engineering and property condition reports, environmental reports, construction budgets, construction plans and specifications, permits, construction contracts, operating statements and tenant and lease information. If, prior to the proposed disbursement of the loan proceeds, any fact or circumstance concerning or affecting the Property, the Borrower or any Guarantor varies in the Lender's sole and absolute discretion from information previously submitted to or received by Lender, or if the representations herein prove to be untrue, then Lender shall have the right to refuse to consummate the Loan. Lender shall have no liability to Borrower, its principal, and/or any Guarantor should the Loan fail to close. Handwritten modifications to this Term Sheet will not be binding upon Lender. Notwithstanding anything to the contrary set forth herein, this Term Sheet is not a commitment by Lender to fund the Loan and Lender shall not be obligated to close the Loan for any reason or no reason in its sole and absolute discretion. This Term Sheet outlines the general terms and conditions under which Lender shall proceed and does not constitute a loan commitment, either express or implied, on behalf of Lender, and does not impose any obligation on Lender to make the Loan.

Proceeds: Immediately upon closing the loan Madison shall release $3,500,000.00 in loan proceeds to the Borrower. Such proceeds will be used as a purchase deposit to secure investor buyout of 271 Lenox Road & 1520 Fulton Street. This Loan is part of a proposed larger loan for $75,000,000.00 which will eventually cross collateralize 1357 Flatbush, 1520 Fulton Street & 271 Lenox Road.

Please acknowledge your acceptance of the terms and conditions described herein by faxing Madison an executed copy of this letter and wiring the Expense Deposit. Once receipt is confirmed, the due diligence process will commence.

[SIGNATURE PAGE FOLLOWS]

Sincerely,

MRC RE HOLDINGS II LLC

By: _____
Joshua Zegen,
Authorized Person

ACCEPTED AND AGREED:

BORROWER:

HELLO FLATBUSH LLC

By: _____
Name:
Title:

_____
ELI KARP, as Guarantor

EXHIBIT “K”

1520 Fulton Street / 271 Lenox Road / 1357 Flatbush Avenue

New Loan Origination

SOURCES & USES

FULTON / LENOX - ORIGINAL DEAL

Sources	$	% LTC	Uses	$	% LTC
MRC Loan Amount	50,750,000	100.0%	1520 Fulton - Repayment	21,606,690	42.6%
Borrower Equity	-	0.0%	271 Lenox - Repayment	18,005,298	35.5%
			Origination Fee	507,500	1.0%
			Lender Legal	50,000	0.1%
			Borrower Legal	50,000	0.1%
			MRT / Title	103,250	0.2%
			Closing Costs	124,500	0.2%
			Hard Costs	7,606,766	15.0%
			Soft Costs	431,182	0.8%
			Interest Reserve	2,264,814	4.5%
Sources	**50,750,000**	**100.0%**	**Uses**	**50,750,000**	**100.0%**

FLATBUSH INTERIM DEAL

Sources	$	% LTC	Uses	$	% LTC
MRC Loan Amount	14,500,000	100.0%	1357 Flatbush - Repayment	10,800,000	74.5%
			Partner Buyout Deposit	3,500,000	24.1%
			Closing / Other	200,000	1.4%
Sources	**14,500,000**	**100.0%**	**Uses**	**14,500,000**	**100.0%**

FULTON / LENOX / FLATBUSH - FULL DEAL

Sources	$	% LTC	Uses	$	% LTC
MRC Loan Amount	75,000,000	96.8%	1520 Fulton - Repayment	21,606,690	27.9%
Gap	2,479,436	3.2%	271 Lenox - Repayment	18,005,298	23.2%
			Origination Fee	750,000	1.0%
			Lender Legal	50,000	0.1%
			Borrower Legal	50,000	0.1%
			MRT / Title	855,000	1.1%
			Closing Costs	124,500	0.2%
			Hard Costs	7,606,766	9.8%
			Soft Costs	431,182	0.6%
			Interest Reserve	3,500,000	4.5%
			1357 Flatbush - Repayment	10,800,000	13.9%
			Partner Buyout Deposit	3,500,000	4.5%
			Closing / Other	200,000	0.3%
			Balance of Partner Buyout	10,000,000	12.9%
Sources	**77,479,436**	**100.0%**	**Uses**	**77,479,436**	**100.0%**

EXHIBIT “L”

Hello Living Portfolio

New Loan Origination

SOURCES AND USES

Loan Sources & Uses - At Close					
Sources	$	% LTC	Uses	$	% LTC
MRC Loan	65,037,715	94.6%	Existing Debt Repayment - 1520 Fulton	23,334,522	33.9%
Borrower Equity	3,738,711	5.4%	Existing Debt Repayment - 271 Lenox	19,108,900	27.8%
			Existing Debt Repayment - 1357 Flatbush	14,500,000	21.1%
			Short Interest	315,204	0.5%
			Origination Fee	750,000	1.1%
			Lender Legal	50,000	0.1%
			Borrower Legal	50,000	0.1%
			MRT	316,400	0.5%
			Title	225,000	0.3%
			Closing Costs	126,400	0.2%
			Balance of Partner Buyout	10,000,000	14.5%
Sources	**68,776,426**	**100.0%**	**Uses**	**68,776,426**	**100.0%**

Loan Sources & Uses - Through Transaction					
Sources	$	% LTC	Uses	$	% LTC
MRC Loan	75,000,000	95.3%	Existing Debt Repayment	56,943,422	72.3%
Borrower Equity	3,738,711	4.7%	MRC Financing Costs / Closing Costs	1,833,004	2.3%
Borrower Deposit	-	0.0%	Hard Costs to Complete	7,606,766	9.7%
			Soft Costs to Complete	431,182	0.5%
			Interest Reserve	1,924,337	2.4%
			Balance of Partner Buyout	10,000,000	12.7%
Sources	**78,738,711**	**100.0%**	**Uses**	**78,738,711**	**100.0%**

Balance to Complete			
	Hard Costs	Soft Costs	Total
1520 Fulton	5,826,136	217,750	6,043,885
271 Lenox Road	1,780,631	213,432	1,994,063
1357 Flatbush	-	-	-
Total	**7,606,766**	**431,182**	**8,037,948**

EXHIBIT “M”

LOAN APPLICATION

February 22, 2019

Mr. Eli Karp
17 Tokay Lane
Monsey, NY 10952

Via Email

RE: Lenox Apartments
271-279 Lenox Road
Brooklyn, NY 11226
(the "Property")

The purpose of this letter is to express our interest in providing financing for the above-referenced property. The following is an outline of key terms and conditions.

Lender:	Greystone Servicing Corporation, Inc. or its designated affiliate
Property & Improvements:	**55** units
Borrower:	Borrower shall be a single purpose entity principally owned and/or controlled by the Key Principal/Guarantor. Borrower shall be a single purpose entity with no operations, assets, or activities other than the Property and no debts other than the loan and ordinary course trade payables.
Key Principal:	**Eli Karp, subject to final review and approval by Lender.**
Guarantor:	**Eli Karp, subject to final review and approval by Lender.**
Maximum Loan Amount:	**$30,000,000**
Recourse:	The Guarantor shall be liable for the customary carve-outs, including fraud, intentional misrepresentation, misapplication or misappropriation of rents, security deposits, insurance proceeds or condemnation awards, fees paid to principals or affiliates after default, gross negligence or criminal acts, breach of environmental or special purpose entity covenants, collection fees and expenses and breach of due-on-sale/encumbrance covenants and in the event of bankruptcy.
Maximum "As Is" Loan to Value:	**70.0%**

