

VC

STATE OF INDIANA) IN THE VANDERBURGH _____ COURT
) SS: 82D05-1710-MF-005520
 COUNTY OF VANDERBURGH) CAUSE NO. _____

U.S. Bank National Association, as Trustee, for the)
 benefit of the holders of COMM 2014-CCRE17)
 Mortgage Trust Commercial Mortgage Pass-)
 Through Certificates,) **COMPLAINT FOR JUDGMENT**
) **AND FORECLOSURE OF**
 Plaintiff,) **COMMERCIAL MORTGAGES**
 vs.) **AND SECURITY INTEREST**
)
 Court Building Development, LLC, an Indiana)
 limited liability company; Hulman Building)
 Development, LLC, an Indiana limited liability)
 company; Fendrich Plaza Development, LLC, an)
 Indiana limited liability company; Kunkel Square)
 LLC, an Indiana limited liability company; First)
 Security Bank of Owensboro; T2 McCurdy, LLC;)
 Arbor Realty Collateralized Loan Obligation 2013-)
 1 Ltd.; The PrivateBank; First Financial Bank, NA;)
 Alpha Mechanical Service, Inc., a Kentucky)
 corporation)
)
 Defendants.)
)

COMPLAINT FOR JUDGMENT AND FORECLOSURE OF COMMERCIAL
MORTGAGES AND SECURITY INTEREST

U.S. Bank National Association, as Trustee, for the benefit of the holders of COMM 2014-CCRE17 Mortgage Trust Commercial Mortgage Pass-Through Certificates ("Plaintiff"), by and through Midland Loan Services, a division of PNC Bank, National Association ("Midland"), acting solely in its capacity as special servicer, and its undersigned counsel, for its Complaint for Judgment, Foreclosure of Commercial Mortgage and Security Interest ("Complaint") against all of the above-captioned Defendants, respectfully states as follows:

PARTIES

1. Plaintiff, by virtue of its election, is a real estate mortgage investment conduit trust formed under the Internal Revenue Code of 1986.

2. On information and belief, Defendants Kunkel Square, LLC ("Kunkel"), Fendrich Plaza Development, LLC ("Fendrich"), Court Building Development, LLC ("CBD"), and Hulman Building Development, LLC ("Hulman", together with Kunkel, Fendrich, and CBD, the "Borrowers"), are each Indiana limited liability companies, having an address of 510 Main Street, Evansville, Indiana 47708.

3. On information and belief, Defendant First Security Bank of Owensboro has an address of 21 S.E. Third Street, Evansville, IN 47708, and is being named for any potential interest they may claim in any property that is subject of this action.

4. On information and belief, Defendant T2 McCurdy, LLC has an address of 111 W. Wesley Street, Ste. #5, Wheaton, Illinois 60187, and is being named for any potential interest it may claim in the property that is subject of this action.

5. On information and belief, Defendant Arbor Realty Collateralized Loan Obligation 2013-1, Ltd. has an address of c/o MaplesFS Limited, P.O. Box 1093, Queensgate House, Grand Cayman KY1-1102, and is being named for any potential interest it may claim in any property that is subject of this action.

6. On information and belief, Defendant The PrivateBank is a federal savings bank having an address of 1401 South Brentwood Boulevard, 2nd Floor, St. Louis Missouri 63144, and is being named for any potential interest it may claim in any property that is subject of this action.

7. On information and belief, Defendant First Financial Bank, NA is a national banking association, having an address of 1601 State Street, Lawrenceville, Illinois 62439, and is being named for any potential interest it may claim in any property that is subject of this action.

8. On information and belief, Defendant Alpha Mechanical Service, Inc. is a Kentucky corporation, having an address of 7200 Distribution Drive, Louisville, Kentucky 40258-2827, and is being named for any potential interest it may claim in any property that is subject of this action.

9. Kunkel is the fee owner of the real property in Vanderburgh County located at 329-331 Main Street and 15 SE Fourth Street, Evansville, Indiana (the "Kunkel Property").

10. Fendrich is the fee owner of the real property in Vanderburgh County located at 100 E. Sycamore Street and 15 John Street, Evansville, Indiana (the "Fendrich Property").

11. CBD is the fee owner of the real property in Vanderburgh County located at 122-123 N.W. Fourth Street, Evansville, Indiana (the "CBD Property").

