

**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

Magistrate Judge Young B. Kim

MORTGAGEES' PROPOSAL FOR ACCESS TO EQUITYBUILD DOCUMENTS

The Mortgagees¹ respectfully submit this Proposal for Access to EquityBuild Documents as directed by the Court on September 23, 2020.

INTRODUCTION

In response to the Court's instruction to provide a proposal for access to EquityBuild documents (the "Project"), the Mortgagees interviewed and obtained bids from several potential

¹ The Mortgagees are Freddie Mac; Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; 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; 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; 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; 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; 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; Federal National Mortgage Association ("Fannie Mae"); BMO Harris Bank N.A.; Midland Loan Services, a Division of PNC Bank, National Association; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Colony American Finance 2015-1; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Registered Holders of Corevest American Finance 2017-2 Trust, Mortgage Pass-Through Certificates, Series 2017-2; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Benefit of Corevest American Finance 2017-1 Trust Mortgage Pass-Through Certificates; BC57, LLC; UBS AG; Thorofare Asset Based Lending REIT Fund IV, LLC; and Liberty EBCP, LLC.

ESI providers. As set forth below, the Mortgagees now identify CloudNine and Teamwerks, two separate entities who submitted a joint proposal (collectively "CloudNine"), as the proposed provider and attach its Project Cost Modeling ("PCM") to this submission for review. Of note, the PCM is based upon estimates as to volume of data, length of time the database will be open, total number of users and the culling of EquityBuild data to reduce the volume of data, such as by removing duplicate documents, duplicate emails in lengthy email chains, and irrelevant materials (like those related to property maintenance).

PROPOSAL

1. **Proposed Provider.** After interviewing several potential ESI providers, the Mortgagees propose the retention and use of CloudNine as the ESI provider based upon reputation, projected cost and past experience with CloudNine's ESI platform.

2. **CloudNine Cost Estimate.** Attached as Exhibit A to this Proposal is CloudNine's PCM spreadsheet. The cost variables of greatest import to the spreadsheet include Total Volume of Data, Anticipated Culling of Data Percentage and Expected Project Duration. The anticipated total volume of data appearing in CloudNine's PCM was provided to all potential ESI providers to compare cost. All of these factors are estimated at this time, but CloudNine's cost estimate was materially lower than any other proposal submitted.

3. **Base Cost Sharing.** The Mortgagees propose that the base Project cost be shared by the Mortgagees and the Receiver. The Mortgagees anticipate that the Receiver will be accessing the EquityBuild databases to review aspects of each property identified in a tranche. Simultaneously, the Mortgagee involved in the tranche is likely to access each property's documents in the database. Although this anticipated "use" of the data will be similar for each property between the Receiver and the applicable Mortgagee, which would justify the Receiver sharing 50% of the base cost, the Receiver has expressed concern on many occasions regarding

funding of the Receivership. Therefore, the Mortgagees propose to accept a 75% burden of the Project cost and propose that the Receivership should bear 25% of the cost.

4. **Cost of Additional Users.** Per the Court's guidance, Investor Lenders and other third parties are not sharing in the base cost of ESI. Instead, the PCM requires additional users to pay a one-time \$300 access fee and a \$400 per month charge for each month of access and the maintenance of its own segregated files. For example, an Investor Lender wanting access to EquityBuild documents for two months would be responsible for a \$1,100.00 charge to CloudNine. Payment of such charges will entitle the Individual Lender to have access to the database similar to the Mortgagees and the Receiver, namely the ability to conduct and maintain segregated files and materials on the CloudNine system. The Mortgagees propose that all parties beyond the Receiver and the Mortgagees accessing the EquityBuild ESI bear this cost through direct payment to CloudNine.

5. **Database Privacy.** CloudNine's platform allows for equal access to the EquityBuild data for all users. Further, CloudNine's system allows all users to keep private search histories, flagged documents and saved documents. Therefore, one user will not have access to another user's searches or results.

6. **Database Open Period.** As set forth in the PCM spreadsheet, the time the database is open is a critical cost factor. The Mortgagees propose that the parties commit to sharing the cost regardless of how quickly their individual interests are resolved by the Court for a 6 month period, which would commence once the database is established and the materials are culled. The Mortgagees propose that a 6 month period will give ample time to interested parties to review and download relevant documents each requires, and thus avoid the substantial cost of maintaining access to the database beyond 6 months. All parties that seek to use the data base

would need to access it during this 6 month period regardless of when the framing report for their tranche issues. Of necessity, all Proofs of Claim received by the Receiver would need to be disclosed prior to the commencement of the 6 month period, as they identify the claims against each EquityBuild property and are needed to guide the database searches related to them. In addition to the material ESI cost savings, such access will expedite the dispute resolution process by enabling all parties to evaluate competing claims up front, rather than having to wait until the first tranche is completed. This is especially significant and most equitable since it would be unfair to require the Mortgagees to bear the cost of ESI (potentially for years on end) without being able to access it in a meaningful manner.

