

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**WELLS FARGO BANK, N.A., as
Trustee for the Certificateholders of
Commercial Mortgage Pass-Through
Certificates, Series 2006-MF2, acting by
and through Crown NorthCorp, Inc. as
Special Servicer,**

**1251 Dublin Road
Columbus, Ohio 43215**

Plaintiff,

v.

**LaSALLE BANK NATIONAL
ASSOCIATION,**

**135 South LaSalle Street, Suite 1625,
Chicago, Illinois 60674-4107**

Defendant.

CASE NO. _____

COMPLAINT

Wells Fargo Bank, N.A. (“Wells Fargo”), as Trustee for the Certificateholders of Commercial Mortgage Pass-Through Certificates, Series 2006-MF2 (“Trustee”), acting by and through Crown NorthCorp, Inc. (“Crown NorthCorp”), its Special Servicer, files its Complaint against Defendant LaSalle Bank National Association (“LaSalle” or “Defendant”) and pleads as set forth below.

SUMMARY OF THE ACTION

1. Pursuant to a Pooling and Servicing Agreement dated as of March 30, 2006 (the “PSA”), a trust (the “Trust”) was created consisting of more than \$400 million in commercial real estate mortgage loans. The Trust has elected to be treated as a Real Estate Mortgage Investment Conduit (“REMIC”) under the Internal Revenue Code of

1986. A REMIC Trust represents a pool of mortgages, the beneficial ownership of which has been sold to various investors in the form of certificates representing their respective individual ownership interests in the total pool. If the REMIC complies with certain IRS regulations, mortgage payments made to the Trust may be passed through to the beneficial owners (“Certificateholders”) without being subject to federal income tax.

2. Loans included in REMIC trusts are typically “conduit” loans which are originated for purposes of sale to REMIC trusts. Loans are pooled in groups and essentially collateralize the certificates the Trust issues to investors, who rely upon the various representations and warranties made by the originators, sellers and servicers of the loans as to the quality and characteristics of each mortgage loan. These representations and warranties are a critical component of the securitization process because time and other constraints prevent investors from thoroughly reviewing the files for each loan. Securitization markets rely on the validity of the representations and warranties made by the loan originators, mortgage loan sellers, and depositors.

3. This case concerns Defendant’s breaches of warranties and representations made in connection with the sale and transfer of a specific loan to the Trust. Defendant originated loans for securitization. An affiliated entity, LaSalle Commercial Mortgage Securities, Inc. (“LaSalle Commercial”), bought loans from Defendant LaSalle and then sold and transferred the loans to the Plaintiff Trustee. It is common in commercial loan securitization markets for companies to form separate entities to originate the loans to be securitized and to act as the depositor into the securitization. Defendant made certain

representations and warranties regarding the loans for the benefit of the Trustee and the Certificateholders.

4. These representations and warranties, set forth in the Mortgage Loan Purchase Agreement (the “MLPA”) by and between LaSalle and LaSalle Commercial dated March 30, 2006, relate to, inter alia, the loan origination and servicing of the loans through the date of the MLPA.

5. The mortgage loan at issue in this case (the “Loan”) was made by LaSalle on or about November 30, 2005 to Royal Oak Apartments of Oklahoma, LLC. The Loan was sold by LaSalle to LaSalle Commercial on March 30, 2006 (the “Closing Date”), and on the Closing Date was transferred and sold by LaSalle Commercial to the Trust as part of the securitization pursuant to the PSA.

6. The inclusion of the Loan in the loan pool breached the representations and warranties in the MLPA in multiple respects. In addition, inclusion of the Loan breached a duty of care that LaSalle owed the Certificateholders.

7. The Loan has failed to perform in accordance with its terms.

8. Plaintiff seeks, inter alia, enforcement of Defendant’s contractual obligation to repurchase the Loan at the price provided for in the PSA (the “Purchase Price”), and compensatory damages resulting from Defendant’s other breaches.

THE PARTIES AND ASSOCIATED ENTITIES

9. Trustee Wells Fargo is a national banking association with its principal place of business in California. Wells Fargo brings this suit solely in its capacity as Trustee for the Plaintiff Trust and on the Trust’s behalf.

