

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., et al.,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

POSITION STATEMENT OF CLAIMANT MIDLAND LOAN SERVICES
(PROPERTIES 50, 51, 53, 54, 55, 56, and 57)

Claimant Midland Loan Services, a Division of PNC Bank N.A., as servicer for (i) Wilmington Trust, N.A., as Trustee for the Benefit of CoreVest American Finance 2017-1 Mortgage Pass-Through Certificates and (ii) Wilmington Trust, N.A., as Trustee for the Registered Holders of CoreVest American Finance 2017-2 Trust, Mortgage Pass-Through Certificates 2017-2 (collectively, “Midland”),¹ pursuant to Docket Entries 941 and 1637, submits this Position Statement demonstrating that Midland holds a first position, perfected security interest in the Group 6 properties located at 7760 S. Coles Avenue (Property 50); 1401 W. 109th Place (Property 51); 6807 S. Indiana Avenue (Property 53); 8000 S. Justine Street (Property 54); 8107 S. Ellis Avenue (Property 55); 8209 S. Ellis Avenue (Property 56); and 8214 South Ingleside Avenue (Property 57).²

RELEVANT FACTUAL BACKGROUND

Midland’s mortgages on the Group 6 Properties were granted as part of two discrete loan transactions, the “EB3” and “EB4” loans. Prior to the closing of these loans, each Property was subject to a prior mortgage held by certain individual investors. For each of the prior mortgage debts, the EB3 and EB4 lenders issued payoffs directed to those investors to ensure their first lien positions. The details of Midland’s two loan transactions—and the prior competing interests asserted against the Properties securing those transactions—are provided below.

I. The EB3 Loan

¹ Midland is acting as a servicer for Wilmington Trust, N.A., as Trustee for the Benefit of CoreVest American Finance 2017-1 Trust Mortgage Pass-Through Certificates (POC#1464) with respect to Property 50 only. For Properties 51, 53, 54, 55, 56, and 57, Midland is a 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 (POC#1466). For ease of reference, references to “Midland” in this brief are inclusive of Wilmington Trust unless otherwise specified.

² Pursuant to Dkt. 1750, Midland reserves the right to oppose the Receiver’s avoidance claims.

On May 26, 2017, Colony American Finance Lender, LLC (“CAF”) agreed to loan \$1,491,000 to EB South Chicago 3, LLC (“EB3”), an Equitybuild entity (the “EB3 Loan”).³ (Exhibit A.) CAF’s loan was secured by a mortgage on seven properties, including Property 50 (the “EB3 Mortgage”).⁴ (Exhibit B.) The EB3 Mortgage was recorded on June 28, 2017. The EB3 loan agreement specified that CAF would receive a “first-priority security interest” in the seven properties and that EB3 would “take all actions necessary to maintain in favor of [CAF], a first priority security interest therein[.]” (Ex. A, §§ 4.5, 5.17.) Part of the consideration for the loan was a guaranty from Jerome Cohen that—among other representations—“no liens, security interests, judgment liens, charges or other encumbrances shall exist on [EB3’s] assets” and that any such liens “shall be and remain inferior and subordinate” to CAF’s mortgage. (Exhibit D, “Sponsor Guaranty,” § 4.3.)

Prior to closing on the EB3 Loan, title insurer OS National issued to EB3 a commitment for a title insurance policy. (Receiver’s Exhibit 23). The title search identified a prior mortgage attached to 7760 S. Coles (Property 50) from Equitybuild, Inc. (the “EB3 Investor Mortgage”). (*Id.* at PageID 116366.) The mortgage listed the lenders as “The Persons Listed on Exhibit A to the Mortgage c/o EquityBuild Finance, LLC” and was recorded on July 23, 2016. (Receiver’s Exhibit 8 at PageID 116229.) OS National required evidence of satisfaction or release of this mortgage before issuing the title policy. (Receiver’s Ex. 23.) Prior to closing the EB3 loan, CAF received a payoff statement “From: The 7760 S Coles Investors C/O Equitybuild Finance, LLC,”

³ The Managing Member of EB3 was SSDF3 Holdco I, LLC, which was in turn managed by Great Lakes Development Corp., LLC, which was managed by its sole member, Jerome Cohen. (Exhibit C at RFC0174474, 174499-500.)

