

JUDGE KOELT

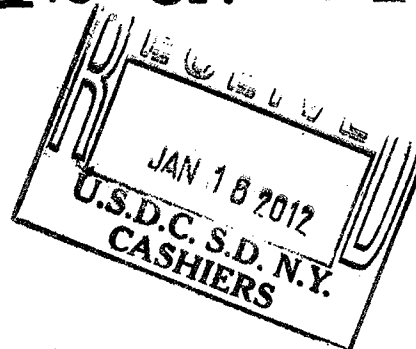
COPY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE FOR THE REGISTERED HOLDERS OF GS MORTGAGE SECURITIES CORPORATION II, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-GG6, acting by and through Torchlight Loan Services, LLC as Special Servicer under the Pooling and Servicing Agreement dated as of March 1, 2006,

CIVIL ACTION FILE NO.

12 CIV 0423



Plaintiff,

-against-

NESBITT BELLEVUE PROPERTY LLC, NESBITT BLUE ASH PROPERTY LLC, NESBITT COLORADO SPRINGS PROPERTY LLC, NESBITT DENVER PROPERTY LLC, NESBITT LIVONIA PROPERTY LLC, NESBITT LYNNWOOD PROPERTY LLC, NESBITT PORTLAND PROPERTY LLC, and NESBITT EL PASO PROPERTY L.P.,

Defendants.

COMPLAINT

U.S. Bank National Association, as successor-in-interest to Bank of America, N.A., as trustee, for the Registered Holders of GS Mortgage Securities Corporation II, Commercial Mortgage Pass-Through Certificates, Series 2006-GG6 ("*Plaintiff*") acting by and through Torchlight Loan Services, LLC as Special Servicer ("*Special Servicer*") under the Pooling and Servicing Agreement dated as of March 1, 2006, states its complaint as follows:

PARTIES, JURISDICTION AND VENUE

1. U.S. Bank National Association ("*U.S. Bank*") is a national banking association with its designated main office located in Cincinnati, Ohio.

2. U.S. Bank is the duly appointed and presently serving Trustee under the trust created under that certain Pooling and Servicing Agreement (the “*PSA*”) dated as of March 1, 2006.

3. U.S. Bank, not individually, but solely in its capacity as such Trustee under the *PSA*, acting by and through the Special Servicer, brings this action as Plaintiff with express reference to the Loan (defined below) and the matters related thereto as hereinafter set forth.

4. Defendant NESBITT BELLEVUE PROPERTY LLC (“*Bellevue LLC*”) is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Bellevue LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Bellevue LLC, are citizens of Ohio. Defendant Bellevue LLC owns certain real property and improvements known as the “Embassy Suites Seattle - Bellevue” located at 3225 158th Avenue SE, Bellevue, Washington. Defendant Bellevue LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant Bellevue LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

5. Defendant NESBITT BLUE ASH PROPERTY LLC (“*Blue Ash LLC*”) is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Blue Ash LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Blue Ash LLC, are citizens of Ohio. Defendant Blue Ash LLC owns certain real property and improvements known as the “Embassy

Suites Cincinnati - Northeast (Blue Ash)" located at 4554 Lake Forest Drive, Blue Ash, Ohio. Defendant Blue Ash LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant Blue Ash LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

6. Defendant NESBITT COLORADO SPRINGS PROPERTY LLC ("*Colorado Springs LLC*") is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Colorado Springs LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Colorado Springs LLC, are citizens of Ohio. Defendant Colorado Springs LLC owns certain real property and improvements known as the "Embassy Suites Colorado Springs" located at 7290 Commerce Center Drive, Colorado Springs, Colorado. Defendant Colorado Springs LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant Colorado Springs LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

7. Defendant NESBITT DENVER PROPERTY LLC ("*Denver LLC*") is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Denver LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Denver LLC, are citizens of Ohio. Defendant Denver LLC owns certain real property and improvements known as the "Embassy Suites Denver Southeast" located at 7525 East Hampden Avenue, Denver, Colorado. Defendant

Denver LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant Denver LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

8. Defendant NESBITT LIVONIA PROPERTY LLC ("*Livonia LLC*") is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Livonia LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Livonia LLC, are citizens of Ohio. Defendant Livonia LLC owns certain real property and improvements known as the "Embassy Suites Detroit - Livonia/Novi" located at 19525 Victor Parkway, Livonia, Michigan. Defendant Livonia LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant Livonia LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

9. Defendant NESBITT LYNNWOOD PROPERTY LLC ("*Lynnwood LLC*") is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Lynnwood LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Lynnwood LLC, are citizens of Ohio. Defendant Lynnwood LLC owns certain real property and improvements known as the "Embassy Suites Seattle - North/Lynnwood" located at 20610 44th Avenue West, Lynnwood, Washington. Defendant Lynnwood LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below).