10. Special Servicer Crown NorthCorp is a Delaware corporation with its principal place of business in Ohio. Crown NorthCorp serves as Special Servicer for the Trust under the PSA. Pursuant to the PSA, Crown NorthCorp is empowered to bring this action for and on behalf of the Trust to enforce rights and remedies under the MLPA.

11. On information and belief, LaSalle is a national banking association that has its principal place of business in Illinois.

12. On information and belief, on or about October 1, 2007, LaSalle was acquired by Bank of America and on or about May 4, 2008, LaSalle assumed the Bank of America name.

VENUE AND JURISDICTION

13. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. Complete diversity exists because Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

14. This Court has personal jurisdiction over Defendant because Defendant transacted business in, and has an interest in, or possesses real property in, the State of Oklahoma. Specifically, Defendant originated and underwrote the Loan in Oklahoma, secured the Loan with real property located in Oklahoma City, Oklahoma, looked to rental income from the apartment complex located on the property as the source of income for payments on the Loan, and serviced the Loan in Oklahoma.

15. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in

the Western District of Oklahoma and the real property that is the subject of this action is located in this district.

THE LOAN AND RELATED FACTS

16. The borrower on the Loan (the “Borrower”) is Royal Oak Apartments of Oklahoma, LLC, which is an Oklahoma limited liability corporation. The principal of the Borrower and guarantor of the Loan is Kevin J. Flessner, who is a resident of Florida. On or about September 23, 2005, Mr. Flessner applied for a loan with LaSalle.

17. LaSalle approved the loan application and on or about November 30, 2005, LaSalle originated, closed and funded the Loan in the amount of \$2,704,000 to the Borrower evidenced by a multifamily note dated November 22, 2005 (the “Note”), executed by Borrower’s principal, payable to the order of LaSalle.

18. The Note was secured in part by a multifamily mortgage, assignment of rents and security agreement (the “Mortgage”), dated November 22, 2005, executed by Borrower’s principal on November 25, 2005, and covering real and personal property relating to the apartment complex owned by Borrower.

Non-Arm’s-Length Sale

19. The Loan financed the acquisition of a 112-unit multifamily complex known as the Royal Oak Apartments, located at 1128 N. Glade Ave., Oklahoma City, Oklahoma. Kevin J. Flessner owned both the Borrower and the seller, HVW Trust, LLC, also known as Horizonview of Sarasota, LLC (“Horizonview”).

Mortgage Fraud

20. On or about November 22, 2005, Mr. Flessner purchased, from Steve and Debra Eide and John Eide, the Royal Oak Apartments via a Flessner-owned company (Horizonview) for \$2,285,000. A week later, Horizonview re-sold Royal Oak Apartments to another Flessner-owned company (the Borrower) at a higher price of \$3,584,000 with financing provided by LaSalle and based on the higher sales price of \$3,584,000. The Loan was the result of a sham transaction designed to deceive the lender and inflate the purchase price to generate higher loan proceeds. Documents with inaccurate information were provided to LaSalle to support the scam and to mislead LaSalle for financial gain.

Misleading Documents

21. On information and belief, Mr. Flessner and/or his agents produced and provided to LaSalle several false and misleading documents that were designed to deceive LaSalle.

22. One such document was a sales contract dated September 6, 2005, which stated that the seller was HVW Trust, with Dee Johnson as Trustee, located at 158 West Orange, Covina, CA 97123. However, according to the title commitment, the owner of record of the property was Steve and Debra Eide and John Eide.

23. HVW Trust (as a d.b.a. for Horizonview) was created to conceal Horizonview's true identity as the seller. Horizonview could be tied to Mr. Flessner through his tax returns, which LaSalle had in its possession, as well as through corporate

entity filings with the Florida Secretary of State, easily accessed via online services. However, the name "HVW Trust" was not so easily traced.

24. The sales contract listed the address of HVW Trust as 158 W. Orange Street, which was actually the address for Steven S. Eide, the owner of record. According to organizational documents filed with the Florida Secretary of State, the true and correct address of HVW Trust (i.e., Horizonview) was 767 Tropical Circle, Sarasota, Florida, which could easily have been traced back to Mr. Flessner, with the obvious conclusion that the sales contract was fraudulent.