LOAN APPLICATION

Minimum DCR at Closing:	**1.0x** based on Lender's underwritten Net Cash Flow (after Replacement Reserves) at the actual interest rate at closing.
Minimum Debt Yield at Closing:	**6.0%** based on Lender's underwritten Net Cash Flow (after Replacement Reserves) and the Maximum Loan Amount at closing.
Interest Rate:	Floating at **350** basis points (bps) over 30-day Libor, adjusted monthly and computed on the basis of actual number of days elapsed in the related accrual period over a 360-day year. Additionally, there will be a **2.0%** Libor floor, so that the actual interest rate shall not be less than **5.50%.** If the Loan does not close within 120 days of receipt of application, the rate will be increased by **0.25%.**
Interest Rate Management:	Borrower shall purchase and interest rate cap effective at closing with a notional amount not less than the maximum potential loan amount which will have the effect of capping the 30 day LIBOR at no greater than **3.0%** for the initial term. Counterparty must be rated A2/A.
Prepayment/Exit Fee:	**After the sixth month of the loan term, the loan shall be open for prepayment, subject to any applicable Exit Fee.** The Loan will be subject to a **1.0%** Exit Fee payable to Greystone. If Greystone provides the permanent financing, the Exit Fee will be waived.
Commitment Fee:	The Commitment Fee of **1.0%** of the ~~Maximum~~ Loan Amount shall be fully payable to Lender at closing. Actual
Brokerage Fee:	Borrower shall be responsible to pay Red Rock Capital, LLC a brokerage fee of **1.0%** of the ~~Maximum~~ Loan Amount at closing. Actual
Loan Term:	**24** months with two, **6**-month extension options subject in each instance to minimum DCR and LTV requirements and to the payment of a **0.25%** fee.
Amortization Period:	Interest Only
Legal & Third-Party Report Deposit:	Upon acceptance of this Loan Application, Applicant shall pay Lender a Legal & Third-Party Report Deposit held in a non-interest bearing account in the amount of **$20,000**. This Deposit will be utilized to cover the cost of legal fees and the MAI appraisal, engineering report, Phase I environmental report and Lender's out-of-pocket expenses in connection with the property inspection and other out-of-pocket processing costs incurred by Lender ("Lender Fees").

LOAN APPLICATION

	Any balance (net of expenses previously paid) will be credited to any Lender Fees at the time said fees are due and payable by Borrower to Lender. To the extent this amount is insufficient to cover the actual expenses; Applicant agrees to provide additional Deposit when requested by Lender. A Processing Fee of **$15,000** will be paid by Borrower upon acceptance of this Loan Application.
Other Expenses:	The Borrower shall be responsible for all reasonable closing costs such as, but not limited to, title insurance premiums, survey, transfer and other taxes, and recordation fees, and shall reimburse Lender for costs actually incurred whether or not the loan closes.
Subordinate Debt:	Not allowed.
Assumption:	The loan is not assumable.
Security:	First Mortgage, Deed of Trust or Deed to Secure Debt. First priority assignment of all leases, rents and income, and management agreement and franchise agreements (said agreements to be fully subordinate to the loan) and first lien security interest in all personal property collateral related to the Property.
Escrow Requirements:	Monthly escrows required for taxes, insurance and replacement reserves.
Insurance:	Commercial general liability insurance, all risk property insurance, business interruption/rental loss insurance, workers' compensation insurance, and employee fidelity insurance from an insurance company with a minimum rating of "A" (Standard & Poor's) and "A-X" (Best Guide). Earthquake, windstorm, flood and ordinance or law insurance is also required, where applicable.

LOAN APPLICATION

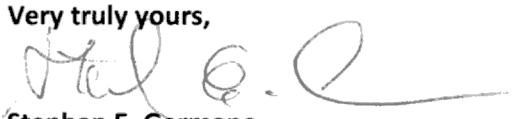
Special Conditions:

1. **The Loan will be subject to the Lender's final review and approval of the Management Agreement.**
2. **The Borrower, Key Principal and Guarantor shall be subject to final review and approval by Lender.**
3. **An insurance policy which meets Lender's guidelines will be required prior to closing.**
4. **The Loan will be subject to Lender's final determination of the Borrower's ability to qualify for permanent financing prior to closing.**
5. **The Borrower shall be required to rebalance the Loan after the 15th month of the Loan Term in order to achieve a minimum Debt Yield of 7.50%, based on the trailing three-month income and underwritten expenses and replacement reserves.**
6. **The Maximum Loan Amount shall not be greater than 95.0% of the estimated Fannie Mae or Freddie Mac permanent financing.**
7. **Lender will not allow either subordinate debt or preferred equity.**

This is a Loan Application, not a Loan Commitment. Neither the issuance of this Loan Application nor acceptance by the Applicant shall constitute an offer of financing on our part. In addition, terms may fluctuate from this estimate due to underwriting due diligence, loan approval requirements and/or market interest rate changes.

If the proposal described in this Loan Application is acceptable to you, kindly sign below. Please forward the countersigned copy of the Loan Application and the Legal, Third Party Report Deposit and Processing Fee of $35,000 to the undersigned. We must receive the Loan Application by February 25, 2019 or it is null and void and the loan will have to be re-priced and re-sized.

Very truly yours,



Stephen E. Germano
Senior Managing Director

LOAN APPLICATION

ACCEPTED THIS _____ DAY OF _____, 2019

BY: _____
Signature of Applicant

Eli Karp
Name of Applicant (printed)

Managing Member
Title of Person Signing (printed)

LOAN APPLICATION

WIRING INSTRUCTIONS-Operating Account

BANK:	Bank of America, New York 100 N. Tryon St Charlotte, NC 800-446-0135
ABA For Wires#	026-009-593
ACH Routing #:	061-000-052
ACCOUNT NUMBER:	334003918489
NAME ON ACCOUNT:	Greystone Servicing Corporation, Inc.
ATTENTION:	Stephen Germano
DETAILS:	Lenox Apartments Bridge Loan $35,000 - Third Party Report Deposit and Processing Fee

EXHIBIT “N”

CLOSING STATEMENT

PURCHASE BY ELI KARP ("PURCHASER") FROM NAG FULTON LLC ("SELLER") OF THEIR 60% INTEREST IN HELLO FULTON, LLC. ("Company")[1]
March 25, 2019

PURCHASE PRICE		**$21,000,000**
LESS 60% of the Liabilities of the Company		
Payables (as of Closing Date)	($5,066,227.68)	
Mortgages[2] (as of Closing Date)	($23,908,072.16)	
Taxes	($ 24,961.65)	
Total Capital	($ 9,453,242.29)	
TOTAL LIABILITIES & CAPITAL	($38,452,503.78)	
	times 60% =	**($23,071,502.27)**
ADJUSTED PURCHASE PRICE		(**$2,071,502.27)**
PLUS		
Seller's Capital[3]	$8,541,131.62	
60% of Company's unrestricted cash on hand	$ 403.63	
NET DUE SELLER		**$ 6,470,032.98**
SOURCES OF FUNDS:		
Down Payment[4]	($ 1,300,000.00)	
NET DUE SELLER		**$5,170,032.98**
Due Infinity Land Services LLC for transfer taxes from Seller[5]	($)	
CASH PAYMENT TO SELLER		**$_____**

Payment is authorized to be made to Seller as indicated on the attached Schedule 1.

SCHEDULE 1 TO CLOSING STATEMENT

[1] This Closing Statement is delivered without prejudice to the positions of either of the parties in pending proceedings before the Beis Din, which proceedings are referenced in certain documents for this transaction.
[2] Provide payoff letter or recent statement from the lender
[3] Overage claims are being reserved and resolved by the Beis Din
[4] Escrow Agent (Mandelbaum Salsburg PC) is authorized to release down payment of $1,300,000 to Seller
[5] Purchaser to provide evidence of delivery of transfer tax to title company

WIRE TRANSFER INSTRUCTIONS FOR CASH PAYMENT TO SELLER:

Valley National Bank
15 Roseland Avenue
Caldwell, NJ 07006
ABA# [redacted]
Account #[redacted]

Account Name:
[redacted]

Please note: we do not request changes to our wiring instructions via e-mail.

Optional Reference Info:
Please include: Client/Matter Number

Contact Info: [redacted]

IN WITNESS WHEREOF, the parties hereto have approved and executed this Closing Statement as of the date set forth above.

SELLER:

NAG FULTON, LLC

Sworn to and subscribed before

me this ____ day of March, 2019

_____

Notary Public, State of New York

[Notary's Seal]

By:_____

Jacob Gold

Sworn to and subscribed before

me this ____ day of March, 2019

_____

Notary Public, State of New Jersey

[Notary's Seal]

By:_____

Chaim T. Nash

[Signature page to Closing Statement.]

