

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

WELLS FARGO BANK, NATIONAL ASSOCIATION,
AS TRUSTEE FOR MORGAN STANLEY
CAPITAL I TRUST 2021-L6, COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2021-L6,

Plaintiff,

v.

Case No.: CL22-5736

APEX GLENWOOD VA LLC, *et al.*,

Defendants.

CONSENT ORDER APPOINTING SPECIAL RECEIVER

THIS CAUSE came before the undersigned Judge of the Circuit Court for the County of Henrico, Virginia, on the motion of Wells Fargo Bank, National Association, as Trustee for Morgan Stanley Capital I Trust 2021-L6, Commercial Mortgage Pass-Through Certificates, Series 2021-L6 (“*Noteholder*”), acting by and through its special servicer, Argentec Services Company LP (“*Special Servicer*”) for an order for the appointment of a special receiver.

FINDINGS OF FACT

1. The Noteholder, acting by and through its Special Servicer has made the following allegations supported by evidence.
2. Wells Fargo Bank, National Association, the Trustee for Noteholder, is a national bank formed under the laws of the United States of America and doing business in Henrico County, Virginia.
3. Apex Glenwood VA LLC (“*Borrower*”) is a Delaware limited liability company that does business, maintains a place of business, and owns certain Property (defined below) in Henrico County, Virginia.

4. This Court has jurisdiction over Borrower by virtue of, among other reasons, Virginia Code § 8.01-328.1, as the Borrower is a business transacting business in the Commonwealth, and venue is proper in this Court.

5. On or about June 22, 2021, Argentic Real Estate Finance LLC (“*Original Lender*”) loaned Borrower the principal sum of \$13,000,000.00 (the “*Loan*”) as evidenced by that certain Promissory Note dated as of June 22, 2021, executed and delivered by Borrower to Original Lender (as modified, and as may be modified from time-to-time, the “*Note*”).

6. The Note is governed by that certain Loan Agreement between Original Lender and Borrower dated as of June 22, 2021 (as modified, and as may be modified from time-to-time, the “*Loan Agreement*”). Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Loan Documents (as defined in the Loan Agreement).

7. The Note is secured by, among other things, that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of June 22, 2021, and recorded on July 15, 2021, in Book 6233 at Page 619 and as Instrument Number 202100035550, with the Clerk’s Office of the Circuit Court of Henrico County (the “*Clerk*”), conveying certain real estate in Henrico County, Virginia to Lawyers Title Realty Services, Inc., as trustee, for the benefit of Original Lender, as assigned by Original Lender to SPREF WH III LLC by Assignment and Assumption of Interest Under Deed of Trust, Assignment of Leases and Rents and Security Agreement dated as of June 22, 2021 and recorded on January 27, 2022 in Book 6332, Page 576 as Instrument Number 202200003421, with the Clerk and as further assigned by SPREF WH III LLC to Original Lender by Assignment of Deed of Trust, Assignment of Leases and Rents and Security Agreement effective as of July 13, 2021 and recorded on June 23, 2022 in Book 6387, Page 916 as Instrument Number 202200022728, with the Clerk by Assignment to Noteholder recorded on June 23, 2022,

in Book 6387, Page 928 as Instrument Number 202200022730, (as modified, and as may be modified from time-to-time, the “*Deed of Trust*”), encumbering certain real and personal property located in Henrico County, Virginia, as more specifically set forth in the Deed of Trust (the “*Property*”).

8. Borrower is the owner of the Property, which includes, without limitation, the real estate, the buildings, the other improvements located thereon, right-of-ways, easements and other rights pertaining to the real estate and improvements of any nature, personal property, and all agreements affecting the use, enjoyment or occupancy of the real estate and/or improvements.

9. The Note is further secured by, among other things, that certain Assignment of Leases and Rents dated as of June 22, 2021, and recorded on July 15, 2021 in Book 6233, Page 645, as Instrument Number 202100035551, with the Clerk, as assigned by Original Lender to SPREF WH III LLC by Assignment and Assumption of Interest Under Assignment of Leases and Rents dated as of June 22, 2021 and recorded on January 27, 2022 in Book 6332, Page 585 as Instrument Number 202200003422, with the Clerk and as further assigned by SPREF WH III LLC to Original Lender by Assignment of Assignment of Leases and Rents effective as of July 13, 2021 and recorded on June 23, 2022 in Book 6387, Page 922 as Instrument Number 202200022729, with the Clerk by Assignment to Noteholder recorded on June 23, 2022, in Book 6387, Page 934 as Instrument Number 202200022731 (as modified, and as may be modified from time-to-time, the “*ALR*”).