25. The sales contract was further misleading in that paragraph 15 stipulated the payment of \$106,000 in sales commissions to brokers Michael Biddinger of MBRE Inc. and Terry Fine of 41 West Realty upon closing. However, neither one received any compensation per the settlement statement dated November 30, 2005. Since the sales contract was essentially between Mr. Flessner and himself, he did not pay any sales commissions.

26. On or about November 15, 2005, the LaSalle underwriter assigned to the Loan, Michelle Tadda, questioned the loan broker by email regarding the discrepancy between the property seller and ownership, stating:

Another issue noted on this file is that the Seller per the Sales Contract is HVW Trust with Dee Johnson signed as the Trustee, BUT the Title Commitment Effective 10/6/2005 shows the Current Title Vesting as Steve S. Eide and Debra L. Eide,...and John Eric Eide. I need to know the complete situation that the Contract Seller is Not on the Title and Who the Actual Legal Seller of the Subject Property is.

27. A second misleading document submitted by Mr. Flessner and/or his agents was an addendum to the sales contract, which was provided to LaSalle on or about November 21, 2005, in response to the underwriter's questioning of the discrepancy in ownership. The addendum read in part: "HVW Trust is granted signature rights for Steve and Debra Eide Living Trust 2002 and John Eide Living Trust 2002 in regards to the sale of Royal Oak Apartments under the terms and conditions contained herein." There is no explanation in the loan file as to why this power of attorney, with signatures that were not notarized, was considered acceptable to explain the discrepancy between the contract seller (HVW Trust) and the then-current title vesting (Steve S. Eide and Debra L. Eide and John Eric Eide) per the title commitment.

28. Nevertheless, on or about November 23, 2005, Ms. Tadda signed off as reviewing the addendum and also signed off on the special condition to loan approval requiring an explanation of the discrepancy between the seller and owner of record.

29. Finally, Mr. Flessner in his loan application (dated September 23, 2005) misstated the purpose of the loan as a purchase (instead of a refinance) and the amount paid for the property (\$3,584,000 instead of \$2,285,000), and omitted his ownership of the Royal Oak property on his schedule of real estate owned.

30. By signing the Loan Approval Letter dated November 18, 2005, Mr. Flessner agreed to a continuing obligation to update any information provided in connection with the application for the loan if substantial changes occurred prior to closing of the loan. Mr. Flessner failed to update his application and schedule of real

estate to include his ownership of the Royal Oak property, which he owned prior to the closing of the Loan on November 30, 2005.

LaSalle's Origination

31. Over and above the Borrower's fraudulent practices, LaSalle's underwriting of the Royal Oak Loan failed to satisfy customary industry standards in several respects, including a lack of understanding of the Borrower, a lack of understanding of the transaction that was being financed, and a failure to follow customary industry standards for origination, including underwriting.

The Appraisal for the Loan

32. The appraisal for the Loan, dated October 5, 2005, contained errors in methodology, unsupported costs, unsupported cap rates and did not provide a clear and concise description of the property and neighborhood characteristics.

The Flawed Mortgage Document

33. The Mortgage did not contain the necessary power-of-sale language for a non-judicial foreclosure in the State of Oklahoma. Language specific to the State of Oklahoma and, in particular, to 46 O.S. § 40 et seq. should have been included in the loan documents.

THE SECURITIZATION DOCUMENTS

The Mortgage Loan Purchase Agreement

34. On or about the Closing Date, Defendant LaSalle transferred to LaSalle Commercial its rights under the Note, the Mortgage and all other documents evidencing or securing the Loan pursuant to the MLPA.

The Pooling and Servicing Agreement

35. On or about the Closing Date, LaSalle Commercial entered into the PSA, which was effective as of that date.

36. The parties to the PSA are LaSalle Commercial as Depositor, GMAC Commercial Mortgage Corporation as Master Servicer (now, by merger, Capmark Finance, Inc.), Crown NorthCorp as Special Servicer, Wells Fargo as Trustee, and LaSalle as Paying Agent.

