

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD  
FINANCE, LLC, JEROME H. COHEN, and  
SHAUN D. COHEN,

Defendants.

Case No. 1:18-cv-5587

Hon. John Z. Lee

**OBJECTIONS OF CERTAIN MORTGAGEES TO RECEIVER’S CONSOLIDATED  
SIXTH MOTION FOR COURT APPROVAL OF THE PROCESS FOR PUBLIC SALE  
OF REAL ESTATE BY SEALED BID, FIFTH MOTION FOR APPROVAL OF THE  
SALE OF CERTAIN REAL ESTATE AND FOR THE AVOIDANCE OF CERTAIN  
MORTGAGES, LIENS, CLAIMS, AND ENCUMBRANCES, AND MOTION TO  
AMEND THE AUGUST 17, 2018 ORDER APPOINTING RECEIVER**

The following mortgagees (collectively, “Mortgagees”, and each individually a “Mortgagee”) respectfully submit this Objection (“Objection”) to the Receiver’s Consolidated Sixth Motion for Court Approval of the Process for Public Sale of Real Estate by Sealed Bid, Fifth Motion for Approval of the Sale of Certain Real Estate and for the Avoidance of Certain Mortgages, Liens, Claims, and Encumbrances, and Motion to Amend the August 17, 2018 Order Appointing Receiver (“Consolidated Motion”) [Dkt. 618]: (1) Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; (2) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB30; (3) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp.,

Multifamily Mortgage Pass-Through Certificates, Series 2017-SB41; (4) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB50; (5) Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16; (6) BMO Harris Bank, N.A.; (7) BC57, LLC; (8) Liberty EBCP, LLC (“Liberty”); (9) Federal Home Loan Mortgage Corporation (“Freddie Mac”); (10) UBS AG (“UBS”); and (11) Federal National Mortgage Association (“Fannie Mae”). In support of the Objections, the Mortgagees state as follows:

**BACKGROUND**

On August 15, 2018, the U.S. Securities and Exchange Commission (the “SEC”) filed a securities fraud complaint against EquityBuild, Inc., Equitybuild Finance, LLC, Jerome Cohen, and Shaun Cohen (collectively, “Receivership Defendants”). On August 17, 2018, the Court appointed Kevin B. Duff as the equity receiver (“Receiver”) over the estates of the Receivership Defendants (“Receivership Estates”). The Receiver proposes to market and list for sale 36 multifamily properties pursuant to certain procedures as outlined in the Consolidated Motion. Among these properties are the following properties which are the subject of a duly perfected security interest by the identified Mortgagee:

<b><u>Property Address</u></b>	<b><u>Mortgagee</u></b>
4611-17 South Drexel Boulevard, Chicago, Illinois 60653 (“ <u>4611 South Drexel</u> ”)	Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48
6217-27 South Dorchester Avenue, Chicago, Illinois 60637 (“ <u>6217 South Dorchester</u> ”)	Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48

6250 South Mozart Street, Chicago, Illinois 60629 (“ <u>6250 South Mozart</u> ”)	Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48
7255-57 South Euclid Avenue, Chicago, Illinois 60649 (“ <u>7255 South Euclid</u> ”)	Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48
1131-41 East 79th Place, Chicago, Illinois 60619 (“ <u>1113-41 East 79th</u> ”)	Fannie Mae
4533-47 South Calumet Avenue, Chicago, Illinois 60653 (“ <u>4533-47 South Calumet</u> ”)	BMO Harris Bank, N.A.
3074 Cheltenham Place, Chicago, Illinois 60648; Alternate Address: 7836 S. South Shore (“ <u>3074 Cheltenham</u> ”)	BC57, LLC
7201-7209 S. Constance, Chicago, Illinois 60649 (“ <u>7201 S. Constance</u> ”)	BC57, LLC
7024-32 South Paxton, Chicago, Illinois 60649 (“ <u>7024-32 South Paxton</u> ”)	Freddie Mac
6356 South Carolina 6355-59 South Talman 7051 South Bennett 7442-48 South Calumet 7201-07 South Dorchester 4317-19 South Michigan 2736-44 West 64th 7508 South Essex 816-20 East Marquette 7701-03 South Essex 7953-59 South Marquette	Liberty EBCP, LLC
5618-5620 S. Dr. Martin Luther King Drive, Chicago, IL 60637 (“ <u>5618-20 S. Dr. Martin Luther King</u> ”) 1422 E. 68 <sup>th</sup> Street Chicago, IL 60637 (“ <u>1422 E. 68<sup>th</sup></u> ”) 6558 S. Vernon (a.k.a. 416-424 E. 66 <sup>th</sup> Street) Chicago, IL 60637 (“ <u>6558 S. Vernon</u> ”) 4750 S. Indiana Avenue, Chicago, IL 60648 (“ <u>4750 S. Indiana</u> ”) 7840-42 S. Yates, Chicago, IL 60649 (“ <u>7840 S. Yates</u> ”) 2800-2806 E. 81 <sup>st</sup> Street, Chicago, IL 60617 (“ <u>2800 E. 81<sup>st</sup></u> ”)	UBS AG

The Receiver also proposes to close on the sale of 15 multifamily properties as outlined in

the Consolidated Motion. Among these properties are the following properties which are the subject of a duly perfected security interest by the identified Mortgagee:

<u>Property Address</u>	<u>Mortgagee</u>
4520-26 South Drexel Boulevard, Chicago, Illinois 60653 (" <u>4520-26 South Drexel</u> ")	U.S. Bank National Association, as Trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB41
6749-59 South Merrill Avenue, Chicago, Illinois 60649 (" <u>6749-59 South Merrill</u> ")	U.S. Bank National Association, as Trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB50
7110-16 South Cornell Avenue, Chicago, Illinois 60649 (" <u>7110-16 South Cornell</u> ")	U.S. Bank National Association, as Trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB50
7109-19 South Calumet Avenue, Chicago, Illinois 60619 (" <u>7109-19 South Calumet</u> ")	U.S. Bank National Association, as Trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB30
7600-10 South Kingston 8201 South Kingston 7656-58 South Kingston 8326-58 South Ellis 7546-48 South Saginaw	Liberty EBCP, LLC

For ease of review by the Court and organizational purposes, this Objection will be divided between objections to the Receiver's request to market and list for sale 36 multifamily properties and the Receiver's request to close on the sale of 15 multifamily properties. Liberty and UBS each also provide their own specific objections.