⁴ The EB3 Mortgage also secured the following properties, resolved previously in the Receivership action: 5437 South Laflin (Dkt. 1364), 6759 S. Indiana Avenue (Dkt. 1303), 9610 S. Woodlawn (Dkt. 1303), 2129 W. 71st (Dkt. 1303), 8809 S. Wood (pre-Receivership tax sale), and 7300-04 St. Lawrence Ave (Dkt. 1671).

requesting \$819,450, the unpaid balance of the prior mortgage plus one month's interest. (Receiver's Exhibit 26 at PageID 116437.) Based on the payoff statement, EB3's title agent caused the payoff amount to be wired to Equitybuild Finance ("EBF") as instructed on May 26, 2017 (Exhibit E), though a release was never provided.

II. The EB4 Loan

On September 15, 2017, CoreVest American Finance Lender, LLC ("CoreVest") agreed to loan \$2,426,250 to EB South Chicago 4, LLC ("EB4"), an Equitybuild entity⁵ (the "EB4 Loan"). (Exhibit G.) The EB4 Loan was secured by a cross-collateralized mortgage on properties located at 310 E. 50th Street,⁶ 1401 W. 109th, 6807 S. Indiana, 8000 S. Justine (a/k/a 1541-1543 W. 80th), 8107 S. Ellis, 8209 S. Ellis, and 8214-8216 S. Ingleside (collectively the "EB4 Properties"). (Exhibit H.) The EB4 Mortgage was recorded on October 5, 2017. (*Id.*)

The EB4 loan agreement specified that CoreVest would receive a "first-priority security interest" in the properties and that EB4 would "take all actions necessary to maintain in favor of [CoreVest], a first priority security interest therein[.]" (Ex. G §§ 4.5, 5.17.) Further, in consideration for the loan, EB4 obtained Jerome Cohen's personal guaranty that "no liens, security interest, judgment liens, charges or other encumbrances shall exist on [the properties secured by the EB4 Loan]" and that any such liens "shall be and remain inferior and subordinate" to CoreVest's mortgage interest. (Exhibit I, § 4.3)

⁵ EB4 was owned and managed by SSDF3 Holdco 2, LLC, which was owned and managed by South Shore Property Holdings LLC – an entity that was wholly owned and managed by Jerome Cohen. (Exhibit F at CoreVest 005531-33.)

⁶ Claims for proceeds from the sale of 310 E. 50th Street were decided in Group 5. In its June 10, 2024 order, the Court ordered that Midland receive \$276,784.61 of the proceeds from the sale of 310 E. 50th Street. (*See* Dkt. 1676.)

The closing of the EB4 Loan was contingent on the issuance of a title insurance policy. (Exhibit J at 1.) OS National's title search identified prior mortgages attached to each of the EB4 Properties:

Property	Prior Mortgage Lenders and Recorded Date⁷
Property 51	1401 W 109th Associates c/o Hard Money Company LLC, rec'd 12/3/2010
Property 53	6807 S. Indiana Avenue Associates C/O Hard Money Company, rec'd 8/20/2014
Property 54	The Persons Listed on Exhibit A to the Mortgage c/o Equitybuild Finance, LLC, rec'd 1/21/2016
Property 55	The Persons Listed on Exhibit A to the Mortgage c/o Equitybuild Finance, LLC, rec'd 7/1/2015
Property 56	8209 S. Ellis Ave Investors C/O Hard Money Company, rec'd 10/21/2014
Property 57	The Persons Listed on Exhibit A to the Mortgage c/o Equitybuild Finance, LLC, rec'd 7/23/2015

OS National required evidence of satisfaction or release of the prior mortgages before issuing the title policies. (*See* Receiver's Ex. 23.) Accordingly, prior to closing the EB4 Loan, CoreVest received payoff statements and issued payoffs consistent with those statements as follows:

Property	Payoff Statement⁸	Payoff Funds Wired per Payoff Statement⁹
Property 51	"From: 1401 W 109th Associates C/O Equitybuild Finance, LLC"	\$116,545.64

⁷ Each prior mortgage is included in Receiver's Exhibit 8 (PageID 116229-116286).

⁸ The EB4 payoff statements are included in Exhibit K.

⁹ The EB4 payoff wires are included in Exhibit L.