37. Pursuant to the PSA, Depositor LaSalle Commercial conveyed to Trustee Wells Fargo, for the benefit of the Certificateholders, all of Depositor's rights, title and interest in and to (a) certain loans (including the Loan at issue) and (b) certain mortgage loan purchase and sale agreements, including the MLPA. In the MLPA, Seller LaSalle explicitly acknowledged the assignment by Depositor LaSalle Commercial to Wells Fargo, as Trustee, of the representations and warranties contained in the MLPA and of the obligation of LaSalle to repurchase the mortgage loans. Accordingly, Wells Fargo, as Trustee, stands in the shoes of Depositor LaSalle Commercial with respect to, inter alia, Seller LaSalle's representations and warranties to LaSalle Commercial contained within the MLPA.

THE BREACHES OF THE MLPA

Defendant's Representations and Warranties

38. Under the MLPA, LaSalle, as Seller, made the following representations and warranties:

a. That as of the Closing Date, the Seller “has no actual knowledge that any statement, report, officer’s certificate or other document prepared and furnished or to be furnished by the Seller in connection with the transactions contemplated hereby (including, without limitation, any financial cash flow models and underwriting file abstracts furnished by the Seller) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading;” MLPA Section 6(viii).

b. “The Mortgage Loan documents for each Mortgage Loan contain enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the practical realization against the Mortgaged Property of the principal benefits of the security intended to be provided thereby, including realization by judicial or non-judicial foreclosure” MLPA Exhibit B ¶ 10(a).

c. “[S]uch Mortgage Loan documents taken as a whole are enforceable to the extent necessary and customary for the practical realization of the principal rights and benefits afforded thereby.” MLPA Exhibit B ¶ 10(b).

d. That as of the Closing Date, “[t]here exists no material default, breach, violation or event of acceleration . . . under the documents evidencing or securing the Mortgage Loan, in any such case to the extent the same materially and adversely affects the value of the Mortgage Loan and the related Mortgaged Property” MLPA Exhibit B ¶ 13.

e. “An appraisal of the related Mortgaged Property was conducted in connection with the origination of such Mortgage Loan, and such appraisal satisfied the guidelines in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as in effect on the date such Mortgage Loan was originated.” MLPA Exhibit B ¶ 35.

f. “The origination, servicing and collection practices used by the Seller . . . with respect to such Mortgage Loan have been in all material respects legal and have met customary industry standards.” MLPA Exhibit B ¶ 23.

Defendant’s Breaches of Representations and Warranties

39. LaSalle breached Section 6(viii) of the MLPA due to several material omissions that were made in the Loan Underwriting Submission, which was furnished in connection with the sale and securitization of the Loan:

a. LaSalle omitted the fact that the proposed collateral property was part of a sales flip that occurred one week prior to loan origination. LaSalle had knowledge of the flip as evidenced by a title commitment and purchase and sale agreement in its loan file, which discrepancies were also discussed in the appraisal. Additionally, LaSalle’s underwriter approved without explanation Addenda A to the Loan Underwriting Submission which read: “Lender shall be provided with satisfactory Explanation/Documentation regarding the Issue that the Contract Seller is not the Current Vesting Entity on the Title Commitment.”

b. LaSalle omitted the fact that the purchase being financed with the Loan was not an arm’s-length transaction. LaSalle had in its possession Mr. Flessner’s

2004 tax return, which referred to his ownership of Horizonview at four separate places. LaSalle failed to include in the Loan Underwriting Submission that the acquisition was between a common buyer and seller, and therefore should have been represented as a refinance instead of an acquisition. This omission was material in that it resulted in a loan-to-cost ratio of 118%.

c. LaSalle omitted the fact that the principal's tax returns indicated substantial loss carryforwards for several consecutive years immediately prior to the Royal Oak Loan. The underwriter should have questioned the Borrower's principal about the losses and documented the explanation in the Loan Underwriting Submission and file, but did not.

40. LaSalle breached Section 10(a) and 10(b) of MLPA Exhibit B as to the Loan because the Mortgage Loan documents for the Loan did not include sufficient power-of-sale language to allow for a non-judicial foreclosure and practical realization against the Mortgaged Property in the state of Oklahoma.