12. Hulman is the fee owner of the real property in Vanderburgh County located at 20 N.W. Fourth Street and 109 N.W. Third Street, Evansville, Indiana (the "Hulman Property" together with the Fendrich Property, CBD Property and Hulman Property, the "Real Estate").

13. Office building and multi-family buildings are located on the Real Estate and included with in the Real Estate is all rents, profits, and personal property associated therewith. The legal descriptions of the Real Estate are attached hereto and incorporated herein as **Exhibits A-1, A-2, A-3 and A-4.**

LOAN DOCUMENTS

14. On or about April 15, 2014, Borrowers executed and delivered to Jefferies LoanCore LLC, a Delaware limited liability company ("Jefferies") a Promissory Note ("Note") in the original principal amount of \$10,350,000.00. A true and accurate copy of the Note is attached as **Exhibit B**.

15. In connection with the execution of the Note, the following additional loan documents (among others) were executed and delivered to Jefferies:

- a. Mortgage, Assignment of Leases and Rents and Security Agreement from Kunkel dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008927, Vanderburgh County Recorder ("Kunkel Mortgage"), which encumbers the Kunkel Property. A true and accurate copy of the Kunkel Mortgage is attached as **Exhibit C**.
- b. Assignment of Leases and Rents from Kunkel dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008928, Vanderburgh County Recorder ("Kunkel Rent Assignment"), which encumbers the Kunkel Property. A true and accurate copy of the Kunkel Rent Assignment is attached as **Exhibit D**.
- c. Mortgage, Assignment of Leases and Rents and Security Agreement from Fendrich dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008924, Vanderburgh County Recorder ("Fendrich Mortgage"), which encumbers the Fendrich Property. A true and accurate copy of the Fendrich Mortgage is attached as **Exhibit E**.

- d. Assignment of Leases and Rents from Fendrich dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008925, Vanderburgh County Recorder (“Fendrich Rent Assignment”), which encumbers the Fendrich Property. A true and accurate copy of the Fendrich Rent Assignment is attached as **Exhibit F**.
- e. Mortgage, Assignment of Leases and Rents and Security Agreement from CBD dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008922, Vanderburgh County Recorder (“CBD Mortgage”), which encumbers the CBD Property. A true and accurate copy of the CBD Mortgage is attached as **Exhibit G**.
- f. Assignment of Leases and Rents from CBD dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008923, Vanderburgh County Recorder (“CBD Rent Assignment”), which encumbers the CBD Property. A true and accurate copy of the CBD Rent Assignment is attached as **Exhibit H**.
- g. Mortgage, Assignment of Leases and Rents and Security Agreement from Hulman dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008919, Vanderburgh County Recorder (“Hulman Mortgage” together with the Kunkel Mortgage, Fendrich Mortgage, and CBD Mortgage, the “Mortgages”), which encumbers the Hulman Property. A true and accurate copy of the Hulman Mortgage is attached as **Exhibit I**.

h. Assignment of Leases and Rents from Hulman dated as of April 15, 2014, and recorded April 17, 2014, in Document No. 2014R00008920, Vanderburgh County Recorder (“Hulman Rent Assignment” together with the Kunkel Rent Assignment, Fendrich Rent Assignment and CBD Rent Assignment, the “Rent Assignments”), which encumbers the Hulman Property. A true and accurate copy of the Hulman Rent Assignment is attached as **Exhibit J**.

16. Additionally, Borrowers executed or caused to be executed the following:

- a. Loan Agreement dated as of April 15, 2014, a true and accurate copy of which is attached as **Exhibit K**;
- b. Deposit Account Agreement dated as of April 15, 2014, a true and accurate copy of which is attached as **Exhibit L**;
- c. Deposit Account Control Agreement dated as of April 15, 2014, a true and accurate copy of which is attached as **Exhibit M**.

17. The Mortgages granted Jefferies a first lien on the Real Estate and the rents and income therefrom, along with a security interest in the personal property of Borrowers, which personal property is more particularly described in the Mortgages and Rent Assignments (the “Personal Property,” together with the Real Estate, the “Property”).

18. Plaintiff’s security interest in the Personal Property has been perfected by the following financing statements:

- a. Kunkel, as Debtor, and Jefferies, as Secured Party, filed April 29, 2014, as File No. 201400003461667, Indiana Secretary of State, which was assigned to Plaintiff on June 20, 2014, as File No. 201400005096966, Indiana Secretary of State. True and accurate copies are attached as **Exhibit N**.