Property 53	“From: 6807 S. Indiana Avenue Associates C/O Equitybuild Finance, LLC”	\$146,329.24
Property 54	“From: 8000 S Justine Investors C/O Equitybuild Finance, LLC”	\$865,867.50 ¹⁰
Property 55	“From: 8107 S Ellis Investors C/O Equitybuild Finance, LLC”	\$529,812.50
Property 56	“From: 8209 S Ellis Investors C/O Equitybuild Finance, LLC”	\$867,883.26
Property 57	“From: 8214 S Ingleside Investors C/O Equitybuild Finance, LLC”	\$765,957.50

Although CoreVest issued payoff letters directed to the prior lienholders, consistent with the payoff statements, releases evidencing the satisfaction of these prior debts were not provided.

III. Assignment to Wilmington Trust, for which Midland Acts as a Servicer

Wilmington Trust did not participate in the origination of the EB3 or EB4 loans, but instead received its interests through a series of assignments. CAF’s interest in the EB3 Mortgage was assigned to Wilmington Trust—for which Midland acts as a servicer—on October 31, 2017. (Exhibit M.) And CoreVest’s interest in the EB4 Mortgage was assigned to Wilmington Trust—again, for which Midland acts as servicer—on June 24, 2018. (Exhibit N.) At all times, Midland had no knowledge—constructive, actual, or otherwise—that Equitybuild or its affiliates were engaged in any fraud or wrongdoing of any kind, including as to the Group 6 Properties.

IV. The Receiver’s Submission

On August 27, 2024, the Receiver filed his Submission to assist the Court in resolving the claims asserted against the Group 6 properties, including the Properties to which Midland has

¹⁰ The amount wired in satisfaction of the prior debt attached to Property 54 was in excess of the amount listed on the payoff statement. (*Compare* Ex. K at 3 *with* Ex. L at 5.)

submitted claims. (Dkt. 1740.) As to these Properties, the Receiver recommends that the “Court find that the investor-lenders’ first-in-time mortgages have priority over the later-recorded Midland mortgages.” (*Id.* at 6.) For the reasons that follow, Midland opposes the Receiver’s priority recommendation and proposed distribution.

ARGUMENT

CAF and CoreVest’s payments to the individual investors’ authorized agent entitles Midland to valid releases as a matter of law, even though releases of the prior individual investor mortgages were never provided. Specifically, Midland reasonably relied on EBF’s (or Hard Money Company, LLC’s¹¹) authority—both actual and apparent—to issue payoff statements and accept payoffs on behalf of the prior individual investor mortgages. As a result, Midland is entitled to releases of the prior mortgages as a matter of Illinois law and is entitled to satisfaction of its entire secured interest.

I. Midland is Entitled to Priority Over Other Claimants.

Midland holds first position, perfected security interests in the Group 6 Properties, giving it priority over competing unsecured claims. As to competing secured claims, the individual investors authorized EBF to act on their behalf as a matter of actual and apparent authority. The prior individual investors actually authorized EBF to issue payoff statements and receive payoffs on their behalf by virtue of collateral agent and servicing agreements with EBF. EBF also enjoyed apparent authority to issue payoff statements and receive payoffs on behalf of the individual investors through the public record and Equitybuild representations. Midland as servicer—

¹¹ For ease of reference, this brief will refer to the prior individual investors’ servicer as EBF, though its prior name Hard Money Company, LLC, was the listed servicer in some instances.

standing in the shoes of assignors CAF and CoreVest¹²—reasonably relied on that authority in directing loan funds to the individual investors’ authorized agent for payoff of the prior loans and is thus entitled to releases and should be deemed to have priority over the remaining claimants.

A. Midland is entitled to priority over unsecured claims.

Midland agrees with the Receiver’s recommendations with respect to investors who rolled over their interests, who have recouped their initial investment, or who hold only equity ownership positions. (*See* Dkt. 1740 at 28-30.) These claims are appropriately deemed unsecured.

In addition to the unsecured claims identified by the Receiver, Midland has identified additional unsecured investors who have only equity-based interests in investment vehicle entities that served as mortgagees for certain properties. These include: Michael and Lyanne Terada¹³ and Hui Tung Carol Lam (members of “1401 W 109th Associates, Property 51), and Leroy Johnson and Edge Investments, LLC (members of “6807 S. Indiana Avenue Associates,” Property 53). These partnerships—not individual investors—were listed as the lenders on the mortgages on these properties. The Teradas, Lam, Johnson, and Edge Investments therefore are not secured claimants because the mortgages at issue were partnership property. *See Korziuk v. Korziuk*, 13 Ill. 2d 238 (1958). As the Receiver has explained, “[e]quity holders stand behind secured creditors in regards to any distributions” in priority disputes. (Dkt. 1571 (citing *Bank of America Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 444 (1999) (recognizing “absolute priority” rule where “fairness and equity required that ‘the creditors . . . be paid before the

¹² *See In re Estate of Martinek*, 140 Ill. App. 3d 621 (2d Dist. 1986) (“The assignee, by acquiring the same rights as the assignor, stands in the shoes of the assignor.”)