### **OBJECTIONS TO THE MARKETING AND SALE OF PROPERTIES**

#### **I. THE CONSOLIDATED MOTION FAILS TO SPECIFICALLY ADDRESS "DUE REGARD TO THE REALIZATION OF THE TRUE AND PROPER VALUE" OF THE PROPERTY AS REQUIRED BY THE RECEIVER ORDER.**

The Receiver cites the Paragraph 38 of the Receiver Order ("Receiver Order") as grounds

for the contemplated sale, noting he is authorized to sell “all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.” (Consolidated Motion at ¶ 7) (citing Receiver Order at ¶ 38) (Dkt. 16). However, the Consolidated Motion fails to truly address “*due regard to the realization of the true and proper value of such real property.*” (Receiver Order at ¶ 38) (emphasis added).

It is unclear from the Consolidated Motion whether the Receiver intends to provide a full payoff to the Mortgagees as a result of the sales. However, based on the Receiver’s request in the Consolidated Motion to approve the sale of the 15 multifamily properties, the Mortgagees believe the Receiver will not provide a full payoff at closing, rather he will withhold payment of the sale proceeds until some later undetermined date. (*See* Consolidated Motion at ¶ 270).

This result is contrary to established case law. Indeed, in a leading SEC receivership real estate Ponzi scheme case, the District Court held that lenders were required to be restored to their status quo under their mortgages. *Cf. S.E.C. v Madison Real Estate Grp., LLC*, 647 F. Supp. 2d 1271, 1276 (D. Utah 2009). To the extent that a property lacked any equity, the property was required to be returned by the Receiver to the lender to enable the lender to foreclose. *Id.* at 84–85 (“During the course of the Receivership, the Receiver has relinquished certain properties that have no equity or benefit to the Receivership...The orders granting relinquishment allow Midland to initiate foreclosure proceedings, as long as it does not pursue a deficiency against the investors.”). The Receiver has also failed to show the properties have sufficient equity to benefit the Receivership Estate.

Moreover, the Receiver “takes the property subject to all liens, priorities, or privileges existing or accruing under the laws of the state.” *S.E.C. v. Credit Bankcorp, Ltd.*, 386 F.3d 438

(2d Cir. 2004); *see also* *Marshall v. People of New York*, 254 U.S. 380, 385 (1920). In fact, this Court agreed with this principle when ruling on prior motions and objections. *See United States v. EquityBuild, Inc.*, No. 18 CV 5587, 2019 WL 587414, \*3 (N.D. Ill. Feb. 13, 2019) (Magistrate Kim’s Memorandum Opinion and Order [DKT. 223] citing with favor the *Madison* decision for proposition that “the rights of receivers can be no greater than those of their predecessors in title.”); *see also* Memorandum Report and Recommendation [Dkt. 311] (stating “a court does not have the authority to extinguish a creditor’s pre-existing state law security interest” and clarifying the issue by stating “[t]o be sure, a receiver appointed by the federal court takes property subject to all liens, properties, or privileges existing or accruing under the laws of the state.”) (internal citation omitted); *See also* Magistrate Kim’s Memorandum Opinion and Order, pp. 9-10 [Dkt. 352] (“Opinion and Order”) (reaffirming the foregoing rulings); Judge Lee’s Order [Dkt. 540] (approving Magistrate Kim’s prior orders). In fact, “[i]t is well-established that a receiver appointed by a federal court takes property subject to all liens priorities or privileges existing or accruing under the laws of the State.” *Madison Real Estate Grp., LLC*, 647 F. Supp. 2d at 1277 (emphasis added). The *Madison* court noted, “While this court may have broad powers to carry out the purpose of the Receivership, **the court is disinclined to put the interests of the buyers and the Receivership over the interests of secured creditors.**” *Id.* (emphasis added). As a result, any proposed sale process that authorizes a discounted payoff to the Mortgagees must be rejected under state and federal law and also by the terms of the loan documents by which the Receiver is bound. *See, e.g., U.S. Commodity Futures Trading Comm’n v. AlphaMetrix, LLC*, No. 13 C 7896, 2017 WL 5904660, at \*2, n.3 (N.D. Ill. Mar. 9, 2017) (noting that regarding a secured creditor’s interests that “[a] pre-existing contractual remedy between creditor and debtor would

bind the receiver....”).<sup>1</sup>

The Receiver’s apparent disregard for the Mortgagees’ liens is especially problematic when the properties’ chain of title is analyzed.

#### **4611 South Drexel**

The Consolidated Motion alleges this property is encumbered by a mortgage in favor of various Equitybuild investors. (Consolidated Motion, ¶ 71). The Consolidated Motion then states this mortgage was released by a release that was allegedly not effective because it “was not executed by the mortgagees.” *Id.* The Receiver provides no evidence or legal support for his interpretation that the release was not valid. However, the public record is clear—the Mortgagee’s mortgage is the senior secured mortgage of record for 4611 South Drexel and the investors’ mortgage was released. The Receiver takes the property subject to liens existing or accruing under the laws of Illinois. *Madison Real Estate Grp., LLC*, 647 F. Supp. 2d at 1277. The Receiver’s unilateral and baseless conclusion that the investors’ mortgage is somehow still valid is not only improper advocacy on behalf of the investors but is also unsupported by law and should not be countenanced by this Court. Therefore, any proposed sale of 4611 South Drexel that does not provide a full payoff of the Mortgagee should be rejected.

#### **1113-41 East 79th**

The original borrower and mortgagor, 81<sup>st</sup> Street LLC, granted a mortgage on this property in December 2013. Fannie Mae is now the holder of this mortgage. Thus, Fannie Mae’s secured interest attached to 1113-41 East 79<sup>th</sup> in December 2013. Fannie Mae believes 81<sup>st</sup> Street LLC is wholly unrelated to the Receivership Defendants or their affiliates<sup>2</sup>. In February 2018, an

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<sup>1</sup> To the extent there may be any low income housing restrictions, the Consolidated Motion does not address how such restrictions are to be treated with respect to potential purchasers.

<sup>2</sup> The Receiver provides no evidence that suggests 81<sup>st</sup> Street LLC is part of the Receivership Defendants, and he has not asked the Court to deem 81<sup>st</sup> Street LLC a Receivership Defendant.