PURCHASER:

Sworn to and subscribed before

me this ____ day of March, 2019

_____

Notary Public, State of New York

[Notary's Seal]

_____

Eli Karp

[Signature page to Closing Statement.]

EXHIBIT “O”

~~MS Draft 3/12/19~~

CLOSING STATEMENT

PURCHASE BY ELI KARP ("PURCHASER") FROM NAG FULTON LLC ("SELLER") OF THEIR 60% INTEREST IN HELLO FULTON, LLC. ("Company")[1]

March 25, 2019

PURCHASE PRICE		**$21,000,000**
LESS ~~50~~60% of the Liabilities of the Company		
Payables[2] (as of ~~3/14/19~~Closing Date)	($5,066,227.68)	
Mortgages[3] (as of ~~3/14/19~~Closing Date)	($23,908,072.16)	
Taxes[4]	($ 24,961.65)	
~~Other: Mechanics Liens[5]~~		
~~Closing Adjustments [utilities[6]]~~		
~~[Unreserved Security Deposits][7]~~		
Total Capital	($ 9,453,242.29)	
TOTAL LIABILITIES & CAPITAL	($38,452,503.78)	
	times 60% =	**($23,071,502.27)**
ADJUSTED PURCHASE PRICE		**($2,071,502.27)**
PLUS		
Seller's Capital[8]	$8,541,131.62	
60% of Company's unrestricted cash on hand[9]	$ 403.63	
NET DUE SELLER ~~*[If Seller's Interest Were Unencumbered]*~~		
$ 6,470,032.98		

SOURCES OF FUNDS:

[1] This Closing Statement is delivered without prejudice to the positions of either of the parties in pending proceedings before the Beis Din, which proceedings are referenced in certain documents for this transaction.
[2] ~~Update total including for title rundown items not reflected below and not previously included~~
[3] Provide payoff letter or recent statement from the lender
[4] ~~As of 3/18/19. Plus taxes, interest and penalties through 3/14/19~~
[7] ~~~~
[8] Overage claims are being reserved and resolved by the Beis Din
[9] ~~~~

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Down Payment ~~(in escrow)~~[10] ($ 1,300,000.00)

~~Cash From Purchaser $~~

~~5~~

NET DUE SELLER

$5,170,032.98

Due Infinity Land Services LLC for transfer taxes from Seller[11] ($)

CASH PAYMENT TO SELLER $

Payment is authorized to be made to Seller as indicated on the attached Schedule 1.

[10] Escrow Agent (Mandelbaum Salsburg PC) is authorized to release down payment of $1,300,000 to Seller

[11] Purchaser to provide evidence of delivery of transfer tax to title company

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1618898

~~MS Draft 3/12/19~~

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SCHEDULE 1 TO CLOSING STATEMENT

WIRE TRANSFER INSTRUCTIONS FOR CASH PAYMENT TO SELLER:

Valley National Bank
15 Roseland Avenue
Caldwell, NJ 07006
[redacted]

Account Name:
[redacted]

Please note: we do not request changes to our wiring instructions via e-mail.

Optional Reference Info:
Please include: Client/Matter Number

Contact Info: [redacted]

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1618898

~~MS Draft 3/12/19~~

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IN WITNESS WHEREOF, the parties hereto have approved and executed this Closing Statement as of the date set forth above.

SELLER:

NAG FULTON, LLC

Sworn to and subscribed before

me this ____ day of March, 2019

_____

Notary Public, State of New York

[Notary's Seal]

By: _____

Jacob Gold

Sworn to and subscribed before

me this ____ day of March, 2019

_____

Notary Public, State of New Jersey

[Notary's Seal]

By: _____

Chaim T. Nash

[Signature page to Closing Statement.]

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~~MS Draft 3/12/19~~

PURCHASER:

Sworn to and subscribed before

me this ____ day of March, 2019

_____

Notary Public, State of New York

[Notary's Seal]

_____

Eli Karp

[Signature page to Closing Statement.]

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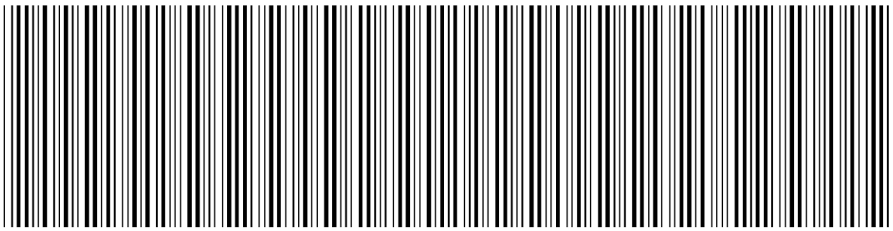
EXHIBIT “P”

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument.The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 12**

Document ID: 2019071100742002 Document Date: 06-27-2019 Preparation Date: 07-11-2019
Document Type: AGREEMENT
Document Page Count: 10

PRESENTER:
GOTHAM ABSTRACT & SETTLEMENT, LLC
370 LEXINGTON AVENUE, SUITE 800
GA-2066-19
NEW YORK, NY 10017
212-767-0707
RECORDINGS@GOTHAMABSTRACT.COM

RETURN TO:
GOTHAM ABSTRACT & SETTLEMENT, LLC
370 LEXINGTON AVENUE, SUITE 800
GA-2066-19
NEW YORK, NY 10017
212-767-0707
RECORDINGS@GOTHAMABSTRACT.COM

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	1864	14	Entire Lot	1520 FULTON STREET

Property Type: COMMERCIAL REAL ESTATE

CROSS REFERENCE DATA

CRFN: 2016000315656
☒ Additional Cross References on Continuation Page

PARTIES

PARTY 1:
1520 FULTON LLC
601 LEHIGH AVENUE
UNION, NJ 07083

PARTY 2:
FULTON STREET LENDER LLC
520 MADISON AVENUE, SUITE 3501
NEW YORK, NY 10022

FEES AND TAXES

Mortgage :

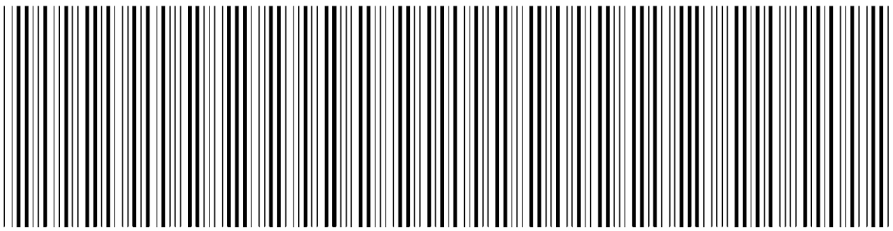
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		255
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00
Recording Fee:	$	87.00
Affidavit Fee:	$	8.00

Filing Fee: $ 0.00
NYC Real Property Transfer Tax: $ 0.00
NYS Real Estate Transfer Tax: $ 0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 07-16-2019 09:30
City Register File No.(CRFN): **2019000222643**

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



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RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) **PAGE 2 OF 12**

Document ID: 2019071100742002 Document Date: 06-27-2019 Preparation Date: 07-11-2019
Document Type: AGREEMENT

CROSS REFERENCE DATA
CRFN: 2018000364350

MORTGAGE AND NOTE SEVERANCE AGREEMENT

1520 FULTON LLC
(Mortgagor)

and

FULTON STREET LENDER LLC
(Mortgagee)

Dated as of: June 27, 2019

Property Addresses:

1520 Fulton Street
Brooklyn, New York 11216
Block: 1864
Lot: 14
County: Kings

RECORD AND RETURN TO:

FULTON STREET LENDER LLC
c/o Madison Realty Capital
520 Madison Avenue, Suite 3501
New York, New York 10022
Attention: Shoshana Carmel

MORTGAGE AND NOTE SEVERANCE AGREEMENT

THIS MORTGAGE AND NOTE SEVERANCE AGREEMENT (this "**Agreement**"), made as of this 27th day of June, 2019, by and between **1520 FULTON LLC**, a New York limited liability company, having an address at 601 Lehigh Ave., Union, NJ 07083 (the "**Mortgagor**"), and **FULTON STREET LENDER LLC**, a New York limited liability company, its successors and/or assigns, as their interests may appear, having offices at 520 Madison Avenue, Suite 3501, New York, New York 10022 (hereinafter, the "**Mortgagee**").