- b. Fendrich, as Debtor, and Jefferies, as Secured Party, filed April 29, 2014, as File No. 201400003462466, Indiana Secretary of State, which was assigned to Plaintiff on June 20, 2014, as File No. 201400005097987, Indiana Secretary of State. True and accurate copies are attached as **Exhibit Q**.
- c. CBD, as Debtor, and Jefferies, as Secured Party, filed April 29, 2014, as File No. 2014000034602800, Indiana Secretary of State, which was assigned to Plaintiff on June 20, 2014, as File No. 201400005097654, Indiana Secretary of State. True and accurate copies are attached as **Exhibit P**.
- d. Hulman, as Debtor, and Jefferies, as Secured Party, filed April 29, 2014, as File No. 201400003462688, Indiana Secretary of State, which was assigned to Plaintiff on June 20, 2014, as File No. 201400005097109, Indiana Secretary of State. True and accurate copies are attached as **Exhibit Q**.

19. Jefferies transferred the Note, Mortgages, Rent Assignments, and all other loan documents and its secured party rights to Plaintiff, by executing and delivering the following:

- a. Allonge, which is attached to the Note at **Exhibit B**.
- b. Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013382, Vanderburgh County Recorder, which assigns Kunkel Mortgage. A true and accurate copy of such assignment is attached as **Exhibit R**.
- c. Assignment of Assignment of Leases and Rents dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013383, Vanderburgh County Recorder, which assigns the Kunkel Rent

Assignment. A true and accurate copy of such assignment is attached as **Exhibit S**.

- d. Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013341, Vanderburgh County Recorder, which assigns the Fendrich Mortgage. A true and accurate copy of such assignment is attached as **Exhibit T**.
- e. Assignment of Assignment of Leases and Rents dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013342, Vanderburgh County Recorder, which assigns the Fendrich Rent Assignment. A true and accurate copy of such assignment is attached as **Exhibit U**.
- f. Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013345, Vanderburgh County Recorder, which assigns the CBD Mortgage. A true and accurate copy of such assignment is attached as **Exhibit V**.
- g. Assignment of Assignment of Leases and Rents dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013346, Vanderburgh County Recorder, which assigns the CBD Rent Assignment. A true and accurate copy of such assignment is attached as **Exhibit W**.

- h. Assignment of Mortgage, Assignment of Leases and Rents and Security Agreement dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013349, Vanderburgh County Recorder, which assigns the Hulman Mortgage. A true and accurate copy of such assignment is attached as **Exhibit X**.
- c. Assignment of Assignment of Leases and Rents dated May 13, 2014, and recorded June 16, 2014, in Document No. 2014R00013350, Vanderburgh County Recorder, which assigns the Hulman Rent Assignment. A true and accurate copy of such assignment is attached as **Exhibit Y**.

20. The Note, Mortgages, Rent Assignments, Loan Agreement, related assignments, and any and all other loan documents associated with the Note, are collectively referred to as the "Loan Documents."

COUNT ONE:
Breach of Contract and Default Under Note

21. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if the same were fully restated in this Count One.

22. Borrowers have defaulted under the terms of the Loan Documents by failing to make payments as and when due under the Note, and for permitting a mechanic's lien to be filed against the Hulman Property, resulting in a lawsuit that is pending in Vanderburgh County Superior Court.

23. Pursuant to letter dated July 10, 2017, a true and accurate copy of which is attached hereto as **Exhibit Z**, Midland notified Borrowers that they are in default under the

Loan Documents for their failure to pay the Note as and when due and automatically accelerated the loan upon Borrowers failure to cure the default.

24. Despite demand, Borrowers have failed and refused to pay the amount due under the Note.

25. Plaintiff is entitled under the Loan Documents to recover from Borrowers the costs of collection, including legal fees and expenses incurred and expected to be incurred by Plaintiff in connection with Plaintiff exercising its remedies in this matter.

26. As of October 20, 2017, there was due and owing to Plaintiff under the Note the principal amount of \$9,967,849.51, plus \$162,838.32 in interest, \$232,189.55 in default interest, \$16,056.00 in late fees, \$1,092.89 in tax advances, \$10,427.67 in administrative fees, \$16,779.05 in expenses, \$100,105.67 in special servicing fees, less a credit for escrows and lockbox funds of \$324,366.63, for a total due of \$10,182,972.03, plus interest at the default rate of 11.32375% per annum accruing from and after October 20, 2017, and all other amounts owed under the Loan Documents, including, but not limited to attorney's fees and Plaintiff's expenses.

