

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )

VANDERBURGH SUPERIOR COURT

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, )  
 )  
vs. ) CAUSE NO. 82D05-1710-MF-005520  
 )  
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 PRIVATE BANK; )  
FIRST FINANCIAL BANK, NA; )  
ALPHA MECHANICAL SERVICE, INC. )  
A Kentucky corporation )  
 )  
Defendants. )

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**DEFENDANTS, COURT BUILDING DEVELOPMENT, LLC, HULMAN BUILDING DEVELOPMENT, LLC FENDRICH PLAZA DEVELOPMENT, LLC AND KUNKEL SQUARE, LLC’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S COMPLAINT**

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Come now the Defendants, Court Building Development, LLC, Hulman Building Development, LLC, Fendrich Plaza Development, LLC and Kunkel Square, LLC, by counsel, and for their answer and affirmative defenses to Plaintiff’s complaint filed herein, would allege and state as follows:

## ANSWER

1. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 1 of Plaintiff's complaint.

2. These Defendants admit the allegations contained in rhetorical paragraph 2 of Plaintiff's Complaint.

3. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 3 of Plaintiff's complaint.

4. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 4 of Plaintiff's complaint.

5. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 5 of Plaintiff's complaint.

6. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 6 of Plaintiff's complaint.

7. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 7 of Plaintiff's complaint.

8. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 8 of Plaintiff's complaint.

9. These Defendants admit the allegations contained in rhetorical paragraph 9 of Plaintiff's Complaint.

10. These Defendants admit the allegations contained in rhetorical paragraph 10 of Plaintiff's Complaint.

11. These Defendants admit the allegations contained in rhetorical paragraph 11 of Plaintiff's Complaint.

12. These Defendants admit the allegations contained in rhetorical paragraph 12 of

Plaintiff's Complaint.

13. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 13 of Plaintiff's complaint.

14. These Defendants admit that the Promissory Note says what it says, deny any allegations not supported by said document, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 14 of Plaintiff's Complaint.

15. These Defendants admit that Exhibits C-I say what they say, deny any allegations not supported by said documents, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 15 of Plaintiff's Complaint.

16. These Defendants admit that Exhibits K-M say what they say, deny any allegations not supported by said documents, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 15 of Plaintiff's Complaint.

17. These Defendants admit that the Mortgages say what they say, deny any allegations not supported by the Mortgages, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 17 of Plaintiff's Complaint.

18. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 18 of Plaintiff's complaint.

19. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 19 of Plaintiff's complaint.

20. As rhetorical paragraph 20 of the Complaint makes no allegation, these Defendants make no response thereto.

## **COUNT ONE**

21. These Defendants incorporate by reference all prior responses to Plaintiff's Complaint as if fully and completely set forth herein.

22. These Defendants deny the allegations contained in rhetorical paragraph 22 of Plaintiff's Complaint.

23. These Defendants admit that Exhibit "Z" says what it says, but otherwise deny the remaining allegations contained in rhetorical paragraph 23 of Plaintiff's Complaint.

24. These Defendants deny the allegations contained in rhetorical paragraph 24 of Plaintiff's Complaint.

25. These Defendants admit that the Loan Documents say what they say, but otherwise deny the remaining allegations contained in rhetorical paragraph 25 of Plaintiff's Complaint.

26. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 26 of Plaintiff's complaint.

27. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 27 of Plaintiff's complaint.

## **COUNT TWO**

28. These Defendants incorporate by reference all prior responses to Plaintiff's Complaint as if fully and completely set forth herein.

29. These Defendants admit the allegations contained in rhetorical paragraph 29 of Plaintiff's Complaint.

30. These Defendants admit that the Kunkel Mortgage says what it says, but otherwise deny any and all other allegations not supported by the Kunkel Mortgage.

31. These Defendants admit that the note and other loan documents say what they say,

deny any and all allegations not supported by said documents, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 31 of Plaintiff's Complaint.

32. These Defendants deny the allegations contained in rhetorical paragraph 32 of Plaintiff's Complaint.

33. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 33 of Plaintiff's complaint.

34. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 34 of Plaintiff's complaint.

35. These Defendants deny the allegations contained in rhetorical paragraph 35 of Plaintiff's Complaint.

### **COUNT THREE**

36. These Defendants incorporate by reference all prior responses to Plaintiff's Complaint as if fully and completely set forth herein.

37. These Defendants admit the allegations contained in rhetorical paragraph 37 of Plaintiff's Complaint.

38. These Defendants admit that the Fendrich Mortgage says what it says, but otherwise deny any and all other allegations not supported by the Fendrich Mortgage.

39. These Defendants admit that the note and other loan documents say what they say, deny any and all allegations not supported by said documents, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 39 of Plaintiff's Complaint.

40. These Defendants deny the allegations contained in rhetorical paragraph 40 of Plaintiff's Complaint.

41. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 41 of Plaintiff's complaint.

42. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 42 of Plaintiff's complaint.