PRELIMINARY STATEMENT

A. Mortgagor and Mortgagee are parties to the following mortgage (the "**Mortgage**"), which encumbers the fee interest owned by Mortgagor in the premises located at 1520 Fulton Street, Brooklyn, New York 11216 (the "**Property**"), as more particularly described on Schedule A attached hereto:

Building Loan Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 24, 2016 in the maximum principal sum of $19,567,500.00, made by Hello Fulton LLC, as mortgagor in favor of Centennial Bank, as administrative agent and mortgagee, and Aristone 1520 Fulton Lender LLC, as mortgagee, and recorded in the New York City Register's Office, Kings County (the "Register's Office") on September 12, 2016 as CRFN 2016000315656 (Mortgage Tax Paid $547,890.00).

Which Mortgage was assigned by Assignment of Mortgage made by Centennial Bank, as assignor to Fulton Street Lender LLC, as assignee, dated as of September 28, 2018 and recorded in the Register's Office on November 1, 2018 as CRFN 2018000364350.

B. The current principal balance under the Mortgage is now $19,567,500.00, which secures a certain Building Loan Note (the "**Note**") dated as of August 24, 2016, in the original principal sum of $19,567,500.00, of which $17,431,473.68 has been advanced, and $2,136,026.32 is unfunded.

C. The parties hereto desire to modify the Note and the Mortgage to permit their severance into two (2) separate sub-notes and sub-mortgages, both of which shall encumber the Property in accordance with this Agreement as specified below.

D. The parties hereto further desire to modify the Note to split the indebtedness of the Note into two (2) separate obligations.

E. Mortgagor will execute and deliver to the Mortgagee simultaneously herewith a substitute mortgage encumbering the Property in the amount of $17,431,473.68 (the "**Substitute Mortgage A**"), which is intended to secure the indebtedness of a replacement note (the "**Substitute Note A**"), which Borrower will deliver to the Mortgagee herewith in favor of the Mortgagee in the principal sum of $17,431,473.68.

F. Mortgagor will execute and deliver to the Mortgagee simultaneously herewith a

substitute mortgage encumbering the Property in the amount of $2,136,026.32 (the "**Substitute Mortgage B**"), which is intended to secure the indebtedness of a replacement note (the "**Substitute Note B**"), which Borrower will deliver to the Mortgagee herewith in favor of the Mortgagee in the principal sum of $2,136,026.32.

G. The Substitute Mortgage A and Substitute Mortgage B do not, and are not intended, to secure any new or additional indebtedness of Mortgagor or of any other person, firm or corporation to the Mortgagee.

F. The parties desire to modify the Mortgage to permit the severance of the lien of the Mortgage.

NOW, THEREFORE, the parties agree as follows:

1. From and after the date hereof, the Mortgage is hereby severed into two (2) portions as follows:

(a) The Substitute Mortgage A, as modified and severed, in the reduced principal sum of $17,431,473.68, evidencing a second (2nd) lien encumbering the Property, securing the remaining indebtedness of the Substitute Note A in the sum of $17,431,473.68; and

(b) The Substitute Mortgage B, as modified and severed, in the reduced principal sum of $2,136,026.32, evidencing a third (3rd) lien encumbering the Property, securing the indebtedness of the Substitute Note B in the sum of $2,136,026.32.

2. Nothing contained in this Agreement or in Substitute Mortgage A or Substitute Mortgage B, shall be deemed to extinguish or increase the indebtedness evidenced by the Note, which is secured by the Mortgage, which, except as modified herein and by Substitute Mortgage A and Substitute Mortgage B, shall remain in full force and effect.

3. From and after the date hereof, the Note is hereby severed into two (2) portions as follows:

(a) Substitute Note A, in the principal amount of $17,431,473.68, evidencing the indebtedness of the Substitute Mortgage A, herein designated as the "Substitute Note A", which will be executed and delivered by Mortgagor simultaneously herewith, and shall be secured by Substitute Mortgage A; and

(b) Substitute Note B, in the principal amount of $2,136,026.32, evidencing the indebtedness of the Substitute Mortgage B, herein designated as the "Substitute Note B", which will be executed and delivered by Mortgagor simultaneously herewith, and shall be secured by Substitute Mortgage "A".

4. The parities hereby agree to modify the Mortgage to provide that the Mortgage may be severed, split and divided into two or more separate mortgages, each such split mortgage being a lien the Property therein described and securing such portion of the indebtedness secured by the

Mortgage as the Mortgagor and Mortgagee agree.

5. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto.

IN WITNESS WHEREOF, this Agreement has been delivered by the parties on the day and year first written above.

MORTGAGOR:

1520 FULTON LLC,
a New York limited liability company

By: _____
Name: Jacob Gold
Title: Authorized Signatory

MORTGAGEE:

FULTON STREET LENDER LLC,
a New York limited liability company

By: _____
Name: David Speiser
Title: Authorized Signatory

IN WITNESS WHEREOF, this Agreement has been delivered by the parties on the day and year first written above.

MORTGAGOR:

1520 FULTON LLC,
a New York limited liability company

By: _____
Name: Jacob Gold
Title: Authorized Signatory

MORTGAGEE:

FULTON STREET LENDER LLC,
a Delaware limited liability company

By: _____
Name:
Title:

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

On the 17 day of June in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared JACOB GOLD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Jan Kiderman
Notary Public, State of NY
No. 01KI6075678
Qualified in Westchester County
Commission Expires June 10, 2022

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

On the ___ day of June in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

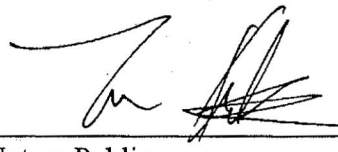
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ___ day of June in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared JACOB GOLD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the 24th day of June in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared David Speiser, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

TOM KORDENBROCK
Notary Public, State of New York
No. 01KO6371148
Qualified in New York County
Commission Expires February 20, 2022

SCHEDULE "A"

(As To Old Lot 14)

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Fulton Street, distant 320 feet westerly from the corner formed by the intersection of the southerly side of Fulton Street and the westerly side of Albany Avenue;

RUNNING THENCE Southerly and parallel with Albany Avenue, 100 feet;

THENCE Westerly and parallel with Fulton Street, 120 feet;

THENCE Northerly and again parallel with Albany Avenue, 100 feet to the southerly side of Fulton Street;

THENCE Easterly along the southerly side of Fulton Street, 120 feet to the point or place of BEGINNING.

(As To Old Lot 54)

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the northerly side of Herkimer Street, distant 320 feet westerly from the corner formed by the intersection of the northerly side of Herkimer Street and the westerly side of Albany Avenue;

RUNNING THENCE Northerly and parallel with Albany Avenue, 100 feet;

THENCE Westerly and parallel with Herkimer Street, 20 feet;

THENCE Southerly and again parallel with Albany Avenue, 100 feet to the northerly side of Herkimer Street;

THENCE Easterly along the northerly side of Herkimer Street, 20 feet to the point or place of BEGINNING.

PERIMETER DESCRIPTION:

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Fulton Street, distant 320 feet westerly from the corner formed by the intersection of the southerly side of Fulton Street and the westerly side of Albany Avenue;

RUNNING THENCE southerly and parallel with Albany Avenue, 200 feet, to a point on the northerly side of Herkimer Street;

THENCE westerly along the northerly side of Herkimer Street, 20 feet;

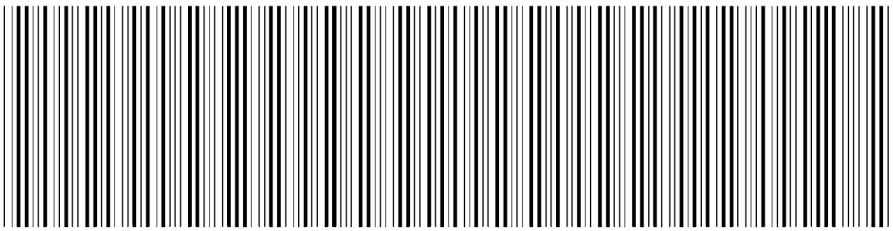
THENCE southerly and again parallel with Albany Avenue, 100 feet to the northerly side of Herkimer Street;

THENCE westerly parallel with Fulton Street, 100 feet;

THENCE northerly and again parallel with Albany Avenue, 100 feet to the southerly side of Fulton Street;

THENCE easterly along the southerly side of Fulton Street, 120 feet to the point or place of BEGINNING.