Defendant Lynnwood LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

10. Defendant NESBITT PORTLAND PROPERTY LLC ("*Portland LLC*") is a Delaware limited liability company that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant Portland LLC, nor the entities or individuals that are partners or members of the corporate parents of Defendant Portland LLC, are citizens of Ohio. Defendant Portland LLC owns certain real property and improvements known as the "Embassy Suites Portland - Washington Square" located at 9000 SW Washington Square Road, Tigard, Oregon. Defendant Portland LLC consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant Portland LLC has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

11. Defendant NESBITT EL PASO PROPERTY L.P. ("*El Paso LP*") is a Delaware limited partnership that maintains its principal place of business located at c/o Windsor Capital Group, Inc., 3000 Ocean Park Boulevard, Suite 3010, Santa Monica, California 90405. Neither the members of Defendant El Paso LP, nor the entities or individuals that are partners or members of the corporate parents of Defendant El Paso LP, are citizens of Ohio. Defendant El Paso LP owns certain real property and improvements known as the "Embassy Suites El Paso" located at 6100 Gateway East, El Paso, Texas. Defendant El Paso LP consented to personal jurisdiction in this Court pursuant to Section 10.6(b) of the Loan Agreement (as defined below). Defendant El Paso LP has authorized National Corporate Research, Ltd., 10 East 40th Street, 10th Floor New York, New York 10016 as its registered agent to accept service of process.

12. This dispute arises between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Therefore, this Court has diversity-of-citizenship jurisdiction over the subject matter of this dispute pursuant to 28 U.S.C. § 1332.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(3).

FACTUAL BACKGROUND

A. The Loan.

14. By Loan Agreement dated as of January 9, 2006 (the "*Loan Agreement*"), Greenwich Capital Financial Products, Inc. ("*Greenwich*"), Plaintiff's predecessor-in-interest, agreed to make a loan to Bellevue LLC, Blue Ash LLC, Colorado Springs LLC, Denver LLC, Livonia LLC, Lynnwood LLC, Portland LLC and El Paso LP (collectively, the "*Borrowers*" or "*Defendants*") in the original principal amount of \$187,500,000 (the "*Loan*"). A copy of the Loan Agreement is attached hereto as Exhibit 1.

15. As evidence of the Loan, Borrowers executed and delivered to Greenwich a Promissory Note dated January 9, 2006 in the original principal amount of \$187,500,000 (the "*Note*"). A copy of the Note is attached hereto as Exhibit 2.

16. Pursuant to the terms of the Note, Borrowers, *inter alia*, agreed to pay to the order of Greenwich the principal sum of \$187,500,000 plus interest thereon in monthly installments at the rates set forth therein commencing on March 6, 2006 and continuing through the maturity date of February 6, 2011 (the "*Maturity Date*") at which time all amounts due under the Note and related loan documents became immediately due and payable. See the Note, Exhibit 2, and the Loan Agreement, Exhibit 1, Page 14 and Section 2.2.4 thereof.

B. The Collateral Security.

17. As collateral security for the payment of the Note each of the Borrowers executed, acknowledged and delivered to Greenwich a security instrument pursuant to which each Borrower, inter alia, granted Greenwich a security interest in each of the eight hotel properties (collectively, the “*Hotels*” or “*Properties*”), respectively (collectively, referred to as the “*Security Instruments*”). Specifically,

(a) by Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by Bellevue LLC to Greenwich (the “*Bellevue Deed of Trust*”), Bellevue LLC, inter alia, pledged to the trustee identified therein for the benefit of Greenwich, property located in King County, Washington commonly known as Embassy Suites Seattle – Bellevue with an address of 3225 158th Avenue SE, Bellevue, Washington, as is more particularly described in the Bellevue Deed of Trust, a copy of which Bellevue Deed of Trust is attached hereto as Exhibit 3;