Equitybuild affiliate obtained an interest in this property when SSDF2 1139 E 79<sup>th</sup> LLC executed an Assumption and Release Agreement assuming all liabilities of 81<sup>st</sup> Street LLC. (Consolidated Motion, ¶ 158). Put simply, the Equitybuild affiliate did not obtain an interest in the property until four years after Fannie Mae's interest attached. The Consolidated Motion glosses over this significant detail. *Id.* Because Fannie Mae's security interest attached to the property four years before any Equitybuild affiliate obtained an interest in the property, Fannie Mae's interest is senior to any Equitybuild affiliate's interest. *Fannie Mae v. Kuipers*, 732 N.E.2d 723, 726, 728 (2<sup>nd</sup> Dist. 2000). The Receiver has failed to produce any evidence which invalidates Fannie Mae's senior position. Thus, any result other than a full payoff of Fannie Mae on the sale date runs afoul of Fannie Mae's security interest and established law. *Madison Real Estate Grp., LLC*, 647 F. Supp. 2d at 1277.

**6217 South Dorchester**

The Consolidated Motion does not identify any competing lien for 6217 South Dorchester. (Consolidated Motion, ¶¶ 62-68). Therefore, the priority of the Mortgagee's secured lien is uncontested. If the Receiver proposes a full payoff of the Mortgagee upon the sale of this property, then the Mortgagee has no objection to the motion. However, if the Receiver will not provide a full payoff of the Mortgagee or withholds any sale proceeds, then the Mortgagee does object to the Consolidated Motion and requests the Court enter an order compelling the Receiver to provide a full payoff of the Mortgagee upon closing on the sale of the property.

**7255 South Euclid; 6250 South Mozart; 4533-37 S. Calumet**

The Consolidated Motion identifies an unreleased recorded mortgage in favor of certain Equitybuild investors for each 6250 South Mozart, 7255 South Euclid, 4533-37 S. Calumet. (Consolidated Motion, ¶¶ 49, 54, 56, 61, 170). The Receiver, however, omits the significant fact



that these unreleased mortgages have been paid off in full. (*See* Reply in Support of Motion of Creditor Federal Home Loan Mortgage Corporation (“Freddie Mac”) Concerning Rents Collected by Equity Receiver, (“Reply Brief”) [Dkt 140], p. 7, Group Exhibit B). The Mortgagees previously submitted evidence of these payoffs in the form of payoff letters and settlement statements for each of these properties. *Id.* Such documents are evidence that the Mortgagees’ liens are senior to these unreleased mortgages because when a secured lender receives a payoff of the debt secured by the lien, the lien is extinguished, as “[a] security interest cannot exist independent of the obligation it secures.” *In re Negus-Sons, Inc.*, 460 B.R. 754, 758-59 (B.A.P. 8th Cir. 2011), *cf. also North Shore Cmty. Bank & Trust Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 72, 20 N.E.3d 104, 118 (Ill. App. Ct. 2014) (concluding that an unrecorded release did not extinguish a mortgage because the mortgagee, who claimed it was not paid in full, never delivered the release to the mortgagor).

Moreover, the Illinois Mortgage Act states that “introduction of a loan payment book or receipt which indicates that the obligation has been paid shall be sufficient evidence to raise a presumption that the obligation has been paid.” 765 ILLINOIS COMP. STAT. 905/4 (2018). The Mortgagees have supplied the Receiver evidence greater than a loan payment book or receipt; they provided actual payoff letters and settlement statements. Even without releases executed and delivered by the prior mortgagees, these payoff letters and settlement statements are conclusive. The Receiver ignores this evidence and improperly advocates on behalf of the investors taking the erroneous position that the investors’ mortgage is somehow senior to the Mortgagees. Not only are the Receiver’s actions improper, they are contrary to Illinois law.

### **7024-32 South Paxton**

Equitybuild originally acquired 7024-32 South Paxton with \$2,000,000 in financing from

Master's Holdings, LLC, with a mortgage recorded January 3, 2017 (Consolidated Motion ¶ 161). Equitybuild quitclaimed 7024-32 South Paxton to SSDF4 7024, S Paxton LLC ("SSDF4 Paxton") by deed recorded June 18, 2018, as Document No. 1816918190 (Ex. 144 to Consolidated Motion). SSDF4 Paxton acquired 7024-32 South Paxton with a \$1,541,000 loan from Greystone Servicing Corporation associated with a multifamily Mortgage, Assignment of Rents and Security Agreement recorded June 18, 2018, as Document No. 1816918191. (Consolidated Motion ¶ 165 and Ex. 145). The security instruments associated with the loan from Greystone to SSDF4 Paxton are now held by Freddie Mac, as conceded by the Receiver, by virtue of an Assignment of Security Instrument recorded on June 18, 2018, as Document No. 1816918192 (Consolidated Motion ¶ 166 and Ex. 146). The loan from Freddie Mac to SSDF4 Paxton is also associated with a Financing Statement filed June 18, 2018, as Document No. 1816918193 (Consolidated Motion ¶ 166). A settlement statement associated with the loan from Greystone to SSDF4 (Ex. 148 to Consolidated Motion) confirms that the promissory note given to Master's Holding, LLC was likely repaid pursuant to the terms of the corresponding payoff letter (See Ex. 149 to Consolidated Motion). Because the Receiver does not have any legal or factual basis for challenging the priority of Freddie Mac's security interest, any proposed sale of 7024-32 South Paxton, which fails to provide for a full payoff of Freddie Mac, as the Mortgagee, should be rejected.

### **3074 Cheltenham**

The Consolidated Motion alleges this property is encumbered by a mortgage in favor of various Equitybuild investors. (Consolidated Motion, ¶ 148). The Consolidated Motion then states this mortgage was released by a release that was allegedly not effective because it "was not executed by the mortgagees." Id. ¶ 154 The Receiver provides no evidence or legal support for his interpretation that the release was not valid. However, the public record is clear—the

Mortgagee's mortgage is the senior secured mortgage of record for 3074 Cheltenham and the investors' mortgage was released. The Receiver takes the property subject to liens existing or accruing under the laws of Illinois. *Madison Real Estate Grp., LLC*, 647 F. Supp. 2d at 1277. The Receiver's unilateral and baseless conclusion that the investors' mortgage is somehow still valid is not only improper advocacy on behalf of the investors but is also unsupported by law and should not be countenanced by this Court. Therefore, any proposed sale of 3074 Cheltenham that does not provide a full payoff of the Mortgagee should be rejected.