43. These Defendants deny the allegations contained in rhetorical paragraph 43 of Plaintiff's Complaint.

#### **COUNT FOUR**

44. These Defendants incorporate by reference all prior responses to Plaintiff's Complaint as if fully and completely set forth herein.

45. These Defendants admit the allegations contained in rhetorical paragraph 45 of Plaintiff's Complaint.

46. These Defendants admit that the Court Building Mortgage says what it says, but otherwise deny any and all other allegations not supported by the Court Building Mortgage.

47. These Defendants admit that the note and other loan documents say what they say, deny any and all allegations not supported by said documents, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 47 of Plaintiff's Complaint.

48. These Defendants deny the allegations contained in rhetorical paragraph 48 of Plaintiff's Complaint.

49. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 49 of Plaintiff's complaint.

50. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 50 of Plaintiff's complaint.

51. These Defendants deny the allegations contained in rhetorical paragraph 51 of Plaintiff's Complaint.

#### **COUNT FIVE**

52. These Defendants incorporate by reference all prior responses to Plaintiff's Complaint as if fully and completely set forth herein.

53. These Defendants admit the allegations contained in rhetorical paragraph 53 of Plaintiff's Complaint.

54. These Defendants admit that the Hulman Mortgage says what it says, but otherwise deny any and all other allegations not supported by the Hulman Mortgage.

55. These Defendants admit that the note and other loan documents say what they say, deny any and all allegations not supported by said documents, but otherwise are without sufficient information to admit or deny the remaining allegations contained in rhetorical paragraph 55 of Plaintiff's Complaint.

56. These Defendants deny the allegations contained in rhetorical paragraph 56 of Plaintiff's Complaint.

57. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 57 of Plaintiff's complaint.

58. These Defendants are without sufficient information to admit or deny the allegations contained in rhetorical paragraph 58 of Plaintiff's complaint.

59. These Defendants deny the allegations contained in rhetorical paragraph 59 of Plaintiff's Complaint.

WHEREFORE, these Defendants, by counsel, respectfully request that this court enter a judgment in their favor and against Plaintiff, and for all other just and proper relief in the premises.

Respectfully submitted,

TERRELL, BAUGH, SALMON & BORN, LLP

By: /s/ Shawn M. Sullivan

Shawn M. Sullivan #18188-53

700 S. Green River Road, Suite #2000

Evansville, IN 47715

Telephone: (812) 479-8721

ATTORNEY FOR DEFENDANTS

COURT BUILDING DEVELOPMENT, LLC

HULMAN BUILDING DEVELOPMENT, LLC

FENDRICH PLAZA DEVELOPMENT, LLC

AND KUNKEL SQUARE, LLC

### **AFFIRMATIVE DEFENSES**

Come now the Defendants, Court Building Development, LLC, Hulman Building Development, LLC, Fendrich Plaza Development, LLC and Kunkel Square, LLC, by counsel, and for their affirmative defenses to the Complaint, would allege and state as follows:

1. Plaintiff's claims for relief herein are barred by the doctrine of payment.
2. Plaintiff's claims for relief herein are barred by the doctrine of setoff.
3. Plaintiff should be precluded from declaring a breach or default by reason of it first breaching the Loan Documents.
4. Plaintiff and/or its agents acted unreasonably and/or unreasonably delayed in authorizing disbursements of the secured rents, and should be precluded or enjoined from enforcing its remedies accordingly.
5. Plaintiff's claims for relief herein are barred by the doctrines of waiver, estoppel and laches.
6. The Complaint is deficient and subject to dismissal in that there was no simultaneous filing of an affidavit of debt upon commencement of this action as required by



IND.T.R.9.2(A).

7. Any alleged breach or default, if any, of the Loan Documents was not material.

Respectfully submitted,

TERRELL, BAUGH, SALMON & BORN, LLP

By: /s/ Shawn M. Sullivan

Shawn M. Sullivan #18188-53

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Evansville, IN 47715

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ATTORNEY FOR DEFENDANTS

COURT BUILDING DEVELOPMENT, LLC

HULMAN BUILDING DEVELOPMENT, LLC

FENDRICH PLAZA DEVELOPMENT, LLC

AND KUNKEL SQUARE, LLC

**CERTIFICATE OF SERVICE**  
**and**  
**CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)**

I hereby certify that the foregoing “Defendants, Court Building Development, LLC, Hulman Building Development, LLC, Fendrich Plaza Development, LLC and Kunkel Square, LLC’s Answer and Affirmative Defenses” complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G) and hereby further certify that, on December 22, 2017, I served a true and accurate copy of the same - by mail or by the Court’s electronic filing system on the following:

Pamela A. Paige  
Plunkett Cooney, P.C.  
300 N. Meridian, suite 990  
Indianapolis, IN 46204  
[ppaige@plunkettcooney.com](mailto:ppaige@plunkettcooney.com)

/s/ Shawn M. Sullivan \_\_\_\_\_  
Shawn M. Sullivan