(b) by Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by Lynnwood LLC to Greenwich (the “*Lynnwood Deed of Trust*”), Lynnwood LLC, inter alia, pledged to the trustee identified therein for the benefit of Greenwich, property located in Snohomish County, Washington commonly known as Embassy Suites Seattle – North/Lynnwood with an address of 20610 44th Avenue West, Lynnwood, Washington, as is more particularly described in the Lynnwood Deed of Trust, a copy of which Lynnwood Deed of Trust is attached hereto as Exhibit 4;

(c) by Mortgage dated as of January 9, 2006, executed, acknowledged and delivered by Livonia LLC to Greenwich (the “*Livonia Mortgage*”), Livonia LLC, inter alia, granted to Greenwich a mortgage lien on property located in Wayne County, Michigan commonly known as Embassy Suites Detroit – Livonia/Novi with an address of 19525 Victor Parkway, Livonia, Michigan, as is more particularly described in the Livonia Mortgage, a copy of which Livonia Mortgage is attached hereto as Exhibit 5;

(d) by Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by Colorado Springs LLC to Greenwich (the “*Colorado Springs Deed of Trust*”), Colorado Springs LLC, inter alia, pledged to the trustee identified therein for the benefit of Greenwich, property located in El Paso County, Colorado commonly known as

Embassy Suites Colorado Springs with an address of 7290 Commerce Center Drive, Colorado Springs, Colorado, as is more particularly described in the Colorado Springs Deed of Trust, a copy of which Colorado Springs Deed of Trust is attached hereto as Exhibit 6;

(e) by Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by Denver LLC to Greenwich (the "**Denver Deed of Trust**"), Denver LLC, inter alia, pledged to the trustee identified therein for the benefit of Greenwich, property located in Denver County, Colorado commonly known as Embassy Suites Denver – Southeast with an address of 7525 East Hampden Avenue, Denver, Colorado, as is more particularly described in the Denver Deed of Trust, a copy of which Denver Deed of Trust is attached hereto as Exhibit 7;

(f) by Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by Portland LLC to Greenwich (the "**Portland Deed of Trust**"), Portland LLC, inter alia, pledged to the trustee identified therein for the benefit of Greenwich, property located in the City of Tigard, Washington County, State of Oregon commonly known as Embassy Suites Portland – Washington Square with an address of 9000 SW Washington Road, Tigard, Oregon, as is more particularly described in the Portland Deed of Trust, a copy of which Portland Deed of Trust is attached hereto as Exhibit 8;

(g) by Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by Blue Ash Portland LLC to Greenwich (the "**Blue Ash Mortgage**"), Blue Ash LLC, inter alia, granted to Greenwich a mortgage on property located in the City of Blue Ash, County of Hamilton, State of Ohio commonly known as Embassy Suites Cincinnati - Northeast with an address of 4554 Lake Forest Drive, Blue Ash, Ohio, as is more particularly described in the Blue Ash Mortgage, a copy of which Blue Ash Mortgage is attached hereto as Exhibit 9; and

(h) by Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed, acknowledged and delivered by El Paso LP to Greenwich (the "**El Paso Deed of Trust**"), El Paso LP, inter alia, pledged to the trustee identified therein for the benefit of Greenwich, property located in the City and County of El Paso, State of Texas commonly known as Embassy Suites El Paso with an address of 6100 Gateway East, El Paso, Texas, as is more particularly described in the El Paso Deed of Trust, a copy of which El Paso Deed of Trust is attached hereto as Exhibit 10.

18. Additionally, pursuant to the terms of the Loan Agreement, as collateral security for the payment of the Loan, Borrowers, inter alia, granted Greenwich a security interest in all Rents (as that terms is defined in the Loan Agreement) generated from each of the properties. Specifically, Section 3.12 of the Loan Agreement provides:

3.12 Grant of Security Interest; Earnings on Accounts; Application of Funds. As security for payment of the Debt and the performance by Borrowers of all other terms, conditions and provisions of the Loan Documents, each Borrower hereby pledges and assigns to Lender, and grants to Lender a security interest in, all such Borrower's right, title and interest in and to "all Rents and in and to all payments to or monies held in the Clearing Account, the Deposit Account, all Subaccounts created pursuant to this Agreement (collectively, the "*Cash Management Accounts*"). Each Borrower hereby grants to Lender a continuing security interest in, and agrees to hold in trust for the benefit of Lender, all Rents in its possession prior to the (i) payment of such Rents to Lender or (ii) deposit of such Rents into the Deposit Account. No Borrower shall, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Cash Management Account, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default, Lender may apply any sums in any Cash Management Account in any order and in any manner as Lender shall elect in Lender's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Lender to foreclose the Lien of any Mortgage or exercise its other rights under the Loan Documents. All interest which accrues on the funds in any Cash Management Account shall accrue for the benefit of Borrowers and shall be taxable to Borrowers and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Upon repayment in full of the Debt, all remaining funds in the Subaccounts, if any, shall be promptly disbursed to Borrowers.