A claim of mechanic's lien was recorded in 2018 in favor of Chicago Real Estate Resources, Inc. (Consolidated Motion, ¶202). There is no unreleased Equitybuild investor mortgage recorded prior to BC57 LLC's mortgage. Therefore, the 2017 BC57 LLC lien is the senior perfected lien against this property. Any claim by an Equitybuild investor is an unsecured claim and is subordinate to BC57 LLC's mortgage. See *Herman*, 73 Ill. App. 3d 475, 477 (3d Dist. 1979). Therefore, any proposed sale of 3074 Cheltenham that does not provide a full payoff of the Mortgagee should be rejected.

### **7201 S. Constance**

The Consolidated Motion alleges this property is encumbered by a mortgage in favor of various Equitybuild investors. (Consolidated Motion, ¶ 150). The Consolidated Motion then states this mortgage was released by a release that was allegedly not effective because it "was not executed by the mortgagees." *Id.* ¶155. The Receiver provides no evidence or legal support for his interpretation that the release was not valid. However, the public record is clear—the Mortgagee's mortgage is the senior secured mortgage of record for 7201 S. Constance and the investors' mortgage was released. The Receiver takes the property subject to liens existing or accruing under the laws of Illinois. *Madison Real Estate Grp., LLC*, 647 F. Supp. 2d at 1277. The

Receiver's unilateral and baseless conclusion that the investors' mortgage is somehow still valid is not only improper advocacy on behalf of the investors but is also unsupported by law and should not be countenanced by this Court. Therefore, any proposed sale of 7201 S. Constance that does not provide a full payoff of the Mortgagee should be rejected.

## **II. THE CONSOLIDATED MOTION FAILS TO PROVIDE IMPORTANT DETAILS REGARDING THE TERMS OF THE SALE PROCESS.**

The Consolidated Motion fails to address the following key considerations and leaves open-ended several key details. First, how does the publication maximize value? The Consolidated Motion states the Receiver intends to publish the notice of sale in the Chicago-Sun Times. There is no detail on how or why this publication was chosen and the potential benefit of this publication. Second, the Receiver identifies the use of 10 public media websites to advertise the sale, noting these "are popular forums for marketing commercial real estate through the United States (including Chicago: [sic]." (Consolidated Motion at ¶ 15). Other than this conclusory statement, no such additional information is included regarding the scope of the advertising (other than a four-week period) or the breadth of the targeted audience. *Id.* The Consolidated Motion does not even furnish links to the relevant public media websites. Such other websites that specialize in the sale of real estate like ten-x.com are not referenced either.

Third, the motion does not specify the commission to be paid to the broker that would be taken from any sale proceeds and which would reduce the amounts available to the Receivership Estates. The Opinion and Order, which was adopted and approved by this Court, states the Mortgagees may petition for relief during the approval process if the commission structure would diminish the sale proceeds such that Lender's security interest would be extinguished. *See* Opinion and Order, p. 9. However, it is impossible for the Mortgagees to know this because the Consolidated Motion fails to provide any detail on the commission structure. The most transparent

and efficient solution is to disclose the commission structure now so the parties and Court can determine if it is fair and reasonable, rather than several months from now after additional costs have been incurred. Finally, while Exhibit 1 to the Consolidated Motion references a “form Purchase and Sale Agreement,” no such form agreement is provided in the Motion.

Finally, the Receiver fails to explain how a short marketing period (four weeks) is sufficient to generate sufficient interest to maximize the purchase price and attain true and proper market value. Anything less than attaining the true and proper market value is a violation of the Receiver’s duties to sell the real estate “with due regard to the realization of the true and proper value of such real property.” (Receiver Order at ¶ 38). As the Receiver and Court are aware, the Mortgagees have a potential title claim against the title company based on the policy issued by the title company insuring the priority and validity of their mortgage liens against the properties. The Receiver’s failure to utilize a marketing and sale process with due regard to the realization of the true and proper value of the property may result in the Receiver accepting a sale price below market value. An artificially depreciated sale price due to the Receiver’s actions may have an adverse impact on the Mortgagees’ claims against the title companies. Therefore, the proposed sale process should not be approved unless and until the Receiver can demonstrate its process will result in obtaining the best and full market value.

**III. THE SEALED BID PUBLIC SALE OF REAL ESTATE TERMS AND CONDITIONS ARE INCONSISTENT WITH THE RECEIVER’S PRIOR SALE PROCEDURES.**

The Sealed Bid Public Sale of Real Estate Terms and Conditions (“Sale Terms”) proposed in the Consolidated Motion are inconsistent with the terms and conditions previously used by the Receiver. On or about June 17, 2019, the Receiver and institutional lender Liberty EBCP, LLC reached an agreement as to revised Sealed Bid Public Sale of Real Estate Terms and Conditions

(“Liberty Procedures”). *See* Notification of Liberty EBCP, LLC Regarding Status of Negotiations with Receiver Regarding Credit Bid Procedures [Dkt. 415]. Since that date, the Receiver sold properties consistent with the Liberty Procedures. Indeed, the Receiver and SEC have acknowledged both in writing and orally before this Court that the Liberty Procedures govern. *See* Receiver’s Response and Opposition to Institutional Lenders’ Objections (Docket Nos. 359, 362, 398 & 455) [Dkt. 476], p. 2; SEC Response to Institutional Lenders’ Objections [Dkt. 474]; SEC Response to Liberty’s Objections [Dkt. 513]. Notwithstanding the Receiver and SEC’s prior statements and actions, the Sale Terms attached to the Consolidated Motion contain different terms than the Liberty Procedures. Notably, the Consolidated Motion terms state “At the reasonable discretion of the Receiver, a Credit Bid Lender may nominate a third party, related or unrelated, to acquire title as the grantee.” Consolidated Motion, Ex. 1. The Liberty Procedures provide “A Credit Bid Lender shall not be required to acquire title to the property subject to the credit bid in its own name, but, instead, in its discretion, shall have the right to assign its right to title pursuant to the credit bid to a third party, related or unrelated, prior to or in conjunction with any closing.” The Receiver unilaterally made this change to the terms and conditions and did not indicate in the motion he was making this material change. Whether this oversight was intentional or not, it highlights the ramifications of rushing to approve the Consolidation Motion that is 118 pages and contains 231 exhibits. Although the Mortgagees did not consent to the Liberty Procedures, the Mortgagees request that the Court include the language from the Liberty Procedures in any order approving the Consolidated Motion.