10. Noteholder’s first-priority security interest in Borrower’s personal property has been perfected by (i) the recording of that certain UCC Financing Statement with the Clerk on July 15, 2021 as Instrument No. 202100000596, as assigned to SPREF WH III LLC by UCC Financing Statement Amendment on January 27, 2022 as Instrument No. 202200000077 and as further

assigned to Original Lender by UCC Financing Statement Amendment on June 30, 2022 as Instrument No. 202200000525 and as further assigned to Noteholder by UCC Financing Statement Amendment on June 30, 2022 as Instrument No. 202200000526 and (ii) filing of that certain UCC Financing Statement in the official records of the state of Delaware on July 2, 2021 (UCC Initial Filing No. 2021 5173449), as assigned to by UCC Financing Statement Amendment filed on January 25, 2022 (Amendment No. 2022 0642751), as further assigned to by UCC Financing Statement Amendment filed on July 8, 2022 (Amendment No. 2022 5698394) and as further assigned to by UCC Financing Statement Amendment filed on July 8, 2022 (Amendment No. 2022 5698600) (collectively, as amended and/or assigned, the “*UCC Financing Statements*”).

11. Noteholder is the current owner and holder of the Loan and the Loan Documents.
12. Special Servicer is authorized to service the Loan on Noteholder’s behalf.
13. Under the Loan Documents, Borrower granted Noteholder a security interest in all of its real and personal property.
14. The Deed of Trust encumbers the Property as a first-priority, perfected lien.
15. The ALR encumbers the Leases and Rents (as defined in the Deed of Trust and ALR) arising from the Property as a first-priority, perfected lien.
16. Borrower has been in default under the terms of the Loan Agreement, Note and other Loan Documents since the loan was originated due to Borrower’s failure to terminate that certain Extended Use Regulatory Agreement & Declaration of Restrictive Covenants dated November 21, 2003, recorded May 5, 2004 in the Henrico County Clerk’s Office, in Deed Book 3662, Page 1442 (the “*Regulatory Agreement*”) prior to June 21, 2021 (the “*Original Event of Default*”).

17. Section 10.1(t) of the Loan Agreement includes among Borrower's Recourse Liabilities: "the failure to terminate and release the Regulatory Agreement from affecting any or all portions of the Property as of the date hereof." The Regulatory Agreement was not terminated and released as of June 21, 2021, the date of the Loan Agreement, and as of the date of this Order, the Regulatory Agreement has still not been terminated or released.

18. The encumbrance of the Property by the Regulatory Agreement constitutes a Lien on the Property (the "**Regulatory Lien**") and a Transfer in violation of Section 8.1(d) of the Loan Agreement, and is an Event of Default and a Springing Recourse Event as described in Section 10.1 of the Loan Agreement.

19. Borrower subsequently defaulted on its obligations under the terms of the Loan Agreement, Note and other Loan Documents due to Borrower's failure to timely pay, when due, the monthly debt service payments and reserve deposits due in June and July 2022 (collectively, the "**Payment Defaults**").

20. The Payment Defaults each constitute an Event of Default pursuant to Section 8.1(a) of the Loan Agreement.

21. On or about August 16, 2022, Noteholder, through counsel, delivered written notice to Borrower, notifying Borrower of the Payment Defaults described above and that as a result of the existing Events of Default, the Loan had been accelerated and demanded that Borrower immediately make payment of the Outstanding Balance (as defined in the Default Notice) to Noteholder (the "**Default Notice**"). Borrower has failed to pay the Outstanding Balance.

22. On or about September 7, 2022, Noteholder, through counsel, delivered written notice to Borrower (the "**Supplemental Default Notice**"), notifying Borrower that, in addition to

the Payment Defaults, Lender had become aware of additional defaults (the “*Supplemental Defaults*”), including:

- (i) the existence of certain additional liens (the “*Additional Liens*,” and together with the Regulatory Lien, the “*Liens*”) encumbering the Property;
- (ii) a complaint filed by the Virginia Housing Development Authority on or about August 17, 2022 (the “*VA Housing Complaint*”) which seeks specific performance of the Regulatory Agreement and a permanent injunction against Borrower; and
- (iii) the existence of certain Code Violations (as defined in the Supplemental Default Notice and further described in the VA Housing Complaint).

23. The encumbrance of the Property by the Additional Liens constitutes a Transfer in violation of Section 8.1(d) of the Loan Agreement and is an additional Event of Default and a Springing Recourse Event as described in Section 10.1 of the Loan Agreement.