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2019071100742002001SC243

SUPPORTING DOCUMENT COVER PAGE **PAGE 1 OF 1**

Document ID: 2019071100742002 Document Date: 06-27-2019 Preparation Date: 07-11-2019
Document Type: AGREEMENT

SUPPORTING DOCUMENTS SUBMITTED:

	Page Count
255 MORTGAGE TAX EXEMPT AFFIDAVIT	1

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

JACOB GOLD, being duly sworn, deposes and says:

I am the Authorized Signatory of **1520 FULTON LLC**, the holder and owner (hereinafter, the "**Owner**") of the fee estate in certain premises and the buildings and improvements erected thereon located at 1520 Fulton Street, Brooklyn, New York 11216 (the "**Premises**"), as more particularly described in that certain mortgage (the "**Mortgage**") set forth on Schedule A attached hereto, and the undersigned is fully familiar with the facts and circumstances herein.

The mortgage tax due on the aforesaid Mortgage was paid in full at the time of recording.

There is offered for recording simultaneously herewith a certain Mortgage and Note Severance Agreement, dated as of June 27, 2019, made by and between the Owner and to **FULTON STREET LENDER LLC** (the "**Severance Agreement**"). The Severance Agreement splits the aforesaid Mortgage into two liens, a second lien in the amount of $17,431,473.68 and a third lien in the amount of $2,136,026.32, encumbering the Premises in accordance with the terms of the Severance Agreement.

After the maximum amount became secured thereby, no reloans or readvances have become secured thereunder to the date of execution of the said supplemental instrument.

The said Severance Agreement offered for recording does not create or secure any new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the above mentioned primary Mortgage.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

WHEREFORE, deponent respectfully requests that said Severance Agreement be declared exempt from taxation pursuant to the provisions of Section 255 of Article 11 of the Tax Law.

JACOB GOLD

Sworn to before me this
17 day of June, 2019

Notary Public

Jan Kiderman
Notary Public, State of NY
No. 01KI6075678
Qualified In Westchester County
Commission Expires June 10, 2022

SCHEDULE "A"

MORTGAGE SCHEDULE

Building Loan Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 24, 2016 in the maximum principal sum of $19,567,500.00, made by Hello Fulton LLC, as mortgagor in favor of Centennial Bank, as administrative agent and mortgagee, and Aristone 1520 Fulton Lender LLC, as mortgagee, and recorded in the New York City Register's Office, Kings County (the "Register's Office") on September 12, 2016 as CRFN 2016000315656 (Mortgage Tax Paid $547,890.00).

Which Mortgage was assigned by Assignment of Mortgage made by Centennial Bank, as assignor to Fulton Street Lender LLC, as assignee, dated as of September 28, 2018 and recorded in the Register's Office on November 1, 2018 as CRFN 2018000364350.

Which Mortgage, with an outstanding principal balance of $19,567,500.00, was modified and severed by that certain Mortgage and Note Severance Agreement, dated as of June 27, 2019, made by and between 1520 FULTON LLC and FULTON STREET LENDER LLC, and is intended to be immediately recorded in the Register's Office. Said Mortgage and Note Severance Agreement splits the Mortgage into two liens: a first lien in the amount of $17,431,473.68, known as Substitute Mortgage A, and a second lien in the amount of $2,136,026.32, known as Substitute Mortgage B.

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument.The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 20**

Document ID: 2019071100742003 Document Date: 06-27-2019 Preparation Date: 07-15-2019
Document Type: MORTGAGE
Document Page Count: 18

PRESENTER:
GOTHAM ABSTRACT & SETTLEMENT, LLC
370 LEXINGTON AVENUE, SUITE 800
GA-2066-19
NEW YORK, NY 10017
212-767-0707
RECORDINGS@GOTHAMABSTRACT.COM

RETURN TO:
GOTHAM ABSTRACT & SETTLEMENT, LLC
370 LEXINGTON AVENUE, SUITE 800
GA-2066-19
NEW YORK, NY 10017
212-767-0707
RECORDINGS@GOTHAMABSTRACT.COM

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	1864	14	Entire Lot	1520 FULTON STREET

Property Type: COMMERCIAL REAL ESTATE

CROSS REFERENCE DATA

CRFN: 2016000315656
☒ Additional Cross References on Continuation Page

PARTIES

MORTGAGOR/BORROWER:
1520 FULTON LLC
601 LEHIGH AVENUE
UNION, NJ 07083

MORTGAGEE/LENDER:
FULTON STREET LENDER LLC
520 MADISON AVENUE, SUITE 3501
NEW YORK, NY 10022

FEES AND TAXES

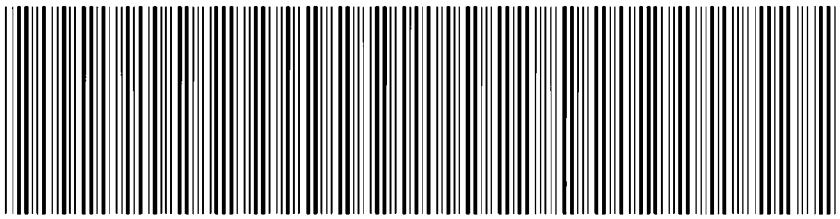
Mortgage :		
Mortgage Amount:	$	17,431,473.68
Taxable Mortgage Amount:	$	17,431,473.68
Exemption:		255
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00
Recording Fee:	$	127.00
Affidavit Fee:	$	8.00

Filing Fee:	$	0.00
NYC Real Property Transfer Tax:	$	0.00
NYS Real Estate Transfer Tax:	$	0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK
Recorded/Filed 07-16-2019 09:30
City Register File No.(CRFN): **2019000222644**

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



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RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) **PAGE 2 OF 20**

Document ID: 2019071100742003 Document Date: 06-27-2019 Preparation Date: 07-15-2019
Document Type: MORTGAGE

CROSS REFERENCE DATA
CRFN: 2018000364350
Document ID: 2019071100742001

SUBSTITUTE MORTGAGE A

1520 FULTON LLC
(Mortgagor)

and

FULTON STREET LENDER LLC
(Mortgagee)

Dated as of: June 27, 2019

Property Addresses:

1520 Fulton Street
Brooklyn, New York 11216
Block: 1864
Lot: 14
County: Kings

RECORD AND RETURN TO:

FULTON STREET LENDER LLC
c/o Madison Realty Capital
520 Madison Avenue, Suite 3501
New York, New York 10022
Attention: Shoshana Carmel

THIS MORTGAGE **DOES / DOES NOT (CIRCLE ONE)** ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

THIS **SUBSTITUTE MORTGAGE A** ("**Mortgage**"), made as of the 27th day of June, 2019, by **1520 FULTON LLC**, a New York limited liability company, having an address at 601 Lehigh Ave., Union, NJ 07083 (the "**Mortgagor**"), to **FULTON STREET LENDER LLC**, a New York limited liability company, its successors and/or assigns, as their interests may appear, having offices at 520 Madison Avenue, Suite 3501, New York, New York 10022 (hereinafter, the "**Mortgagee**").