19. Consistent with the terms of the Loan Agreement, each of the Borrowers executed and delivered to Greenwich an Assignment of Leases and Rents dated January 9, 2006

("AL&R") pursuant to which each Borrower assigned to Greenwich all Leases and Rents (as defined therein). Specifically, Paragraph 2(a) of the AL&R provides:

(a) As part of the consideration for the Debt, Assignor [Borrowers] does hereby absolutely and unconditionally assign to Assignee [Plaintiff] all right, title and interest of Assignor [Borrowers] in and to all present and future Leases and Rents, and this Assignment constitutes a present and absolute assignment and is intended to be unconditional and not as an assignment for additional security only. It is further intended that it not be necessary for Assignee [Plaintiff] to institute legal proceedings, absent any requirements of law or regulation to the contrary, to enforce the provisions hereof. Assignor [Borrowers] hereby authorizes Assignee [Plaintiff] or its agents to collect the Rents; provided, however, that prior to an Event of Default, and subject at all times to the requirement that payments and deposits of Rents be made directly to the Clearing Account, Assignor [Borrowers] shall have a revocable license, but limited as provided in this Agreement and in any of the other Loan Documents, to otherwise deal with, and enjoy the rights of the lessor under, the Leases.

Copies of the AL&R delivered by each of the Borrowers are attached hereto as Exhibit 11 through 18, respectively.

C. Assignment of Loan Documents.

20. By assignments dated December 22, 2005, Greenwich assigned to Wells Fargo Bank, N.A. as trustee ("*Wells Fargo*") for the Registered Holders of GS Mortgage Securities Corporation II, Commercial Mortgage Pass-Through Certificates, Series 2006-GG6 (the "*Trust*"), all of its right, title and interest in and to the Security Instruments, the AL&R, the Loan Agreement and the other Loan Documents (the "*Wells Fargo Assignments*"). Copies of the Wells Fargo Assignments are attached hereto collectively as Exhibit 19.

21. In connection with the Wells Fargo Assignment, Greenwich delivered to Wells Fargo a First Allonge to Promissory Note ("*Wells Allonge*") by which Greenwich directed all payments under the Note be made to the order of Wells Fargo, as trustee for the Trust. A copy of the Wells Allonge is attached hereto as Exhibit 20.

22. Thereafter, by assignments dated as of June 30, 2009, Wells Fargo transferred to Bank of America, N.A. ("*BofA*") as trustee for the Trust all of its right, title and interest in and to the Security Instruments, the AL&R, the Loan Agreement and the other Loan Documents (the "*BofA Assignments*"). Copies of the BofA Assignments are attached hereto collectively as Exhibit 21.

23. In connection with the BofA Assignments, Wells Fargo delivered to BofA an Allonge (the "*BofA Allonge*") by which Wells Fargo directed payments under the Note to be made to the order of BofA as trustee for the Trust. A copy of the BofA Allonge is attached hereto as Exhibit 22.

24. By assignments effective as of January 20, 2011, BofA assigned to Plaintiff all of its right, title and interest in and to the Security Instruments, the AL&R, the Loan Agreement and the other Loan Documents (the "*Plaintiff Assignments*"). Copies of the Plaintiff Assignments are attached hereto collectively as Exhibit 23.

25. In connection with the Plaintiff Assignments, BofA delivered to Plaintiff an Allonge (the "*Plaintiff Allonge*") by which BofA directed payments under the Note to be made to the order of Plaintiff. A copy of the Plaintiff Allonge is attached hereto as Exhibit 24.

D. The Default.

26. On February 6, 2011, Borrowers defaulted on their obligations under the Loan Documents by, inter alia, failing to pay to Plaintiff all of the amounts due and owing on the Maturity Date (the "*Default*").