27. All conditions precedent required to give rise to the Plaintiff's filing of this action under the terms of the Loan Documents have occurred, been waived, or have otherwise been deemed satisfied, and Plaintiff has not waived the Borrowers' defaults.

COUNT TWO:
Foreclosure of Kunkel Mortgage

28. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if the same were fully restated in this Count Two.

29. At all times relevant hereto, including as of April 15, 2014, Kunkel was the fee owner of the Kunkel Property.

30. The Kunkel Mortgage secures payment and performance of Borrowers' obligations under the Note and encumbers the Kunkel Property.

31. A default under the Note is a default under the Kunkel Mortgage (and other Mortgages) and the other Loan Documents, and Borrowers are therefore in default under the Mortgages.

32. Because of Borrowers' defaults, Plaintiff is entitled to have the Kunkel Mortgage foreclosed and receive the rents and profits associated with the Kunkel Property.

33. Plaintiff has a first lien upon the Kunkel Property, subject only to the interest of the Treasurer of Vanderburgh County, Indiana, for real estate taxes and assessments.

34. Pursuant to the security interests granted by the Kunkel Mortgage, Plaintiff has a first lien on the Personal Property described therein and the fixtures on the Kunkel Property, which was perfected by the filing of the financing statement set forth in ¶18.a.

35. The Kunkel Property and related Personal Property under UCC 9-604 should be sold together.

COUNT THREE:
Foreclosure of Fendrich Mortgage

36. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if the same were fully restated in this Count Two.

37. At all times relevant hereto, including as of April 15, 2014, Fendrich was the fee owner of the Fendrich Property.

38. The Fendrich Mortgage secures payment and performance of Borrowers' obligations under the Note and encumbers the Fendrich Property.

39. A default under the Note is a default under the Fendrich Mortgage (and other Mortgages) and the other Loan Documents, and Borrowers are therefore in default under the Mortgages.

40. Because of Borrowers' defaults, Plaintiff is entitled to have the Fendrich Mortgage foreclosed and receive the rents and profits associated with the Fendrich Property.

41. Plaintiff has a first lien upon the Fendrich Property, subject only to the interest of the Treasurer of Vanderburgh County, Indiana, for real estate taxes and assessments.

42. Pursuant to the security interests granted by the Fendrich Mortgage, Plaintiff has a first lien on the Personal Property described therein and the fixtures on the Fendrich Property, which was perfected by the filing of the financing statement set forth in ¶18.b.

43. The Fendrich Property and related Personal Property under UCC 9-604 should be sold together.

COUNT FOUR:
Foreclosure of CBD Mortgage

44. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if the same were fully restated in this Count Two.

45. At all times relevant hereto, including as of April 15, 2014, CBD was the fee owner of the CBD Property.

46. The CBD Mortgage secures payment and performance of Borrowers' obligations under the Note and encumbers the CBD Property.

47. A default under the Note is a default under the CBD Mortgage (and other Mortgages) and the other Loan Documents, and Borrowers are therefore in default under the Mortgages.

48. Because of Borrowers' defaults, Plaintiff is entitled to have the CBD Mortgage foreclosed and receive the rents and profits associated with the CBD Property.

49. Plaintiff has a first lien upon the CBD Property, subject only to the interest of the Treasurer of Vanderburgh County, Indiana, for real estate taxes and assessments.

50. Pursuant to the security interests granted by the CBD Mortgage, Plaintiff has a first lien on the Personal Property described therein and the fixtures on the CBD Property, which was perfected by the filing of the financing statement set forth in ¶18.c.

51. The CBD Property and related Personal Property under UCC 9-604 should be sold together.

COUNT FIVE:
Foreclosure of Hulman Mortgage

52. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if the same were fully restated in this Count Two.

53. At all times relevant hereto, including as of April 15, 2014, Hulman was the fee owner of the Hulman Property.

54. The Hulman Mortgage secures payment and performance of Borrowers' obligations under the Note and encumbers the Hulman Property.

55. A default under the Note is a default under the Hulman Mortgage (and other Mortgages) and the other Loan Documents, and Borrowers are therefore in default under the Mortgages.