WITNESSETH:

WHEREAS, Mortgagor is the fee owner of real property located at 1520 Fulton Street, Brooklyn, New York 11216, as further described in Schedule A attached hereto (the "**Premises**");

WHEREAS, the Mortgagee is the owner and holder of the mortgage (the "**Existing Mortgage**") as set forth on the attached Schedule B and the note and bond secured thereby (the "**Existing Note**"); and

WHEREAS, the Existing Mortgage was severed by Mortgage and Note Severance Agreement, dated as of the date hereof by and between Mortgagor and Mortgagee, creating two (2) portions;

WHEREAS, this Mortgage shall constitute one of the portions of the severed Existing Mortgage, and pursuant to which the Mortgagor shall be indebted to the Mortgagee in the principal sum of **SEVENTEEN MILLION FOUR HUNDRED THIRTY-ONE THOUSAND FOUR HUNDRED SEVENTY-THREE AND 68/00 DOLLARS ($17,431,473.68)**, lawful money of the United States of America, to be paid with interest according to a certain Substitute Note A of even date herewith made by Mortgagor to Mortgagee (the mortgage note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "**Note**") and all other sums due hereunder, (said indebtedness and interest due under the Note and this Mortgage being hereinafter collectively referred to as the "**Debt**"), Mortgagor has mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee the real property, as described respectively in Schedule "A" attached hereto (collectively, the "**Premises**") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "**Improvements**");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises,

the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtsey and rights of curtsey, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "**Equipment**"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "**Leases**") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and

other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (hereinafter collectively referred to as the "**Rents**"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt. All such leases and rents shall be deemed assigned to Mortgagee as further security for the repayment of the Debt.

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "**Intangibles**"); and

(g) all proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and this Mortgage in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay all monthly installments of interest and principal as provided

for in the Note and shall repay the Debt on or before the Maturity Date, as such term is defined in the Note (the "**Maturity Date**") at the time and in the manner provided in the Note and in this Mortgage.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property, subject only to said exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Representations and Covenants Concerning the Loan. Mortgagor represents, warrants and covenants as follows:

(a) The Note and this Mortgage are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note and this Mortgage, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Mortgaged Property have been obtained and are in full force and effect. The Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Mortgaged Property. The Mortgagor shall comply with all of the recommendations concerning the maintenance and repair of the Mortgaged Property which are contained in the inspection and engineering report which was delivered to Mortgagee in connection with the origination of the Loan.

(c) All of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against by title insurance. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

(d) The Mortgaged Property is and shall at all times remain in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

4. **Trust Fund.** Pursuant to Section 13 of the lien law of New York, Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

5. **Estoppel Certificates and No Default Affidavits.**

(a) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a certificate reaffirming all representations and warranties of Mortgagor set forth herein as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

6. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable, provided that Mortgagor shall not be required to pay any Prepayment Premium in connection herewith unless an Event of Default has occurred and is continuing.

7. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

8. **Controlling Agreement.** It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 8

shall control every other covenant and agreement in this Mortgage. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note , or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt, and the provisions of the Note and this Mortgage immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

9. **Performance of Other Agreements.** Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

10. **Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan (if Mortgage elects to do so.) Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

11. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

12. **Events of Default.** The Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "**Event of Default**"):

(a) if any portion of the Debt is not paid when due, after all applicable grace and/or cure periods, including the failure to repay the Debt on or before the Maturity Date;

(b) if Mortgagor shall fail to insure the Mortgaged Property in such amounts as determined from time to time by Mortgagee;

(c) if Mortgagor transfers or encumbers any portion of the Mortgaged Property without Mortgagee's prior written consent, it being expressly agreed and acknowledged by Mortgagor that subordinate financing is prohibited by this Mortgage;

(d) if any material representation or warranty of Mortgagor, or of any Guarantor, made herein or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(e) if Mortgagor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor shall be appointed or if Mortgagor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or if any proceeding for the dissolution or liquidation of Mortgagor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by

Mortgagor or such upon the same not being discharged, stayed or dismissed within sixty (60) days:

(g) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(h) except as permitted in this Mortgage, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;

(i) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Note beyond applicable cure periods contained in those documents;

(j) if Mortgagor fails to pay all taxes, assessments, water and sewer charges assessed against the Mortgaged Property;

(k) if Mortgagor fails to cure a default under any other term, covenant or provision of this Mortgage within thirty (30) days after Mortgagor first receives notice of any such default; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional sixty (60) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

13. **Right To Cure Defaults.** Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and shall be due and payable to Mortgagee upon demand.

14. **Remedies.**

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property by Mortgagee itself or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) declare the entire Debt to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisementor otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; notwithstanding the foregoing,upon default of the Mortgage or the Note, or other obligation secured thereby, Mortgagee shall have the right to sell the Premises by power of sale pursuant to Article 14 of the New York Real Property Actions and Proceedings Law;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein.

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with

respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the payment of Debt, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; or

(ix) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto in accordance with all applicable laws, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by

crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this paragraph at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note or this Mortgage in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note or this Mortgage. The failure of Mortgagee to exercise any right, remedy or option provided in the Note or this Mortgage shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note or in this Mortgage. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 24 (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Note or this Mortgage shall not be impaired by any indulgence, including, without limitation, (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

15. **Authority.** (a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and

to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

16. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclosure this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

17. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

18. **Waiver of Jury Trial.** **MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, OR THIS MORTGAGE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.**

19. **Cross Default.** This Substitute Mortgage, the Substitute Note, and the Loan Documents are cross defaulted with any loan made by Mortgagee to which the guarantor of

this Substitute Mortgage, the Substitute Note, and the Loan Documents, is a signatory, surety, or Guarantor (the "**Cross Default Loans**"). Upon the occurrence of an Event of Default hereunder, Mortgagee shall be permitted to exercise all remedies under the mortgage, the accompanying note and the loan documents of the Cross Default Loans. Upon the occurrence of an Event of Default under any of the Cross Default Loans, Mortgagee shall be permitted to exercise all remedies under this Mortgage, the Note and the Loan Documents.

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SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, Mortgagor has delivered this instrument the day and year first above written.

1520 FULTON LLC,
a New York limited liability company

By: _____
Name: Jacob Gold
Title: Authorized Signatory

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

On the 17 day of June in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared JACOB GOLD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Jan Kideman
Notary Public, State of NY
No. 01KI6075678
Qualified in Westchester County
Commission Expires June 10, 2022

SCHEDULE A

(As To Old Lot 14)

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Fulton Street, distant 320 feet westerly from the corner formed by the intersection of the southerly side of Fulton Street and the westerly side of Albany Avenue;

RUNNING THENCE Southerly and parallel with Albany Avenue, 100 feet;

THENCE Westerly and parallel with Fulton Street, 120 feet;

THENCE Northerly and again parallel with Albany Avenue, 100 feet to the southerly side of Fulton Street;

THENCE Easterly along the southerly side of Fulton Street, 120 feet to the point or place of BEGINNING.

(As To Old Lot 54)

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the northerly side of Herkimer Street, distant 320 feet westerly from the corner formed by the intersection of the northerly side of Herkimer Street and the westerly side of Albany Avenue;

RUNNING THENCE Northerly and parallel with Albany Avenue, 100 feet;

THENCE Westerly and parallel with Herkimer Street, 20 feet;

THENCE Southerly and again parallel with Albany Avenue, 100 feet to the northerly side of Herkimer Street;

THENCE Easterly along the northerly side of Herkimer Street, 20 feet to the point or place of BEGINNING.

PERIMETER DESCRIPTION:

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Fulton Street, distant 320 feet westerly from the corner formed by the intersection of the southerly side of Fulton Street and the westerly side of Albany Avenue;

RUNNING THENCE southerly and parallel with Albany Avenue, 200 feet, to a point on the northerly side of Herkimer Street;

THENCE westerly along the northerly side of Herkimer Street, 20 feet;

THENCE southerly and again parallel with Albany Avenue, 100 feet to the northerly side of Herkimer Street;

THENCE westerly parallel with Fulton Street, 100 feet;

THENCE northerly and again parallel with Albany Avenue, 100 feet to the southerly side of Fulton Street;

THENCE easterly along the southerly side of Fulton Street, 120 feet to the point or place of BEGINNING.