27. As a result, Borrowers, among others, were notified of their Default under the Loan Documents by letter dated February 11, 2011 and by letter dated November 28, 2011 Plaintiff formally demanded payment in full of all amounts due under the Loan Documents.

Copies of the February 11, 2011 and November 28, 2011 letters are attached collectively hereto as Exhibit 25.

28. As of the date of this complaint, Borrowers have failed to satisfy their obligations under the Loan Documents despite demand. As a result, there is now due and owing to Plaintiff, an unpaid principal balance in excess of \$175,000,000 plus accrued and paid interest at the rates set forth in the Note, together with such other amounts due and owing under the Loan Documents, including, without limitation, Plaintiff's reasonable attorneys' fees and costs.

E. Plaintiff's Remedies Under the Loan Documents.

29. Pursuant to the express terms of the Loan Documents, Borrowers have consented to the appointment of a receiver following its Default. An example of the language contained in the Security Instruments¹ is as follows:

10. Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee [Plaintiff] may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor [Borrowers] and in and to the Mortgaged Property, by Mortgagee [Plaintiff] itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee [Plaintiff] may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee [Plaintiff]:

...

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

...

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor

¹ Identical or nearly identical language can be found in each of the Security Instruments identified in paragraph 17.

[Borrowers] or of any person, firm or other entity liable for the payment of the Debt;

See the Security Instruments, copies of which for each of the Properties are attached hereto as Exhibits 3 through 10.

30. In turn, the AL&R provides at paragraph 2(b) as follows:

Upon the occurrence and during the continuance of an Event of Default, and without the necessity of Assignee [Plaintiff] entering upon and taking and maintaining full control of the Property in person, by agent or by court-appointed receiver, the license referred to in paragraph (a) above shall immediately be revoked and Assignee [Plaintiff] shall have the right at its option, to exercise all rights and remedies contained in the Loan Documents, or otherwise available at law or in equity.

See the AL&R, copies of which for each of the Properties are attached hereto as Exhibits 11 through 18.

31. The Hotels, the Leases, the Rents, the books, records and other property relating to the ownership and operation of the Hotels (collectively, the "*Defendants' Assets*") are the sole assets of Defendants.

32. Except for certain limited qualifications as set forth in the Loan Documents, Defendants have no personal liability for repayment of the Loan, and Plaintiff's sole recourse for repayment of the Loan is the collateral securing the Loan, including the Hotels and the Rents.

33. Each of the eight Hotels are being required by the franchisor to undergo improvements for which Defendants lack the adequate funds to undertake.

34. There is manifest danger of loss, deterioration and diminution of the Hotels which, along with the Rents, are the primary sources for repayment of the Loan, and Plaintiff, as an interested and secured party, is threatened with material losses and injuries for which it has a no adequate remedy at law against Defendants.

35. Plaintiff is contractually and equitably entitled to the appointment immediately of a receiver to take possession of and hold, subject to the discretion of this Court, the Hotels, the Leases, the Rents and the other Defendants' Assets.

**COUNT I
(Breach of Contract)**

36. Plaintiff realleges and incorporates by reference, as if set forth fully herein, the allegations contained in paragraphs 1 through 35 of this Complaint.

37. Plaintiff and Defendants are parties to the Loan Documents regarding the financing provided to Defendants.

38. Defendants failed to pay its indebtedness to Plaintiff in accordance with the terms of the Loan Documents.

39. Defendants' failure to pay such indebtedness constitutes a breach of the Note and the other Loan Documents.

40. As the proximate result of Defendants' breach, Events of Default have occurred under the Loan Documents and Plaintiff is contractually entitled to exercise its remedies under the Loan Documents which includes applying for the appointment of a receiver for the Defendants' Assets.

**COUNT II
(Appointment of a Receiver)**

41. Plaintiff realleges and incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 40 of this Complaint.

42. Defendants' Assets are the sole assets of Defendants.

43. Except for certain limited qualifications as set forth in the Loan Documents, Defendants have no personal liability for repayment of the Loan, and Plaintiff's sole recourse for repayment of the Loan is the collateral securing the Loan, including the Hotels.

44. Defendants have failed to pay to Plaintiff all amounts due under the Loan Documents on the Maturity Date.

45. The Loan Documents expressly allow Plaintiff to seek, and Defendants consented to, the appointment of a receiver upon the occurrence of an Event of Default.