41. LaSalle breached Section 13 of MLPA Exhibit B as to the Loan because as of the Closing Date, as detailed below, there existed multiple events of "material default, breach, violation or event of acceleration . . . under the documents evidencing or securing the Mortgage Loan . . . that materially and adversely affects the value of the Mortgage Loan and the related Mortgaged Property"

a. The Borrower was in default as of the Closing Date due to Borrower's submission of untrue and incorrect information in the loan application process. The borrower submitted two loan applications (dated September 23, 2005 and

November 29, 2005), which included incorrect and/or misleading information regarding several issues.

b. In both loan applications, Mr. Flessner represented that the purpose of the Loan was for purchase, when in fact he was purchasing the property in a different transaction at a different price and refinancing it with the Loan.

c. In the September 23, 2005 loan application, Mr. Flessner stated the purchase price was \$3,584,000, while in the November 29, 2005 loan application, he stated the purchase price was \$3,386,000. Neither purchase price was correct because Mr. Flessner purchased the property through Horizonview for \$2,285,000 on November 22, 2005, one week prior to the funding of Loan.

d. Mr. Flessner did not include his interest in HVW Trust or Horizonview in either loan application. He provided only one schedule of real estate owned, which did not include his interest in the Royal Oak Apartments.

e. In the November 19, 2005 Loan Approval Letter, which was signed by Mr. Flessner, he agreed to provide LaSalle with any updates in his financial condition that occurred prior to loan closing, including but not limited to a change in sales price of the collateral. Per this requirement, on or about November 29, 2005, Mr. Flessner provided an updated loan application to reflect the adjusted sales price from \$3,584,000 to \$3,386,000. This was another opportunity for Mr. Flessner to report his ownership of Horizonview and the Royal Oak Apartments, but he failed to do so. By the time the November 29 application was submitted, Mr. Flessner had closed on the sale of the Royal Oak Apartments (on November 22, 2005) in the name of Horizonview (HVW Trust),

which was his company. However, the only difference between the two loan applications was an adjustment to the property sales price.

f. Both loan applications signed by Mr. Flessner contained an acknowledgment and agreement at Section IX that stated in part: “[T]he undersigned specifically represent to Lender and to Lender’s actual and potential . . . successors and assigns . . . that: (1) the information provided in this application is true and correct”

g. Information in both applications was not true and correct, and the misstatements were material.

h. The false statements in the loan applications were material defaults under paragraph 27 of the Mortgage, which provided, in part, that: “Upon Borrower’s breach of any covenant or agreement of Borrower in this Instrument . . . Lender at Lender’s option may declare all of the sums secured by this Instrument to be immediately due and payable”

42. LaSalle breached Section 35 of MLPA Exhibit B as to the Loan because of material errors contained in the appraisal report that was prepared for the Loan:

a. The property description, under a form report, did not provide a clear and concise description of the property and neighborhood characteristics. The appraisal identified the property as being generally average in construction and average in condition, but then stated that the overall property appeal and maintenance levels were below average for the Oklahoma City Metro Area, as evidenced by higher-than-typical apartment vacancy rates. The appraiser mentioned very little about the neighborhood other than attributing the neighborhood’s prevailing MF vacancy of 15 to 50% to an

oversupply of non-rehabilitated apartment units, and estimated the cost of rehabbing unit interiors at \$3,000 to \$6,000 per unit.

b. In contrast, a review appraisal report, dated January 22, 2008, by J.W. Hoyt & Associates, provided a more detailed description of the same neighborhood:

The property is located within the 10th Street Apartment Corridor, a heavily developed apartment area of northwest Oklahoma City which was developed by a group of less sophisticated builders in the late 1960s and early 1970s. These apartments were commonly below the physical standards of other apartment projects within the northwest quadrant of the city. Over the past 40 years, this apartment grouping experienced multiple mortgage foreclosures when there is a downturn in the apartment market. Many of the area projects endure crime problems. Rental rates in this area are commonly at the bottom of the Oklahoma City metropolitan area. Because of the lower income level of the occupants, the apartments have excessive turnover and credit losses. And due to the lower rental rate achievements, a rehabilitation effort many times only makes the individual apartment habitable but leaves it without upgrades in appliances, mechanical systems, etc. In general, the apartments in the area of the appraised property are lower in quality and generally lower in condition when compared to the apartment market within Oklahoma City.