**IV. THE MORTGAGEES SHOULD NOT BE REQUIRED TO POST A LETTER OF CREDIT.**

The Sale Terms require the Mortgagees to post an irrevocable letter of credit as “required under certain circumstances established by the Receivership Court” if the Mortgagees decide to

credit bid at the sale of their properties. Consolidated Motion, Ex. 1. As an initial matter, there has not been a lien priority determination or a determination of lien amount by this Court so the Mortgagees lack necessary information to determine whether to credit bid. Furthermore, the Sale Terms and the Consolidated Motion are completely devoid of any detail as to the specific terms and conditions required for the letter of credit. The terms and condition of a letter of credit are material terms that must be negotiated by the parties and agreed to by the issuing lender. Demanding a letter of credit without first determining these material terms is improper.

Additionally, the posting of a letter of credit exposes lenders to a great risk by essentially requiring the lender to make two loans. In other words, as currently structured, a lender could be required to pay twice for the same loan, leaving the lender doubly exposed. For example, the first loan is the original loan to the Equitybuild affiliate, which was completed long before the receivership. The Receiver does not contest that these loans were in fact given or that the lenders' loan proceeds were utilized by the borrowers.

The second loan is the posting of a letter of credit. By placing the cart before the proverbial horse on lien priority and debt amount, the Receiver is forcing the lenders to assume the risk that their liens may be subordinated or even deemed unsecured and that they would be required to pay twice for a single property. This would result in the lender extending two loans for the same property. Put simply, no homeowner would pay twice to buy the same house. Yet such a result would follow here. Such an outcome should not be countenanced by this Court.

Additionally, certain of the Mortgagees' loans are secured by multiple properties and equitable rights of marshalling apply to the disposition of their collateral to ensure that value is maximized. These rights are potentially impacted by the Receiver's proposed process as the Mortgagees would not know the amounts due to them prior to credit bidding on any particular

property. Without a determination of the amounts due, the Mortgagees' equitable rights of marshalling are undermined.

**OBJECTIONS TO REQUEST FOR APPROVAL TO CLOSE ON PROPERTIES**

**I. THE SALE PROCEEDS SHOULD BE IMMEDIATELY DISBURSED TO THE MORTGAGEES UPON CLOSING.**

The Mortgagees are entitled to immediate distribution of the sale proceeds. It is the Mortgagees' position that they have first priority lien on their respective properties. Even a cursory review of the basic facts and chain of title for each property reveals the Mortgagees are either senior secured lienholders or there are no competing liens. The Mortgagees are entitled to be paid from the sale proceeds according to the priority of liens. *See Herman v. First Farmers State Bank of Minier*, 73 Ill. App. 3d 475, 477 (3d Dist. 1979) (stating “[a]s a general rule, the holder of a perfected security interest has an interest in the secured property, and the proceeds from the sale thereof, which is superior to the interests of unsecured creditors of the debtor and subsequent purchasers of the secured property.”); *see also* 11 U.S.C. §§ 103(a), 361, 362(d), 363(e), 725. The Consolidated Motion ignores establish law and instead proposes to hold the sale proceeds in escrow from some undetermined length of time pending the claims process. (Consolidated Motion at ¶ 270).

**4520 South Drexel**

The Consolidated Motion does not identify any competing liens for 4520 South Drexel. (Consolidated Motion, ¶¶ 212-215). In fact, a review of the Cook County Recorder of Deeds records also reveals there are no competing liens on this property and that there is no Equitybuild investor mortgage recorded prior to the Mortgagee's mortgage. Therefore, the Mortgagees lien is a senior perfected lien on this property. Any claim by a Equitybuild investor is an unsecured claim and is subordinate to the Mortgagee's lien. *Herman*, 73 Ill. App. 3d at 477. Because the



Mortgagee's mortgage is a senior lien and there are no competing Equitybuild investor liens, there is no just reason to delay payment to the Mortgagee upon closing the sale of the property.

**6751 South Merrill, 7110 South Cornell**

The Consolidated Motion does not identify any competing Equitybuild investor liens for 6751 South Merrill or 7110 South Cornell.<sup>3</sup> (Consolidated Motion, ¶¶ 212-215). In fact, the Receiver admits **no claims by Equitybuild investors or any third parties have been submitted for these two properties.** See Receiver's Sixth Status Report [Dkt. 624], Exhibit 5. The claims bar date (December 31, 2019) has passed, so any claim submitted now or in the future is barred. Therefore, **there is absolutely no lien priority dispute as to these two properties.** Based on the undisputed fact that the Mortgagees' liens on 6751 South Merrill and 7110 South Cornell are valid senior liens that are uncontested by a competing investor lien or an investor or third party claim, there is no just reason to delay payment to the Mortgagee upon closing the sale of the property.

The Mortgagees will continue to be prejudiced by additional delays in disbursement of the sale process. The sale proceeds for 6751 South Merrill or 7110 South Cornell are less than the amounts owed the Mortgagees, resulting in a discounted payoff to the Mortgagees. This is a violation of state and federal law and the loan documents by which the Receiver is bound. *AlphaMetrix, LLC*, No. 13 C 7896, 2017 WL 5904660, at \*2, n.3 (N.D. Ill. Mar. 9, 2017) (noting that regarding a secured creditor's interests that "[a] pre-existing contractual remedy between creditor and debtor would bind the receiver...."); *Madison Real Estate Grp.*, 647 F. Supp. 2d at 1277 (stating a receiver "takes property subject to all lien priorities or privileges existing or accruing under the laws of the State." The Opinion and Order expressly allows lenders to "petition the court for relief" where the sale closing costs "would diminish the sale proceeds such that any

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<sup>3</sup> The motion does identify one *lis pendens* recorded against each property in favor of the City of Chicago for apparent code violations.

Lender's preexisting security interest would be extinguished." *See* Opinion and Order, n. 4. The Mortgagees' liens are diminished more and more every day the Receiver withholds payment because interest and fees continue to accrue. Therefore, the Mortgagees respectfully request that the Court order the immediate disbursement of the sale proceeds to avoid further detriment to the Mortgagees.

**7109 South Calumet**

The Mortgagee and Receiver are in active negotiations regarding the letter of credit for this property. Provided the parties reach an agreement on the terms of the letter of credit, the Mortgagee has no objection to the closing of this property.