24. The VA Housing Complaint makes reference to, among other things, “220 Notices of Violation for 987 violations of the Building Code” (the “*Notices of Violation*”). The VA Housing Complaint also states that Borrower “has been convicted of violating the Building Code five times in Henrico County General District and Circuit Courts” (the “*Building Code Convictions*,” and collectively with the Notices of Violation and all other violations described in the Complaint, the “*Code Violations*”).

25. The VA Housing Complaint further notes that “Virginia Housing has detailed documentation and photographs of the poor condition of the property and residential dwelling units thereon, including identification of potentially life-threatening issues.”

26. The VA Housing Complaint noted the following conditions existing at the Property:

- a. Areas of broken fencing;
- b. Ponding water caused a sink hole at one unit, which posed a tripping hazard;

- c. Damaged mailboxes throughout the property;
- d. Walkways and steps were cracked, posing trip hazards;
- e. Many units had missing or loose siding, resulting in exposed sharp edges;
- f. Entry doors were unable to be locked due to hardware damage, and those doors also showed surface and frame cracking;
- g. Multiple open or missing crawl space doors throughout the property;
- h. Broken light fixtures;
- i. Water heater misalignment caused venting of exhaust gasses;
- j. Exposed wires on outdoor HVAC units throughout the property;
- k. Excessive trash and debris outside multiple residential dwelling units; and
- l. Evidence of roaches.

27. On September 8, 2022, Bruce Rickert, Director of Asset Management for Special Servicer, visited the Property, confirmed the existence of the conditions described in the VA Housing Complaint, and additionally observed the following conditions existing at the Property:

- a. Evidence of pervasive, unrepaired plumbing leaks observed in the units;
- b. One bedroom unit observed suffers from severe mold caused by sewer leaks in the ceiling;
- c. One bathroom unit has an inoperable toilet that doesn't work and overflows each time there has been an attempt to use it. As a result, the flooring has been heavily damaged by the repeated overflows. The plumbing under the sink in this same bathroom has a severe leak. As a result, the tenant must fill a large pan with water from the sink and use in lieu of allowing the water to drain;
- d. The bedroom in one unit is unusable due to a water leak from the roof. Maintenance removed a large section of the sheet rock, but it was never repaired. Sunlight coming from the damaged roof is visible from the bedroom. The tenant has been forced to move her mattress to the living room to avoid getting wet;

- e. The strong smell of sewage was noted coming from the crawl space in several of the buildings. According to the Henrico County building inspector, sewage is draining from some units directly into the crawl space;
- f. Exposed wiring was noted in some of the units; and
- g. Tenants interviewed complained that the Manager does not keep accurate records, does not address concerns raised regarding the property conditions, and threatens retaliation/eviction when concerns are raised.

28. On or about January 27, 2023, Noteholder, through counsel, delivered written notice to Borrower (the “*Continuing Default Notice*”), notifying Borrower that, in addition to the Original Event of Default, the Payment Defaults and Supplemental Defaults, Borrower’s failure to establish a Cash Management Account in accordance with the Loan Agreement and the Cash Management Agreement gave rise to additional recourse liability pursuant to Section 10.1 of the Loan Agreement (the “*Cash Management Default*”).

29. On February 7, 2023, Lender received notice from Signature Bank that Signature Bank had elected to terminate its obligations and resign from its role under that certain Control Account Agreement, dated as of June 22, 2021, by and among Signature Bank, Lender and Borrower (the “*Clearing Account Agreement*”) because Borrower failed to maintain the Minimum Balance of \$5,000 in the Clearing Account, as required under the Clearing Account Agreement. Section 3.1 of the Loan Agreement requires the Borrower to establish and maintain the Clearing Account, as further described in the Clearing Account Agreement. Borrower’s failure to comply with its obligations to maintain the Clearing Account is an additional default under the Loan Documents (the “*Clearing Account Default*,” and collectively with the Original Event of Default, the Payment Defaults, the Supplemental Defaults, the Cash Management Default and all other defaults and Events of Default under the Loan Documents, the “*Events of Default*”).

30. Lender provided notice of the Clearing Account Default by letter dated February 8, 2023 (the “*February 2023 Notice*,” and collectively with the Default Notice, the Supplemental Default Notice and the Continuing Default Notice, the “*Notices*”).

31. Borrower has failed to respond to the Notices and has failed to cure the Events of Default.

32. As of the date hereof, the entire Debt (as defined in the Loan Agreement) is due and payable, Borrower has failed to pay the entire Debt to Noteholder, and Noteholder is entitled to exercise any and all remedies afforded to it under the Loan Documents and applicable law.

33. The Debt is not the subject of a bona fide dispute.

34. Pursuant to Section 10(a) of the Deed of Trust, Borrower agreed in a signed record to the appointment of a special receiver upon the occurrence of an Event of Default. Section 10(a) of the Deed of Trust provides, among other things:

Section 10. Remedies.