¹³ Lyanne Terada sold 1401 W. 109th to EB4 and her husband, Michael, held a partnership interest with 1401 W. 109th Associates. Whether the Teradas’ interest is considered equity-based or secured (though it appears to be equity-based), they were in fact aware of the refinancing transaction with EB4 and signed a closing statement evidencing that the funds were being sent to EBF in satisfaction of their interest in Property 51. (Exhibit O.)

stockholders could retain [equity interests] for any purposes whatsoever.”) Accordingly, and at a minimum, Midland is entitled to priority over claimants holding only an unsecured, equity-based interest in the Properties. *See Midwest Decks, Inc., v. Butler & Baretz Acquisitions, Inc.*, 272 Ill. App. 3d 370, 377 (1st Dist. 1995).

B. EBF had actual authority to issue payoff statements and receive payoffs.

Prior individual investors entered into Collateral Agency and Servicing Agreements (“CASA”) with EBF. (*See* Exhibit P.) According to the CASA, EBF was authorized to act as the collateral agent and servicer of the Investor-Lenders’ loan. (*Id.* §2(a).) Specifically, the CASA authorized EBF, among other things, to “issue payoff demands” and “demand, receive and collect all Loan payments.” (*Id.* § 9(a).) Prior individual investors further executed documents, which authorized EBF “as [their] agent[s] and trustee[s] to “receive payoff in [their] name[s] and issue and execute a release of said mortgage, upon payment in full of any outstanding balance. (Exhibit Q, “Authorization Documents”).) Accordingly, EBF had actual authority to issue payoff statements and receive payoffs on behalf of the prior individual investors.

C. EBF had apparent authority to issue payoff statements and receive payoffs.

Apparent authority arises when a principal by its words or conduct creates “the reasonable impression in a third party that the agent has the authority to perform a certain act on its behalf.” *Weil, Frieburg & Thomas, P.C. v. Sara Lee Corp.*, 218 Ill. App. 3d 383, 390 (1st Dist. 1991). Establishing apparent agency requires a showing that (1) the principal consented or knowingly acquiesced to the agent’s exercise of authority; (2) the third party had knowledge of the facts and held a good-faith belief that the agent possessed such authority; and (3) the third party detrimentally relied on the agent’s apparent authority. *Id.* (citing *Northern Tr. Co. v. St. Francis Hosp.*, 168 Ill. App. 3d 270, 278 (1st Dist. 1988)).

All three elements are established here. First, the prior individual investors authorized EBF to act on their behalf as a matter of public record by virtue of the prior individual investor mortgage’s “c/o” language. (*See* Receiver’s Ex. 8.) Second, Midland had knowledge of and a good faith belief in EBF’s authority to act on behalf of the prior individual investors’ behalf. As described, the public record is consistent with EBF’s authority to act on the individual investors’ behalf—i.e. by listing in the prior investor mortgages for all of the Properties the lender as “The Persons listed on Exhibit A c/o [Equitybuild Finance, LLC/Hard Money Company, LLC]” the prior individual investors consented to appointing EBF (by that name or its prior name, Hard Money Company) to act on their behalf. (*See id.*) Accordingly, the third element is satisfied as well: Midland relied on the publicly recorded mortgages containing the “c/o” language, to its detriment.

The Illinois Appellate Court for the First District recently analyzed a similar scenario and, applying Illinois law, reached the same conclusion. In *5201 Wash. Investors LLC & Arthur Bertrand v. Equitybuild, Inc.*, 2024 IL App (1st) 231403-U,¹⁴ the Appellate Court affirmed the lower court’s decision dismissing the prior mortgagees’ lawsuit to foreclose their mortgage against a subsequent purchaser and mortgagee because the subsequent purchaser was a *bona fide* purchaser. As relevant here, the Appellate Court embraced the same indicia of apparent authority Midland saw in closing its loans, noting “the plain language of the Investor Mortgage indicates that EBF acted as agent for the individuals listed on exhibit A to the Investor Mortgage (including plaintiffs) to execute the Release.” *Id.* at ¶ 30. The Appellate Court specifically referenced both

¹⁴ Non-precedential orders may be cited for persuasive purposes. Ill. S. Ct. R. 23(e)(1). Further, the Seventh Circuit recognizes federal courts will generally follow a holding of the state’s immediate appellate court. *See Green Plains Trade Group, LLC v. Archer Daniels Midland Co.*, 90 F.4th 919, 928 (7th Cir. 2024).