**II. THE PROPOSED ORDER APPROVING THE SALE OF PROPERTIES IS INCONSISTENT WITH PRIOR COURT RULINGS.**

The proposed order granting the Receiver's request to sell properties free and clear of certain mortgages and liens fails to order that the mortgages and liens attach to the sale proceeds. (Consolidated Motion, Tab C). In granting the Receiver's First Motion for Court Approval of the Sale of Certain Real Estate and Avoidance of Certain Mortgages, Liens, Claims, and Encumbrances, this Court ordered that the avoided mortgages, liens, claims, and encumbrances attach to the sale proceeds "with the same force, validity, status, and effect, if any, as they had against the property prior to the sale." *See* Order Granting Receiver's First Motion for Court Approval of the Sale of Certain Real Estate and Avoidance of Certain Mortgages, Liens, Claims, and Encumbrances [Dkt. 346]. The proposed order to the Consolidated Motion omits this material language. In the event this Court grants the Consolidated Motion, the Mortgagees request the Court include identical language as providing in the Court's prior order.

**III. THE CONSOLIDATED MOTION FAILS TO SPECIFY A DEFINITE CLOSING DATE.**

Over 8 months have passed since the Court approved bid procedures for the sale of certain real estate by the Receiver. The cost of this delay to the Receivership Estate and all interested parties is significant. For example, interest alone for the properties 6751 South Merrill, 7110 South Cornell, and 4520 Drexel since the Court approved the bid procedures is \$226,717.92. In addition, other fees, costs, and other charges continue to accrue. The Receiver's delay also substantially increase the costs to the estate, including tax liabilities, insurance premiums, property management fees, and maintenance and repairs costs, which continue to accrue for each day a property is held in the estate. *See e.g.*, Receiver's Sixth Status Report, Dkt. No. 624. The Receiver's Sealed Bid Public Sale of Real Estate Terms and Conditions proposed by the Receiver and approved by this Court provide "The closing shall be held within fifteen (15) days after the Receivership Court grants the Receiver's motion to approve the sale, which motion will be filed as soon as practicable following the Seller's acceptance of the contract submitted by the winning bidder." Therefore, the Mortgagees respectfully request that any order granting the Consolidated Motion require closing to occur within 15 days of entry of the order.

**LIBERTY'S SPECIFIC OBJECTIONS TO THE CONSOLIDATED MOTION**

Based on the claims of record, as set forth in the Receiver's Sixth Status Report [Dkt. 624], Liberty holds the only recorded mortgage of record against each of the 17 properties in which it is secured. Of those 17 properties, one has closed, 7748 S. Essex, with proceeds in escrow of \$1,217,924.27 [Dkt. 624-1, Exhibit 1]. Per the Consolidated Motion, the following five properties, subject only to the lien of Liberty, are proposed to be sold for the following amounts:

7600-10 South Kingston	\$1,870,000
8201 South Kingston	\$ 400,000
7656-58 South Kingston	\$ 510,000

8326-58 South Ellis	\$1,610,000
7546-48 South Saginaw	\$ 625,000

Per the Consolidated Motion, the remaining eleven properties, subject only to the lien of Liberty, are proposed to be marketed, per the terms outlined in the Consolidated Motion:

6356 South Carolina  
6355-59 South Talman  
7051 South Bennett  
7442-48 South Calumet  
7201-07 South Dorchester  
4317-19 South Michigan  
2736-44 West 64<sup>th</sup>  
7508 South Essex  
816-20 East Marquette  
7701-03 South Essex  
7953-59 South Marquette

### **Objection**

Liberty, like the Mortgagees, asserts that the Court should delve further into the proposed sale processes and establish, up front, greater transparency and impose additional requirements into the marketing efforts to be undertaken (such as use of other marketing platforms, use of other publications, a greater than four week marketing period, disclosure of commissions, prohibiting insider bids by property managers, etc.). To date, Liberty and the Mortgagees have advocated for this greater clarity and these additional requirements but, to date, have not received them under the prior sale procedure orders.

Also, to date, Liberty has not found itself compelled to credit bid, such that facially, the sale procedures may be effective enough, although if modified, would likely have brought an even greater return to the receivership estate. Liberty hereby reserves the right to challenge a sale resulting from the Receiver's proposed sale procedures, to the extent the proposed sales bring less revenue than anticipated by Liberty and/or the Receiver, based on appraisals, listing prices and other objective criteria. In that instance, Liberty will object as necessary to a sale, challenge the

specifics of how a property was marketed and if necessary, advocate for the remarketing using additional or changed procedures to enhance the sale value.

Liberty joins in the Mortgagees objection that the credit bid procedures previously adopted by this Court, as advocated by Liberty, should be equally applicable to the going forward proposed sales. Modification of those credit bid procedures, after the Court previously approved them, is not warranted.

Liberty joins in the Mortgagees request that the sale proceeds related to Liberty's properties be disbursed to Liberty at the time of closing. Liberty is the only mortgage holder on its properties. Any creditor claiming a superior interest to Liberty's sole mortgage may object to this Consolidated Motion on the basis that they claim a right superior to that of Liberty, in a given property. Failing such an objection, the proceeds should be disbursed, at the time of closing, to Liberty.

If the Court is not inclined to permit disbursement of the sale proceeds to Liberty at closing, the proposed sale order, as noted by the Mortgagees, must be modified to track the prior sale orders, which stated that upon sale, all liens would be transferred to the proceeds of sale, with the proceeds having the same priority and effect, in existence, prior to the closing of the sale.

**UBS AG'S SPECIFIC OBJECTIONS TO RECEIVER'S CONSOLIDATED MOTION**

UBS AG ("UBS"), successor by assignment to Wilmington Trust, National Association, as Trustee for the benefit of the registered holders of UBS Commercial Mortgage Trust 2017-C1, Commercial Mortgage Pass-Through Certificates, Series 2017-C1 (the "Trust") files this Objection to the Receiver's Consolidated Motion with respect to certain properties which secure the loan of UBS to SSPH Portfolio 1, LLC ("*SSPH*"), and the Receiver's Fifth Motion for approval of the sale of certain real estate and for the avoidance of certain mortgages, liens, claims and encumbrances, as it relates to the sale of a property commonly known as 7450 S. Luella/2220 E.