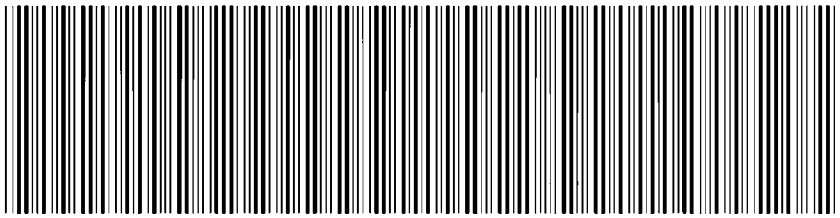
SCHEDULE B

Building Loan Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 24, 2016 in the maximum principal sum of $19,567,500.00, made by Hello Fulton LLC, as mortgagor in favor of Centennial Bank, as administrative agent and mortgagee, and Aristone 1520 Fulton Lender LLC, as mortgagee, and recorded in the New York City Register's Office, Kings County (the "Register's Office") on September 12, 2016 as CRFN 2016000315656 (Mortgage Tax Paid $547,890.00).

Which Mortgage was assigned by Assignment of Mortgage made by Centennial Bank, as assignor to Fulton Street Lender LLC, as assignee, dated as of September 28, 2018 and recorded in the Register's Office on November 1, 2018 as CRFN 2018000364350.

Which Mortgage, with an outstanding principal balance of $19,567,500.00, was modified and severed by that certain Mortgage and Note Severance Agreement, dated as of June 27, 2019, made by and between 1520 FULTON LLC and FULTON STREET LENDER LLC, and is intended to be immediately recorded in the Register's Office. Said Mortgage and Note Severance Agreement splits the Mortgage into two liens: a first lien in the amount of $17,431,473.68, known as Substitute Mortgage A, and a second lien in the amount of $2,136,026.32, known as Substitute Mortgage B.

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



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SUPPORTING DOCUMENT COVER PAGE **PAGE 1 OF 1**

Document ID: 2019071100742003 Document Date: 06-27-2019 Preparation Date: 07-15-2019
Document Type: MORTGAGE

SUPPORTING DOCUMENTS SUBMITTED:

	Page Count
255 MORTGAGE TAX EXEMPT AFFIDAVIT	1

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

JACOB GOLD, being duly sworn, deposes and says:

I am the Authorized Signatory of **1520 FULTON LLC**, the holder and owner (hereinafter, the "**Owner**") of the fee estate in certain premises and the buildings and improvements erected thereon located at 1520 Fulton Street, Brooklyn, New York 11216 (the "**Premises**"), as more particularly described in that certain mortgage (the "**Mortgage**") set forth on Schedule A attached hereto, and the undersigned is fully familiar with the facts and circumstances herein.

The mortgage tax due on the aforesaid Mortgage was paid in full at the time of recording.

There is offered for recording simultaneously herewith a Substitute Mortgage A dated as of June 27, 2019 (the "**Substitute Mortgage**"), from the Owner to **FULTON STREET LENDER LLC**, in the amount of $17,431,473.68, encumbering the Premises.

After the maximum amount became secured thereby, no reloans or readvances have become secured thereunder to the date of execution of the said supplemental instrument.

The said Substitute Mortgage offered for recording does not create or secure any new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the above mentioned primary Mortgage.

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WHEREFORE, deponent respectfully requests that said Substitute Mortgage A be declared exempt from taxation pursuant to the provisions of Section 255 of Article 11 of the Tax Law.

JACOB GOLD

Sworn to before me this
17 day of June, 2019

Notary Public

Jan Kiderman
Notary Public, State of NY
No. 01KI6075676
Qualified in Westchester County
Commission Expires June 10, 2022

SCHEDULE "A"

MORTGAGE SCHEDULE

1. Building Loan Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 24, 2016 in the maximum principal sum of $19,567,500.00, made by Hello Fulton LLC, as mortgagor in favor of Centennial Bank, as administrative agent and mortgagee, and Aristone 1520 Fulton Lender LLC, as mortgagee, and recorded in the New York City Register's Office, Kings County (the "Register's Office") on September 12, 2016 as CRFN 2016000315656 (Mortgage Tax Paid $547,890.00).

   Which Mortgage was assigned by Assignment of Mortgage made by Centennial Bank, as assignor to Fulton Street Lender LLC, as assignee, dated as of September 28, 2018 and recorded in the Register's Office on November 1, 2018 as CRFN 2018000364350.

   Which Mortgage, with an outstanding principal balance of $19,567,500.00, was modified and severed by that certain Mortgage and Note Severance Agreement, dated as of June 27, 2019, made by and between 1520 FULTON LLC and FULTON STREET LENDER LLC, and is intended to be immediately recorded in the Register's Office. Said Mortgage and Note Severance Agreement splits the Mortgage into two liens: a first lien in the amount of $17,431,473.68, known as Substitute Mortgage A, and a second lien in the amount of $2,136,026.32, known as Substitute Mortgage B.

2. Substitute Mortgage A, dated as of June 27, 2019, made by and between 1520 FULTON LLC and FULTON STREET LENDER LLC, in the original principal amount of $17,431,473.68, which is intended to be immediately recorded in the Register's Office.

EXHIBIT "Q"

LOAN APPLICATION

September 13, 2019

Eli Karp
17 Tokay Lane
Monsey, NY 10952

Via Email

RE: Lenox Apartments
271-279 Lenox Road
Brooklyn, NY 11226

(the "Property")

The purpose of this letter is to express our interest in providing financing for the above-referenced property. The following is an outline of key terms and conditions.

Lender:	Greystone Servicing Corporation, Inc. or its designated affiliate
Property & Improvements:	**55** units
Borrower:	Borrower shall be a single purpose entity principally owned and/or controlled by the Key Principal/Guarantor. Borrower shall be a single purpose entity with no operations, assets, or activities other than the Property and no debts other than the loan and ordinary course trade payables.
Key Principal:	**Eli Karp, subject to final review and approval by Lender.**
Guarantor:	**Eli Karp, subject to final review and approval by Lender.**
Maximum Loan Amount:	**$35,000,000**
Recourse:	The Guarantor(s) shall be liable for the customary carve-outs, including fraud, intentional misrepresentation, misapplication or misappropriation of rents, security deposits, insurance proceeds or condemnation awards, fees paid to principals or affiliates after default, gross negligence or criminal acts, breach of environmental or special purpose entity covenants, collection fees and expenses and breach of due-on-sale/encumbrance covenants and in the event of bankruptcy.

LOAN APPLICATION

Maximum "As Is" Loan to Value:	**70.0%**
Minimum DCR at Closing:	**1.0x** based on Lender's underwritten Net Cash Flow (after Replacement Reserves) at the actual interest rate at closing.
Minimum Debt Yield at Closing:	**5.25%** based on Lender's underwritten Net Cash Flow (after Replacement Reserves) and the Maximum Loan Amount at closing.
Interest Rate:	Floating at **325** basis points (bps) over 30-day Libor, adjusted monthly and computed on the basis of actual number of days elapsed in the related accrual period over a 360-day year. Additionally, there will be a **2.0%** Libor floor, so that the actual interest rate shall not be less than **5.25%.** If the Loan does not close within 120 days of receipt of application, the rate will be increased by **0.25%.**
Interest Rate Management:	Borrower shall purchase and interest rate cap effective at closing with a notional amount not less than the maximum potential loan amount which will have the effect of capping the 30-day LIBOR at no greater than **3.0%** for the initial term. Counterparty must be rated A2/A.
Prepayment/Exit Fee:	**After the sixth month of the loan term, the loan shall be open for prepayment, subject to any applicable Exit Fee.** The Loan will be subject to a **1.0%** Exit Fee payable to Greystone. If Greystone provides the permanent financing, the Exit Fee will be waived.
Commitment Fee:	The Commitment Fee of **1.0%** of the Maximum Loan Amount shall be fully payable to Lender at closing.
Loan Term:	**24** months with two, **6**-month extension options subject in each instance to minimum DCR and LTV requirements and to the payment of a **0.25%** fee.
Amortization Period:	Interest Only