“[t]he cover page of the Investor Mortgage nam[ing] the Lender as “The Persons Listed on Exhibit A to the Mortgage c/o [EBF]” and “[t]he first page of the Investor Mortgage further includ[ing] a written notation directing the Recorder to mail the Investor Mortgage to EBF after recording” as evidence of that authority. *Id.* Together, “these parts of the Investor Mortgage signal to the reader that EBF acted as plaintiffs’ agent and had apparent authority with respect to the Investor Mortgage.” *Id.*

The same is true here. The prior individual mortgages list EBF or Hard Money as acting “c/o” the listed individual investors in precisely the same way (indeed, both cases involve some of the same Equitybuild entities). Midland further reasonably relied on Equitybuild’s representations to CAF and CoreVest in the underlying transactions about the EB3 and EB4 lien priority, and the expectation that the lenders would receive valid releases upon payment of the prior debt encumbering the Properties. (*See supra.*) Specifically, the loan agreement, a sponsor guaranty, and the title commitment all required releases upon receipt of payoffs to close the loans. (*See* Exhibit A §§ 4.5, 5.17; Exhibit D § 4.3; Exhibit G, §§ 4.5, 5.17; Exhibit I, § 4.3, Exhibit J; Receiver’s Ex. 23 at PageID 116366, 116369-410.) Accordingly, EBF had apparent authority to issue payoff statements and receive payoffs on behalf of the prior individual investors.

D. Having relied on EBF’s authority to accept payoffs, Midland is entitled to valid releases.

Pursuant to and reliant upon EBF’s authority—actual or apparent—CAF and CoreVest issued funds directed to the individual investors of each property (via their agent, EBF) at closing, consistent with the payoff statements. (*See* Exs. K, L.) Given that the payoff funds were directed to the prior individual investors’ servicer acting with authority to receive those payoffs, Midland reasonably expected the funds were remitted to the individual investors. Importantly, Illinois law does not impose a duty on payors like CAF or CoreVest—let alone subsequent assignees, like

Midland—to ensure the prior individual investors’ agent in fact remitted the funds to those investors. *See Rockford Life Ins. Co. v. Rios*, 128 Ill. App. 2d 190, 195 (3d Dist. 1970) (“If payment is made to an authorized agent [for the balance of the debt secured by a mortgage] as is the case at bar, the payor is not bound to inquire into the application of such payment. The default of such agent is the responsibility of the principal.”). To the contrary, Illinois law protects such payors, both pursuant to case law (*see Rockford*) and statute. *See, e.g.* Illinois Fiduciary Obligations Act (760 ILCS 65/2) (“A person who in good faith pays . . . to a fiduciary any money . . . which the fiduciary as such is authorized to receive . . . is not responsible for the proper application thereof” and “any right or title acquired from the fiduciary in consideration of such payment . . . is not invalid in consequence of a misapplication by the fiduciary.”)

Once CAF and CoreVest made their payments to EBF for the balance of the existing debts encumbering the Properties, the prior investors and EBF were obligated to issue valid releases evidencing the extinguishment of the prior debts as a matter of Illinois law. *See SEC v. Equitybuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024) (“In *Rockford [Life Ins. Co.]*, 128 Ill. App. 2d 190 (2d Dist. 1970)], the Illinois Appellate Court ordered the release of a mortgage after it determined that the note securing the mortgage had been properly paid to the mortgagee’s authorized agent.”).¹⁵ The Illinois Mortgage Act (“IMA”) further entitles Midland to valid releases, given that the prior individual investors’ legal representative—EBF—received “full . . . payment” due under the prior mortgages. *See 5201 Wash. Investors LLC*, 2024 IL App (1st) 231403-U at ¶ 38 (“EBF acting as an agent qualifies as a legal representative within the meaning