75<sup>th</sup> Street, Chicago IL (the “Luella Property”) [Docket No. 618], and in support thereof, respectfully states as follows:

**BACKGROUND**

In the Consolidated Motion Receiver proposes to market and list for sale 36 multifamily properties pursuant to certain procedures as outlined in the Consolidated Motion. Included in the properties Receiver seeks to list for sale the following six (6) properties, which secure the UBS Loan to:

<u>Property Address</u>	<u>Description of Property</u>
5618-5620 S. Dr. Martin Luther King Drive, Chicago, IL 60637 (“5618-20 S. Dr. Martin Luther King”)	The subject is a Multifamily (Garden/Low Rise) property totaling 14 units
1422 E. 68 <sup>th</sup> Street Chicago, IL 60637 (“1422 E. 68 <sup>th</sup> ”)	The subject is a Multifamily (Garden/Low Rise) property totaling 6 units
6558 S. Vernon (a.k.a. 416-424 E. 66 <sup>th</sup> Street) Chicago, IL 60637 (“6558 S. Vernon”)	The subject is a Multifamily (Garden/Low Rise) property totaling 12 units
4750 S. Indiana Avenue, Chicago, IL 60648 (“4750 S. Indiana”)	The subject is a Multifamily (Garden/Low Rise) property totaling 6 units
7840-42 S. Yates, Chicago, IL 60649 (“7840 S. Yates”)	The subject is a Multifamily (Garden/Low Rise) property totaling 8 units
2800-2806 E. 81 <sup>st</sup> Street, Chicago, IL 60617 (“2800 E. 81 <sup>st</sup> ”)	The subject is a Multifamily (Garden/Low Rise) property totaling 8 units

[Document No. 618, ¶12(v) through (aa)], (the “UBS Proposed Sale Properties”). Each of the UBS Proposed Sale Properties, along with Luella Property, are each subject to a duly perfected security interest by held by UBS. For the reasons that follow UBS objects to the Receiver’s request for approval of the 7450 S. Luella Sale and Receiver’s request to list the UBS Proposed Sale Properties.

**ARGUMENT**

**I. THE TERMS OF THE PROPOSED LUELLA PROPERTY SALE AND PROPOSAL TO SELL THE REMAINING PROPERTIES SECURING THE UBS LOAN ARE MANIFESTLY UNJUST AND A BYPRODUCT OF RECEIVER’S**

**FAILURE TO EMPLOY A SALE PROCESS WITH DUE REGARD TO THE REALIZATION OF THE TRUE AND PROPER VALUE OF SUCH REAL PROPERTY.**

The Luella Property is a mixed use building comprised of 13 studio apartment units and 3,000 square feet of ground floor commercial space. As of the last appraisal UBS obtained for the Luella Property in November 2018, the Luella Property had an as-is market value of \$440,000 and a prospective value upon stabilization of \$490,000. Based on the limitations placed upon the creditors to file a consolidated objection to the Receiver's Combined Motion, those appraisals have not been attached but can be submitted as a joinder if requested by the Receiver or the Court.

Over UBS' and other creditors objection, the Receiver was authorized to sell certain properties, including the Luella Property by public sale, as described in the Receiver's Fifth Motion For Court Approval of the Process for Public Sale of Real Property By Sealed Bid ("Fifth Motion"). [Doc. No. 329] The marketing method used by the Receiver was to publish the sale of the properties by notice published "once a week for four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state of judicial district of the United States wherein the realty is situated" and to market the public sale of the properties through certain public media websites which the Receiver, without support, stated are "popular forums for marketing properties in Chicago and throughout the United States [Doc. No. 329 Par. 20-23].

The problem with the sale method which the Receiver proposed and followed in the Fifth Motion (and proposes to follow in the Combined Motion) is that it does not maximize the purchase price that the properties, including the Luella Property could receive, if the properties were marketed in a more conventional method. As set forth above, the Paragraph 38 of the Receiver Order requires the Receiver to sell "all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership

Estate, *and with due regard to the realization of the true and proper value of such real property.*” (Consolidated Motion at ¶ 7) (citing Receiver Order at ¶ 38) (Dkt. 16). Therefore, the Receiver has a responsibility to not only the secured creditors holding recorded liens against these properties, but also to the unsecured creditors to *maximize the recovery* from the sale of the properties so that the Receiver will have funds available to pay the amounts owed the secured creditors, and once those amounts are paid, then any excess funds would be available to pay allowed unsecured claims.

Instead of using a method which would sell the properties with due regard to the realization of the true and proper value, the Receiver is using the forced sale method which somewhat tracks the judicial sale procedure provided for in the Illinois Mortgage Foreclosure Act (“Act”). This provides for a marketing period which is an unreasonably short time period (four weeks) to market these properties to potential buyers, without allowing a broker the normal marketing period of five to six month period to market and try and maximize the purchase price of the properties. Such a method would in all probability generate more offers and at a higher price. As the courts have held in Illinois “Of course, in a forced judicial sale, the price will be lower than the arm’s-length ideal because the marketplace is constricted. In the forced sale setting, the seller is under judicial compulsion to sell, and the buyers may not have the ability to learn all the relevant facts regarding the asset for sale. So, as the *NAB Bank* court observed, property sold at a forced sale does not generate a true fair market value price. See *Preservation Holding, LLC v Norberg*, 2019 IL App (1<sup>st</sup>) 181136 , ¶ 15 citing *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20.

While the Court in *Preservation* upheld the judicial sale, the fact remains that was a judicial sale mandated by the Illinois foreclosure Act. The Receiver is not constrained by the provisions



of the Act and in fact, the Receiver order requires him to sell the properties “*with due regard to the realization of the true and proper value of such real property.*” (Consolidated Motion at ¶ 7).

The result in the sale of the Luella Property was that while the Receiver purportedly marketed the Luella Property for \$450,000, using the sealed bid methods described in the Fifth Motion, the Receiver ended up accepting a bid of only \$278,000 for the Luella Property. *Id.*, ¶ 217. There is no statement in the Consolidated Motion as to whether this was the only bid the Receiver was presented with, whether the Receiver tried to counter the offer to increase the sale price, or whether the Receiver decided not to accept the offer and try and re-market the Luella Property at a later date to maximize the true value of the Luella Property.