c. The appraisal report concluded a fair market value of \$3,020,000 based on the assumption of a stabilized value of \$3,350,000 less \$3,000 per unit deduction for renovations to bring the property to an as-is basis. The \$3,000 per unit allowance to bring the property up to market standards is not detailed as to the exact unit renovations needed to be made. The appraiser did not explain how he arrived at the repair cost of \$3,000 per unit. Each of the three apartment sales used as comparables had recently been rehabilitated and stabilized occupancy had occurred. The buyer of Sale 1 spent \$10,000 per unit bringing the property to stabilized occupancy, and the buyer of

Sale 2 spent \$6,000 per unit bringing the property to stabilized occupancy. Furthermore, no allowance was made for the loss in income during the rehabilitation process.

d. The 8% cap rate used by the appraiser was not supported by the sale comps which sold at cap rates of 8.77%, 8.23% and 8.75%, respectively. Sale Comp 1 was superior to the subject both in terms of location, physical appearance, and size, yet had a higher cap rate. With the high degree of risk associated with being able to accomplish the rehabilitation cost of \$3,000 per unit, an 8% overall cap rate was inappropriate and not supported by the sales comps.

e. The appraisal's inaccuracies had a material and significant effect on the opinion of value, and resulted in a misleading conclusion of value.

43. LaSalle breached Section 23 of MLPA Exhibit B as to the Loan because it was one that would not have been made if origination practices meeting customary industry standards had been utilized. In addition, LaSalle's servicing for the Loan failed to meet customary industry standards. LaSalle's origination and servicing failed to meet customary industry standards because:

a. Nowhere in the loan file or in the Loan Underwriting Submission did LaSalle attempt to explain why the seller under the sales contract was not the owner of record as set forth in the title commitment.

b. If LaSalle had reviewed the settlement statement prior to funding, as is customary, and reviewed the principal's tax returns, as is also customary, it would have been apparent that the settlement statement listed the seller as one of Mr. Flessner's

companies: Horizonview. This is particularly relevant since the issue of seller/owner of record was a special condition to loan approval.

c. If the Loan Underwriting Submission had included a more in-depth analysis of the Borrower's principal and his credit, including a discussion of the substantial business loss carryforwards contained in his tax returns, someone at LaSalle would have and/or should have recognized Mr. Flessner's company as the seller. But the underwriter did not mention in the Loan Underwriting Submission that Mr. Flessner's tax returns showed substantial losses, or attempt to explain and mitigate this potentially negative credit information.

d. LaSalle did not consider the substantial discrepancy in the appraised value (\$3,050,000) and purchase price (\$3,584,000) as a red flag to question the transaction. In fact, quite the opposite occurred. LaSalle email correspondence directed the appraiser to re-write the value based on a "renovated" basis, when in fact the property had not been renovated.

e. LaSalle's underwritten net operating income improperly utilized the appraiser's pro forma rents, which were higher than historical rents (because LaSalle directed the appraiser to project income on a post-renovation, stabilized basis even though the property was not stabilized), and expenses that were less than the appraiser's expenses.

f. LaSalle failed to know and/or understand its Borrower. One significant series of negative facts concerning Mr. Flessner that LaSalle ignored related to Mr. Flessner's position with iDigi, which was a wireless communications company based

in Sarasota. In 2001, iDigi's largest investor sued iDigi and other parties, alleging among other things, incompetence and fraud. Mr. Flessner, who was the CEO of iDigi during this time, was personally sued for misappropriation of funds. Allegations in the media (approximately ten articles in total) of misappropriation of funds by iDigi and Flessner should have been considered by LaSalle.

g. In fact, LaSalle's Risk Assessment Form for Entities, question 4, asked "Do you know of any negative public opinions about your customer or the principals of the company?" The question was answered "no," resulting in LaSalle's rating of the Borrower to be a neutral risk. If LaSalle had answered "yes," then the Borrower would have been considered an Increased Risk requiring completion of a due diligence questionnaire for Increased Risk Customers.

h. Finally, regarding LaSalle's servicing of the Loan, in March 2006, LaSalle approved the release of \$270,000 of holdback funds based on a deficient inspection (in which the inspector appeared to have actually entered only two apartment units out of 112) and a signed affidavit from the "contractor," who was actually Gary Dowden, the Director of Operations for Sussex Management, which was a Flessner-owned company.