¹⁵ To be clear, Midland advances a different argument than was addressed by the Seventh Circuit’s Group 1 opinion. The Seventh Circuit rejected BC57’s argument that the payoff of prior liens alone extinguishes those liens. *SEC v. Equitybuild, Inc.*, 101 F.4d at 531. Here, Midland is arguing its payoff of the prior liens entitles it to valid releases, and therefore priority, as a matter of Illinois common law and statute.

of the [IMA].”) Indeed, the IMA requires execution and delivery of a valid release from the prior mortgagee once the mortgagee, or its legal representative, receives payment of the prior mortgage debt. *See* 765 ILCS 905/2. The IMA further mandates that a court order the issuance and delivery of a release when a prior mortgagee fails to deliver a release as required by the IMA. *See* 765 ILCS 905/4 (“Upon a finding for the party aggrieved, the court shall order the mortgagee . . . to make, execute, and deliver the release as provided in Section 2 of [the IMA].”).

Accordingly, given that CAF and CoreVest performed all payment obligations under Illinois law, Midland, the subsequent assignee, is entitled under both the common law and the IMA to valid releases and priority over prior individual investors who authorized EBF to act on their behalf. *See* 765 ILCS 905/4; *Rockford*, 128 Ill. App. 2d 190 (affirming decision ordering subsequent mortgagee entitled to a release where prior mortgage had been paid in full to prior mortgagee’s agent); *see also M&T Bank v. Mallinckrodt*, 2015 IL App (2d) 141233, ¶ 52 (“Where one of two innocent persons must suffer by reason of the fraud or wrong conduct of another, the burden must fall upon him who put it in the power of the wrongdoer to commit the fraud or do the wrong.”).

II. Midland is Entitled to the Entirety of its Secured Claim.

Midland’s loan documents from the EB3 Loan confirm that it is entitled to \$1,471,942.01 in outstanding principal, at least \$88,742.96 in contractual interest, at least \$151,983.56 in default interest, and \$303,941.03 in other amounts as detailed in Midland’s Proof of Claim. (Midland Proof of Claim #1464, at 64-74.) With respect to the EB4 Loan, Midland’s loan documents confirm that it is entitled to \$2,403,082.84 in outstanding principal, at least \$139,095.37 in contractual interest, at least \$118,716.73 in default interest, and \$397.994.07 in other amounts as detailed in Midland’s Proof of Claim. (Midland Proof of Claim #1466, at 64-74.) The Receiver argues that post-receivership interest, penalties, fees, and other such amounts is inappropriate,

(Dkt. 1740 at 22), but Illinois law is clear that the recording of a mortgage creates a security interest in real estate for the payment of the underlying indebtedness. *See* 765 ILCS 5/11; *see also Ogle v. Koerner*, 140 Ill. 170, 179 (1892) (“A mortgage. . . vests in the party secured a lien upon the mortgage premises” and “[b]y virtue of that lien the mortgagee is entitled to . . . the proceeds of the sale [of the property in foreclosure] applied to the payment of the debt secured.”). And while the Court enjoys broad discretion to fashion [equitable remedies] in federal receivership matters, it 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.’” *In re Real Prop. Located at [Redacted] Jupiter Drive*, No. 2:05-CV-01013-DB, 2007 U.S. Dist. LEXIS 65276, at *12 (D. Utah June 7, 2007). Similarly, “[t]he United States Constitution specifically states that contractual rights are not to be impaired.” *Id.* at *26-27. Accordingly, as the claimant entitled to priority for its secured claims on the Group 6 Properties, Illinois law dictates Midland is entitled to the entirety of its claim as set forth in its loan documents.

CONCLUSION

For the aforementioned reasons, Midland holds the only secured mortgage interest in Properties 50, 51, 53, 54, 55, 56, and 57, and Midland is therefore entitled to priority as a matter of law. As the secured claimant entitled to priority, Midland is further entitled to receive the available funds liquidated by the Receiver’s sale of Properties 50, 51, 53, 54, 55, 56, and 57.

Dated: September 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2024, I electronically filed the foregoing **POSITION STATEMENT OF CLAIMANT MIDLAND LOAN SERVICES (PROPERTIES 50, 51, 53, 54, 55, 56, and 57)**, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record, and further caused the foregoing to be served upon all members of Claims Group 6 by email to the distribution list via equitybuildclaims@rdaplawn.net.

/s/ Andrew R. DeVooght _____

Andrew R. DeVooght