Instead, the Receiver apparently accepted an offer which is only 62% of the listing / marketing price proposed by the Receiver. Even under Illinois foreclosure laws, the courts have discretion to vacate judicial sales if, “...the amount bid is so grossly inadequate that it shocks the conscience of a court of equity” *CPH Landwehr, LLC v PWS Northbrook, LLC and Paul Swanson*, 2017 IL App (1<sup>st</sup>) 161802, ¶ 30 citing *Deutsche Bank Nat. v. Burtley*, 371 Ill. App. 3d 1, 6 (2006).

While the method used by the Receiver to market and sell the Luella Property, may work when selling a multi-unit apartment building containing 30 units or more, said method clearly does not work for properties which are similar to the properties securing the UBS loan, including the Luella Property. These properties are smaller, some only six units and none more than fourteen units, which are not the types of properties large national investors are looking for. These smaller properties don’t make economic sense for large in state or out of state real estate companies to purchase, since the management costs would not make these properties economically feasible.

Rather these properties are better marketed and sold to local Chicago investors who have an understanding of the properties, the property locations and how to manage and find tenants for

these properties. This requires a marketing method and marketing period which would have a local broker market the property for a four to sixth month period to maximize the sale price, allowing the broker to show the properties to potential buyers more than one time, so the buyer understands the properties and reject offers which shock the conscious (i.e. the offer for the Luella Property the Receiver wants this Court to accept).

Further, as this Court is aware, UBS (and other creditors) have potential claims against title companies based on policies issued by those title companies insuring the priority and validity of their mortgage liens against the various properties. If the Receiver is allowed to enter into the contract for the sale of the Luella Property based on what was in effect a forced sale and at a price which is unconscionable, this may have a significant adverse impact on the UBS claim against the title company as it relates to the Luella Property and the other UBS properties. As stated above, Illinois courts have long recognized, "... that it is unusual for land to bring its full, fair market value at a forced sale." *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20; see also *Burtley*, 371 Ill. App. 3d at 8 ("At a forced sale, a 'debtor must expect to suffer a loss.'") (quoting *World Savings & Loan Ass'n v. Amerus Bank*, 317 Ill. App. 3d 772, 780 (2000)). ***Unless there is fraud or some other irregularity in the foreclosure proceeding, the price at which the property is sold is "the conclusive measure of its value."*** See *CHP* at ¶ 29 citing *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 35. (emphasis added)

Therefore, to allow the Receiver to enter into a contract for the sale of the Luella Property for a price of \$278,000.00 when it was marketed for sale at \$450,000.00 and further to allow the Receiver to use the same sale method for the sale of the remaining UBS Proposed Sale Properties, would not only have an adverse impact on the proceeds realized by the estate, but also could have material adverse impacts on UBS claims against its title insurer.

There is no reason why this can't be done, since it is clear there is no urgency in the Receiver's sale of these properties and this method of marketing the property would not incur additional costs to the Receiver. The Receiver's Fifth Motion to sell the Luella Property was filed April 18, 2019, which was eight months after he was appointed Receiver and took control of the properties. The Court granted his Fifth Motion on May 21, 2019 [Doc No. 381]. The Receiver purportedly accepted the offer in July 2019, but has waited until January 2020 (six months after the offer was made) to move for authority to enter into the contract for the sale of the Luella Property. If the Receiver has used this time (as far back as December 2018) to market these properties, including the Luella Property in a conventional method of hiring a broker and allowing the broker time to obtain the highest bids possible for the properties, the Receiver would be doing his job in maximizing the recovery on the sale of the Equitybuild assets, instead of selling them using a forced sale approach. Further, the Receiver has been in control of these properties since August 2018 and has not paid any debt service for the loans secured by these properties. Therefore, the properties should be cash flowing enough to allow sufficient time to market the properties over a five to six month period. In addition, the broker is paid a commission, so there is no reason the Receiver will incur additional costs for a broker to show the properties to multiple parties over this time, since this is what brokers do as part of their commission.

The Combined Motion filed the Receiver includes not only the properties securing the UBS loan, but other properties which secure loans to other institutional creditors. Certain of those creditors have raised objections set forth above which UBS adopts in addition to the specific matters raised with respect to the Receiver's Combined Motion for the sale of the properties securing the UBS loan. Due to the fact that the offer to purchase the Luella Property is unconscionable, based on what the appraised value of this property was in 2018 and what the

Receiver thought the Luella Property was worth (since he marketed the Luella Property for sale at \$450,000.00) and the method used by the Receiver does not seek to realize the true and proper value of the Luella Property, the Court should deny the Receiver's motion as it relates to the contract for the sale of the Luella Property.

In addition, based on the fact that the remaining UBS properties are similar in type to the Luella Property, and it is clear that the forced sale method the Receiver wants to use to market and sell these properties not only won't allow the properties to sell at their highest and best price, but that the Receiver's sale methods could materially adversely impact UBS' claim against its title carrier, the Receiver's Combined Motion to sell the UBS Proposed Sale Properties, should be denied and the Receiver should be ordered to market these properties in a more conventional method, which would maximize the sale price. This conventional method would not cause the Receiver to incur additional costs and clearly, based on how long it has taken for the Receiver to move for authority to enter into sale contracts for properties where he accepted bids in July / August 2019, there is no rush to sell these properties to the detriment of any secured creditor.

### **CONCLUSION**

In sum, the Mortgagees object to the Consolidated Motion for the reasons set forth herein and request the relief specified herein, including the following relief: (a) the sales process provide a full payoff to the Mortgagee for each property; (b) the sale procedures Sealed Bid Public Sale of Real Estate Terms and Conditions be modified to be consistent with the Liberty Procedures; (c) abandonment of property to the Mortgagee in the event the sale proceeds will not satisfy the indebtedness under the loan documents to the Mortgagees; (d) immediate disbursement of all net sale proceeds to the Mortgagee for each property sale that will be closed pursuant to the Consolidated Motion; and (e) the close of the sales of the properties to occur no later than 15 days

from entry of the Court order.

Dated: February 17, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Jill Nicholson, hereby certify that on February 17, 2020, I caused to be electronically filed the ***Objections of Certain Mortgagees to Receiver's Consolidated Sixth Motion for Court Approval of the Process for Public Sale of Real Estate by Sealed Bid, Fifth Motion for Approval of the Sale of Certain Real Estate and for the Avoidance of Certain Mortgages, Liens, Claims, and Encumbrances, and Motion to Amend the August 17, 2018 Order Appointing Receiver*** each of which is being served electronically via the Court's ECF system on all counsel of record.

/s/ Jill Nicholson

Jill Nicholson