7. **Training.** CloudNine's proposal includes training for users in its system. CloudNine has agreed that it will conduct more than one training session for users.

8. **Timing.** CloudNine estimates that it will take 1-2 weeks to download data when it is given access by the Receiver. The Mortgagees propose that the culling of documents occur via an agreed upon group of counsel from the Mortgagees and the Receiver. The process may take approximately two months.

Accordingly, the Mortgagees request that the Court approve the selection of CloudNine as the provider of access to EquityBuild data, determine that the ESI cost be shared as outlined above, direct the Receiver to provide CloudNine with access to the EquityBuild data and to provide the parties with access to the proofs of claim, and, to the extent necessary, that Court consider its rulings regarding ESI further if necessary after the EquityBuild data is obtained and culled.

Dated: October 9, 2020

Respectfully submitted,

<p><u>/s/ Michael Gilman</u> <i>Federal National Mortgage Association; 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; 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; Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; 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; Freddie Mac; 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; Sabal TL1 LLC; UBS AG; BC57 LLC; 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; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Benefit of Corevest American Finance 2017-2 Trust Mortgage Pass-Through Certificates, Series 2017-2; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Benefit of Corevest American Finance 2017-1 Trust Mortgage Pass-Through Certificates; 1111 Crest Dr., LLC,</i></p>	<p><u>/s/ Ronald Damashek</u> (rdamashek@stahlcowen.com) Stahl Cowen Crowley Addis LLC 55 West Monroe Street – Suite 1200 Chicago, Illinois 60603 PH: (312) 377-7858 Fax: (312) 423-8160 <i>Counsel for Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; Midland Loan Services, a Division of PNC Bank, National Association; Thorofare Asset Based Lending REIT Fund IV, LLC; and Liberty EBCP, LLC</i></p> <p><u>/s/ Scott B. Mueller</u> (Scott.Mueller@stinson.com) Scott B. Mueller, #6294642 Stinson LLP 7700 Forsyth Blvd., Suite 1100 St. Louis, MO 63105 314.863.0800 314.259.3931 (Fax) <i>Attorney for BMO Harris Bank, N.A., and Midland Loan Services, a division of PNC Bank, NA, acting under authority designated by Colony American Finance Lender, LLC, Assignee Wilmington Trust, N.A. as Trustee for the benefit of registered holder of Colony American Finance 2015-1</i></p>
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<p><i>Pakravan Living Trust, Hamid Esmail, and Farsaa, Inc.; Direct Lending Partner LLC, successor to Arena DLP Lender LLC and DLP Lending Fund LLC; Thorofare Asset Based Lending REIT Fund IV LLC.</i></p>	
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CloudNine Explore and Review Project Cost Modeling

Project Assumptions

Total Data Volume Ingested (GBs) to CloudNine Explore	4,000	<i>Fixed Fee Subscription Options Available</i>
Anticipated % of Data Culled Prior to CloudNine Review	70%	
Expected Project Duration (months)	12	

Pricing

Explore ECA and Culling - Total Data Volume (GBs)	\$10	Unexpanded Data Volume. Includes 2 months of active access.
Data Promoted to CloudNine Review	\$5	> 5 TBs Promoted to CloudNine Review - \$3 per GB
Explore ECA Data Maintained Beyond 2 Months	\$2	

Cost Model (based on assumptions)	GBs	Price Per GB	Months	Cost
Explore ECA Data Volumes (GBs)	4,000	\$10	N/A	\$40,000
Anticipated % of Data Promoted to Review	30%			
Expansion Rate During Promotion to CloudNine Review	2.0			
Review Data Volume	2,400	\$5	12	\$144,000

Project Cost Estimate - 12 Months	\$184,000
Effective Total Monthly Per GB Cost (include CloudNine Explore and Review fees)	\$3.83
Effective Monthly Per GB cost per Firm (assumes 7 participants)	\$0.55

Notes:

Fixed Fee Subscription Options Available

No User Fees, No Additional Fees Per Firm

Each monthly invoice subjected to 3% Fee (covers unlimited training, setup, and on-going support)

Each Firm will have their own discrete CloudNine Review database

Each additional database subject to a \$300 initial set up fee and \$400 per month thereafter.

Hosting of production images shall be billed at the per GB rate

Pricing assumes at least 3TBs ingested into Explore during first 12 months

CloudNine Review Hosted Data Tiers

Up to 5TBs Promoted to Review (post culled, expanded data size)	\$5
> 5 TBs Promoted to Review (post culled, expanded data size)	\$3 Would Apply to All Review Data