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

...

(viii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Trust Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Trustor or of any person, firm or other entity liable for the payment of the Debt

35. The Deed of Trust and the ALR each contain a valid and enforceable assignment to Noteholder of Leases and Rents relating to the Property. Due to the Events of Default,

Borrower's license to collect Rents granted in the Deed of Trust and the ALR has been automatically revoked.

36. Borrower is a special-purpose entity, and, as such, its assets are limited to the Property, the Rents and profits of the Property, and such incidental personal property as may be necessary for the operation of the Property.

37. All of Borrower's real and personal property is encumbered by the Loan Documents, and Noteholder has a first-priority security interest in all of Borrower's property.

38. All of Borrower's assets, including the Property, and the Rents related thereto, are being subjected to and in danger of waste, loss, dissipation and impairment unless a special receiver is immediately appointed and unless that special receiver is allowed, among other things, to assume control of Borrower, to take possession of the Property, to collect the Rents relating thereto, to secure it, to allow for any necessary maintenance and repairs, and to preserve the Property.

39. As a result, a special receiver is necessary to manage, protect, maintain, and operate Borrower's assets, including the Property, and to secure and safeguard any existing Rents, if applicable, and future Rents that can be collected, to ensure payment of all Taxes and payments to other secured creditors, to perform any necessary repairs, maintenance, and improvements on the Property subject to the Approved Budget (as defined below), to market the Property for sale, and to apply any amounts collected to, among other things, the costs and fees incurred by the special receiver and to the indebtedness described herein.

40. Trigild IVL, LLC ("*Receiver*") has agreed to accept its appointment as special receiver pursuant to the terms of its proposal to Noteholder, and those parties have agreed upon the terms and rate of compensation to Receiver.

41. Receiver has significant experience as a receiver and a manager of multifamily residential properties such as the Property. Receiver has managed multifamily residential properties throughout the United States, and has agreed to serve at the pleasure of this Court in accordance with the terms of this Order.

42. Neither Receiver nor any insider of Receiver has ever been disqualified from serving as a receiver, convicted of a felony or other crime involving moral turpitude or been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct.

43. Receiver has no materially adverse interest with respect to any party or the Property, and has no material financial or pecuniary interest, other than compensation for receivership services, in the outcome of the underlying dispute.

44. Receiver is not a debtor, creditor, lienor of, or holder of any equity interest in, any party in interest or of receivership property.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

45. Noteholder has an apparent right to, and interest in, the Borrower's assets, including the Property, based on the Loan Documents and the Events of Default.

46. Noteholder is entitled to the appointment of a special receiver for Borrower's assets, including the Property, under the provisions of the Loan Agreement, Deed of Trust, and other Loan Documents, which appointment allows a special receiver, among other things, to take possession of, manage, operate, control, and preserve the going-concern value of the Property as permitted by law and subject to the terms of this Order.

47. Because Borrower is not paying its undisputed debts as they become due, as demonstrated by the Payment Defaults and the Liens, Noteholder is entitled to have a special

receiver appointed to control and possess Borrower's assets, including all Rents derived from the Property, and to have a special receiver appointed to control, manage, recover, possess, and distribute funds from accounts holding Rents – or proceeds therefrom – derived from the Property.

48. Specifically, a special receiver is needed to collect, control, manage, conserve, and protect receivership property of Borrower, including to collect the Rents for transmission to Noteholder; to enter into contracts and other agreements, including leases and licenses, to ensure that potential Rents derived from the Property are recognized at their highest potential; and to take any other action it deems necessary to protect the interests of Noteholder, subject to this Court's supervision.

49. A special receiver is needed to determine whether to sell all or any portion of the Property free and clear of any and all liens and encumbrances and, if so, to effectuate such a sale.

50. Noteholder will suffer irreparable loss and damage in the form of substantial lost rental payments and likely deterioration of its collateral unless a special receiver is appointed.

51. Noteholder is entitled to receive all mail addressed to Borrower and may enter a forwarding order to protect that right.

52. This Order is entered to protect and preserve Noteholder's rights arising out of the Deed of Trust, Loan Agreement, and other Loan Documents and applicable law to manage Borrower's assets, including to collect past and present Rents and any other income and ensure professional management of the Property.