LOAN APPLICATION

Legal & Third-Party Report Deposit:	Upon acceptance of this Loan Application, Applicant shall pay Lender a Legal & Third-Party Report Deposit held in a non-interest bearing account in the amount of **$20,000**. This Deposit will be utilized to cover the cost of legal fees and the MAI appraisal, engineering report, Phase I environmental report and Lender's out-of-pocket expenses in connection with the property inspection and other out-of-pocket processing costs incurred by Lender ("Lender Fees"). Any balance (net of expenses previously paid) will be credited to any Lender Fees at the time said fees are due and payable by Borrower to Lender. To the extent this amount is insufficient to cover the actual expenses; Applicant agrees to provide additional Deposit when requested by Lender. A Processing Fee of **$15,000** will be paid by Borrower upon acceptance of this Loan Application.
Other Expenses:	The Borrower shall be responsible for all reasonable closing costs such as, but not limited to, title insurance premiums, survey, transfer and other taxes, and recordation fees, and shall reimburse Lender for costs actually incurred whether or not the loan closes.
Subordinate Debt:	Not allowed.
Assumption:	The loan is not assumable.
Security:	First Mortgage, Deed of Trust or Deed to Secure Debt. First priority assignment of leases, rents and income, and management agreement and franchise agreements (said agreements to be fully subordinate to the loan) and first lien security interest in personal property collateral related to the Property.
Escrow Requirements:	Monthly escrows required for taxes, insurance and replacement reserves.
Insurance:	Commercial general liability insurance, all risk property insurance, business interruption/rental loss insurance, workers' compensation insurance, and employee fidelity insurance from an insurance company with a minimum rating of "A" (Standard & Poor's) and "A-X" (Best Guide). Earthquake, windstorm, flood and ordinance or law insurance is also required, where applicable.

LOAN APPLICATION

Special Conditions:

1. **The Loan will be subject to the Lender's final review and approval of the Management Agreement.**
2. **The Borrower, Key Principal(s), and Guarantor(s) shall be subject to final review and approval by Lender.**
3. **An insurance policy which meets Lender's guidelines will be required prior to closing.**
4. **The Loan will be subject to Lender's final determination of the Borrower's ability to qualify for permanent financing prior to closing.**
5. **The Borrower shall be required to rebalance the Loan after the 18th month of the Loan Term in order to achieve a minimum Debt Yield of 7.50%, based on the trailing-three-month income and underwritten expenses and replacement reserves.**
6. **The Maximum Loan Amount shall not exceed 95.0% of the estimated permanent financing.**
7. **Lender will not allow any subordinate debt or preferred equity.**
8. **The Loan will be subject to Lender's final review of any tax abatements.**
9. **The Loan will be subject to review of a detailed Sources and Uses Statement.**
10. **Lender will not allow any return of equity to Key Principal or Investors (cash neutral).**
11. **The Loan will be subject to a signed Letter of Intent, satisfactory to Lender, from Kings County Hospital for the entire 8,000 square feet of ground floor commercial space at a minimum rent of $40.50 per square foot (NNN). If the Borrower is not able provide a satisfactory Letter of Intent, the Maximum Loan Amount will be reduced from $35,000,000 to $34,000,000.**

This is a Loan Application, not a Loan Commitment. Neither the issuance of this Loan Application nor acceptance by the Applicant shall constitute an offer of financing on our part. In addition, terms may fluctuate from this estimate due to underwriting due diligence, loan approval requirements and/or market interest rate changes.

If the proposal described in this Loan Application is acceptable to you, kindly sign below. Please forward the countersigned copy of the Loan Application and the Legal, Third Party Report Deposit and Processing Fee of $35,000 to the undersigned. We must receive the Loan Application by September 16, 2019 or it is null and void and the loan will have to be re-priced and re-sized.

Very truly yours,

Stephen E. Germano
Senior Managing Director

LOAN APPLICATION

ACCEPTED THIS _____ DAY OF _____, 2019

BY:_____
Signature of Applicant

_____
Name of Applicant (printed)

_____
Title of Person Signing (printed)

LOAN APPLICATION

WIRING INSTRUCTIONS-Operating Account

BANK:	Bank of America, New York 100 N. Tryon St Charlotte, NC 800-446-0135
ABA For Wires#	026-009-593
ACH Routing #:	061-000-052
ACCOUNT NUMBER:	334003918489
NAME ON ACCOUNT:	Greystone Servicing Corporation, Inc.
ATTENTION:	Stephen Germano
DETAILS:	Lenox Apartments Bridge Loan $35,000 - Third Party Report Deposit and Processing Fee

EXHIBIT “R”

At an IAS Part — of the Supreme Court
of the State of New York, County of Rockland,
located at 1 South Main Street, New City, New York,
on the 24 day of August, 2021

PRESENT. HON. PAUL I. MARX, J.S.C.

----------X

HELLO LIVING DEVELOPER NOSTRAND LLC and HELLO NOSTRAND LLC,

Index No. 034885/2021

Plaintiffs,

-against-

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION WITH TEMPORARY RESTRAINING ORDER

1580 NOSTRAND MEZZ, LLC,
MADISON REALTY CAPITAL, L.P.,

Defendants.

VIRTUAL APPEARANCES REQUIRED ON RETURN DATE

----------X

Upon the reading and filing of the annexed Summons and Complaint filed on August 17, 2021 and the exhibits annexed thereto; the annexed affirmation of Yitzhak Zelman, dated August 17, 2021 ("Zelman Affirmation"), together with the exhibits annexed thereto; and the Plaintiffs' Memorandum of Law In Support of their Motion for a Preliminary Injunction and Temporary Restraining Order ("Memorandum of Law"); and upon all the pleadings and proceedings had herein;

LET the defendants1580 Nostrand Mezz LLC and Madison Realty Capital, L.P. (collectively "Defendants") show cause before the Supreme Court of the State of New York, Rockland County, Part 4, located at 1 South Main Street, New City, New York 10956, on the 1st day of October 2021 at 9:30 o'clock [a.m./~~p.m.~~] VIA TEAMS, or as soon thereafter as counsel can be heard, why an order should not be entered granting the following relief: (i) pursuant to CPLR 6301, issuing a preliminary injunction enjoining Defendants and anyone acting on the

* all parties having appeared before the Court on 8/24/21

Defendants' behalf, during the pendency of this action, from holding the proposed auction sale of plaintiff Hello Living Developer Nostrand, LLC's 100% membership interests in plaintiff Hello Nostrand LLC (the "Collateral") currently scheduled for September 2, 2021 at 1 p.m. (the "Auction") and (ii) granting such other and further relief as this Court deems just and proper.

SUFFICIENT CAUSE APPEARING THEREFOR, it is hereby

ORDERED that pending the hearing of the motion for a preliminary injunction, Defendants and anyone acting on Defendants' behalf are temporarily restrained and enjoined from conducting the proposed Auction of plaintiffs Hello Living Developer Nostrand LLC's membership interest in the Collateral currently scheduled for September 2, 2021 at 1 p.m.; and it is further

Ordered that, as a condition of the stay, plaintiffs shall post a bond in the amount of $100,000 no later than 5:00 pm on 8/27/21 to offset expenses + damages which Defendants may suffer in the event plaintiffs do not prevail.

PM JSC

ORDERED, that the Auction sale of the Collateral currently scheduled for September 2, 2021 at 1 p.m. is hereby canceled; and it is further

ORDERED, that service of a copy of this Order To Show Cause and the papers upon which it is based, shall be made upon Defendants by ~~electronic mail to Defendants' counsel, Kriss & Feuerstein LLP, 360 Lexington Avenue, Suite 1200, New York, New York 10017, attention: Jerold C. Feuerstein, Esq., jfeuerstein@kandfllp.com, and by overnight delivery mail on or before _____, 2021, and such service~~ the Court uploading the signed Order To Show Cause to NYSCEF shall be deemed good and sufficient; and it is further

PM JSC

ORDERED, that any opposition, if any, shall be served upon Marcus & Zelman, LLC, 701 Cookman Avenue, Suite 300, Asbury Park, New Jersey 07712, Attention: Yitzhak Zelman, Esq., by NYSCEF, ~~at least three (3) days before the return date of this application~~ no later than 9/20/21.

PM JSC

Reply papers shall be served via NYSCEF no later than 9/28/21.

ENTER:

HON. PAUL I. MARX, J.S.C.

VIRTUAL APPEARANCES REQUIRED ON RETURN DATE