56. Because of Borrowers' defaults, Plaintiff is entitled to have the Hulman Mortgage foreclosed and receive the rents and profits associated with the Hulman Property.

57. Plaintiff has a first lien upon the Hulman Property, subject only to the interest of the Treasurer of Vanderburgh County, Indiana, for real estate taxes and assessments.

58. Pursuant to the security interests granted by the Hulman Mortgage, Plaintiff has a first lien on the Personal Property described therein and the fixtures on the Hulman Property, which was perfected by the filing of the financing statement set forth in ¶18.d.

59. The Hulman Property and related Personal Property under UCC 9-604 should be sold together.

WHEREFORE, based on all of the foregoing, Plaintiff respectfully requests the Court:

A. Enter judgment in favor of the Plaintiff and against Borrowers Kunkel Square, LLC, Fendrich Plaza Development, LLC, Court Building Development, LLC, and Hulman Building Development, LLC, jointly and severally, on the Note in the amount of \$10,182,972.03 as of October 20, 2017, plus all per diem interest at the default rate of 11.32375% per annum from and after October 20, 2017, and any and all other amounts due and owing under the Loan Documents, including but not limited to prepayment premiums, attorneys' fees, expenses, charges and all costs of collection to be incurred by the Plaintiff in this action, plus any sums the Plaintiff must expend for taxes, improvements,

insurance, and title insurance to the date of the Sheriff's sale(s) in this matter.

B. Declare the Kunkel Mortgage on the Kunkel Property to be first and superior to any liens, interests, or claims asserted by any defendant, or by any and all persons claiming from, under, or through any defendant, in or to the Kunkel Property.

C. Declare the Fendrich Mortgage on the Fendrich Property to be first and superior to any liens, interests, or claims asserted by any defendant, or by any and all persons claiming from, under, or through any defendant, in or to the Fendrich Property.

D. Declare the CBD Mortgage on the CBD Property to be first and superior to any liens, interests, or claims asserted by any defendant, or by any and all persons claiming from, under, or through any defendant, in or to the CBD Property.

E. Declare the Hulman Mortgage on the Hulman Property to be first and superior to any liens, interests, or claims asserted by any defendant, or by any and all persons claiming from, under, or through any defendant, in or to the Hulman Property.

F. Foreclose any and all liens on and security interests in and to the Property, including those held by the Plaintiff, and declare that all equity, right to redemption, liens, claims, or any other interests of the defendants, or of any and all persons claiming from, under or through them in or to the Property, and all other claims or interests thereon, be forever barred and foreclosed.

G. Enter an Order:

1. Directing the sale of each Property by the Sheriff of Vanderburgh County, Indiana, as other real and personal property is sold on execution, free and clear of all interests and claims of, by, or through the defendants, without relief from valuation and appraisal laws, in order to satisfy Plaintiff's judgment as provided

by law;

2. Providing that at such Sheriff's sale(s), Plaintiff shall be permitted to bid up to its judgment in this action, with the proceeds of such sale to be applied to the cost of sale, and then to the judgment of the Plaintiff;

3. Providing that upon the execution by the Sheriff of Vanderburgh County, Indiana, of a Sheriff's deed(s) and bill(s) of sale to the Property sold thereunder, the defendants, or any other person or entity who may be in possession of any of the Property or any part thereof, shall forthwith surrender to the holder(s) of said deed and/or bill of sale the full and peaceful possession of the Property, and that upon failure of such party or parties to do so, the Sheriff of Vanderburgh County, Indiana, shall be and is directed to forthwith enter or take possession of the Property and eject and remove such person(s) or entity/entities therefrom and put the party holding such Sheriff's deeds or bills of sale, or their assignees, in full, peaceful, and quiet possession of the Property without delay or further Order of this Court;

4. Providing that the defendants, and any other relevant parties, are directed to surrender full and peaceful possession of the Personal Property to Plaintiff or to the holder of the deed, bill of sale, or copy thereof, that results from the Sheriff's sale(s) conducted in this matter, as Plaintiff may so direct; and

5. Providing that following the date of judgment in this matter in Plaintiff's favor, all rents and profits associated with the Property shall be delivered directly to Plaintiff or to any third party designated by Plaintiff.

H. Grant Plaintiff all other just and appropriate relief.

Dated: October 26, 2017

Respectfully submitted,

PLUNKETT COONEY, P.C.
Attorneys for Plaintiff

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