46. Defendants and their agents are still in possession of Defendants' Assets, including the Hotels.

47. The Hotels are required under the franchise agreements to undergo certain property improvements in order to extend and maintain the ability to operate as "Embassy Suites" hotels. Defendants estimate that the cost of making such improvements will exceed \$47,000,000.

48. Defendants have failed to make such improvements.

49. The failure to make the required improvements to the Hotels places the franchise licenses in jeopardy of being terminated.

50. Plaintiff, as an interested and secured party, is threatened with material losses and injuries, including the Defendants' Assets suffering continuing waste and a dissipation or diminution in value, if Defendants remain in control of Defendants' Assets, including the Hotels.

51. Therefore, in accordance with Rule 66 of the Federal Rules of Civil Procedure, Plaintiff, as a secured creditor, asks the Court to appoint a receiver to take immediate possession of and hold, subject to the discretion of this Court, the Hotels, the Leases, the Rents and the other Defendants' Assets.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

A. That the Court grant Plaintiff the relief it seeks on all counts;

B. That the Court appoint a receiver to take possession of, control and hold the Defendants' Assets, including the Hotels, the Leases and the Rents;

C. That Defendants and their agents charged with operating and/or managing the Hotels promptly render an accounting for all Rents and other income from the Hotels and all other revenue from Defendants' Assets received by Defendants from and after February 1, 2011, and provide all such information and reports concerning the ownership, use, operation, management, repair, maintenance and leasing of the Hotels and the other Defendants' Assets as may be required by this Court to provide the receiver appointed by this Court with the information necessary to perform its obligations as receiver of the Hotels and the other Defendants' Assets;

D. That the receiver appointed by this Court shall segregate, preserve, protect, collect and account for, and manage, operate, lease, maintain and preserve, the Defendants' Assets, including the Hotels, the Leases and the Rents;

E. That Defendants promptly pay over to the receiver and cause Defendants' affiliates and the management companies currently managing the Hotels to promptly pay over to the receiver (1) all deposits by tenants of the Hotels and all Rents, revenues and other income from the Hotels and all other funds which are a part of Defendants' Assets which are currently in their possession or control; and (2) all such deposits, Rents, revenue and other income from the Hotels and other funds which are a part of Defendants' Assets which are received by any of them from and after the appointment of the receiver;

F. That the receiver pay to Plaintiff on a monthly basis any income and revenue from the Hotels in excess of that amount reasonably required to manage, operate, lease, maintain and preserve the Hotels and the other Defendants' Assets;

G. That Plaintiff be permitted, at its sole election, and be authorized to make such advances to the receiver for the benefit and account of Defendants under the Loan Documents as may be necessary from time to time, in the exercise of Plaintiff's sole discretion, and as provided under the Loan Documents, to pay costs and expenses reasonably required to manage, operate, lease, maintain and preserve the Hotels to the extent that Rents, income and other revenue from Defendants' Assets, including the Hotels, are insufficient to pay such costs and expenses, all without Plaintiff becoming a mortgagee in possession or incurring any other liability to Defendants;

H. That any such advances made by Plaintiff pursuant to the foregoing paragraph G of this prayer be additional indebtedness which is owed to Plaintiff under the Note and is secured by the Security Instruments and the other Loan Documents;

I. That Plaintiff be permitted to commence and consummate, without further order of this Court, judicial and non-judicial foreclosure proceedings against all or any part of the Hotels under and pursuant to the power of sale granted by Defendants to Plaintiff in the Security Instruments and that the receiver be discharged immediately if and when the sale of all of the Hotels is consummated;

J. That the receiver be authorized, upon request by Plaintiff, to list or otherwise advertise for sale and to solicit offers to purchase the Hotels and to sell the Hotels, on such terms as are acceptable and approved in writing prior to such sale by Plaintiff, by way of public or private sale or other disposition in accordance with the applicable provisions of 28 U.S.C. § 2001 and 2004, free and clear of all security interests, liens, claims and other interests with all valid security interests and liens to attach to the proceeds of such sale(s);

K. That this Court tax all costs of this action to Defendants; and

L. That this Court award such other and further relief as is just and proper.

Dated: New York, New York
January 18, 2012

KILPATRICK TOWNSEND & STOCKTON LLP
Counsel for Plaintiff

By: 

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