44. Each of the above-described breaches had a material and adverse effect on the value of the collateral property and/or the value of the Loan.

45. The PSA provides that:

If . . . the Special Servicer . . . discovers . . . a breach of any representation or warranty with respect to a Mortgage Loan . . . which . . . materially and adversely affects the value of such Mortgage Loan, the related Mortgaged

Property or the interests of the Trustee or any Certificateholder in the Mortgage Loan or the related Mortgaged Property, . . . the Special Servicer shall give prompt written notice of such . . . Breach . . . and shall request in writing that the Mortgage Loan Seller not later than 90 days after . . . the Mortgage Loan Seller's receipt of such notice . . . (i) cure such . . . Breach . . . in all material respects, (ii) repurchase the affected Mortgage Loan . . . at the applicable Purchase Price and in conformity with the Mortgage Loan Purchase Agreement and this Agreement or (iii) substitute a Qualified Substitute Mortgage Loan for such affected Mortgage Loan (PSA § 2.03(b))

46. The MLPA provides that:

Pursuant to this Agreement or Section 2.03(b) of the Pooling and Servicing Agreement, the Seller . . . shall be given notice of any Breach . . . that materially and adversely affects the value of a Mortgage Loan, the value of the related Mortgaged Property or any interest of any Certificateholder in the Mortgage Loan or the related Mortgaged Property. (MLPA § 6(d))

Upon notice pursuant to Section 6(d) above, the Seller shall, not later than 90 days from . . . Seller's receipt of the notice . . . (i) cure such . . . Breach in all material respects, or (ii) repurchase the affected Mortgage Loan at the applicable Purchase Price . . . or (iii) substitute a Qualified Substitute Mortgage Loan (MLPA § 6(e))

47. On July 3, 2008, pursuant to PSA § 2.03(b) and MLPA § 6(d), Crown NorthCorp sent LaSalle notice of its MLPA breaches regarding the Loan and demanded that LaSalle repurchase the Loan at the Purchase Price as required by the PSA and the MLPA.

48. LaSalle failed to repurchase the Loan at the Purchase Price as required by the PSA and the MLPA, despite the clear and obvious breaches.

COUNT I: BREACH OF WARRANTY

49. Plaintiff realleges and incorporates this Complaint's preceding paragraphs.

50. Defendant LaSalle made the representations and warranties set forth in Plaintiff's Complaint ¶38.

51. Pursuant to the PSA, LaSalle Commercial assigned and transferred Plaintiff its rights under the MLPA, including all rights to enforce any breach of LaSalle's representations and warranties contained within the MLPA.

52. Defendant LaSalle breached multiple representations and warranties as to the Loan, as set forth in Plaintiff's Complaint at Paragraphs 39 through 44.

53. LaSalle has further breached its obligations under the PSA and MLPA by failing within ninety (90) days of its receipt of initial notice of the above breaches of warranty to repurchase the loan from the Trust as specified in PSA § 2.03(b) or MLPA § 6(e).

54. As a direct and proximate result of Defendant's breaches of warranty, Plaintiff has been damaged in an amount to be proven at trial, but in no event less than \$2,704,000.00, plus interest.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant as follows:

a. Enforcing the MLPA and PSA by requiring LaSalle to repurchase the Loan from the Trust as specified in PSA § 2.03(b) and MLPA § 6(e) at the Purchase Price;

b. Awarding Plaintiff compensatory damages in an amount to be determined at trial but in excess of Seventy-Five Thousand Dollars (\$75,000.00);

c. Awarding Plaintiff its attorneys' fees and costs in this action as permitted in the PSA and MLPA;

d. Awarding Plaintiff all pre-judgment and post-judgment interest at the maximum rate allowed by law;

e. Awarding Plaintiff such other, further and different relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Kiran A. Phansalkar

Kiran A. Phansalkar, OBA #11470

Crystal A. Johnson, OBA #21715

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[Application for admission pro hac vice to be filed]