NOW, THEREFORE, based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. Trigild IVL, LLC is hereby appointed as a special receiver within the meaning of Virginia Code § 8.01-591 (the "*Code*") to take control of Borrower's assets; to enter upon and take

possession of, manage, collect, lease, sell, liquidate, and operate the Property; and to exercise any other remedies provided to Noteholder in the Loan Agreement, Deed of Trust, and other Loan Documents or otherwise permitted under the Code or other applicable law, and as the Court may direct; and to exclude all other persons from the Property, in each case, during the term of Receiver's appointment. In any event, Receiver's possession of the Property may not be disturbed absent an order of this Court during the term of Receiver's appointment.

2. Receiver's management fees are set forth on Schedule I attached hereto (*"Receiver Fee"*).

3. During the term of Receiver's appointment, Receiver:

a. is authorized and empowered to take all actions it deems necessary or appropriate to take control of and manage Borrower's assets, including assuming control of all accounts, collecting all amounts owed to Borrower and taking all actions set out in the Order or otherwise permitted by applicable law;

b. will collect all Rents, proceeds, and any other income from the Property and use such proceeds to make payments and disbursements, in the ordinary course of business, as may be needed and proper for the management, operation, protection and/or preservation of the Property, as is set forth hereinafter. Upon issuance of this Order, Receiver will direct any tenants of the Property occupying, using or leasing all or any portion of the Property to make payments to Receiver;

c. is authorized, empowered, and directed to deposit all receipts and revenues coming into its or Borrower's possession into a federally insured bank having an office in Virginia to be selected in its sole discretion with due regard for the safety, preservation, and protection of such funds and will use said accounts as an operating fund for the Property. Any accounts established by Receiver

related to the Property will be designated such that it is clear that Receiver is safeguarding such funds in its capacity as a special receiver (collectively, the “*Receivership Account*”);

d. is authorized to endorse any check received by Receiver in the course of its management of the Property and to execute in the name of Borrower any and all reports and other documents required to be executed in connection with the performance of Receiver’s obligations hereunder;

e. is authorized to enter upon and take possession of the Property and the originals (it being understood that Borrower may retain copies and without any requirement for Borrower to expend funds for the preparation of the same if any are not now existing) of all books, records, statements, checkbooks, check registers, cancelled checks, bank and other statements, worksheets, spreadsheets, memoranda, statements of account, receipts, files and other financial information; the originals of all leases, subleases, rental agreements, occupancy agreements, license agreements and other agreements relating to the rental, occupancy, licensing and/or use of the Property, together with all files, correspondence and communications with all current and prospective lessees, tenants, occupants, licensees and/or users of the Property and their agents and representatives; the originals of all marketing, advertising, listing and promotional materials; all telephone, facsimile, e-mail and post office box numbers and addresses, the originals of all listing and commission contracts, agreements and commitments, together with all related files, correspondence and communications with all brokers and their agents and representatives; the originals of all pictures, plans, specifications, drawings and other depictions and descriptions of the Property; the originals of all permits, licenses, authorizations and other approvals; the originals of all contracts, agreements, purchase orders, invoices, bills, receipts, account statements, files, correspondence and communications with all utility companies, service providers, contractors, subcontractors,

vendors, vendees, governmental authorities, adjacent land owners and other third parties in any way relating to ownership, repair, maintenance, improvement, management, leasing, use, operation, preservation and/or protection of the Property; copies of insurance certificates; copies of all local, state and federal tax returns for Borrower and for the Property; all utility deposits, all payroll and employee records, credit/background checks, applications and other materials relevant to those persons employed by or at the Property, assuming such turnover is allowed by applicable law, and all local, state and federal employer and employee reports, tax deposits and returns; copies of all notices, protests, objections, claims, demands, suits, complaints, petitions, injunctions, restraining orders, pleadings and mediation and arbitration proceedings received, sent or filed by or against the Property or the Borrower which in any way relates to or involves the Property. To the extent that payroll and employee information turnover is not allowed or is restricted, at a minimum, Borrower will provide or will cause its manager and/or management company to provide a list of employees showing the names of employees, positions held and current compensation and benefit terms. (All documents described herein to the extent necessary for the continued operation of the Property may be collectively referred to as "*Project Documents*"). To the extent that Project Documents exist in electronic form, Borrower will use commercially reasonable efforts to provide Receiver with electronic versions of and/or electronic access to such Project Documents;

f. is authorized to enforce, amend, renew, extend, terminate, and enter into contracts, including, but not limited to, leases and licenses, and to take such action with respect to contracts, including, without limitation, the termination of existing vendor contracts and management contracts, as may be necessary or appropriate to assure collection and payment of Rents and any other income and the orderly and efficient management of the operation of the

Property or other assets of Borrower. Additionally, Receiver is authorized to obtain the industry standard insurance protections afforded property managers or receivers of similarly situated properties, including but not limited to, being named as an insured or additional insured on Borrower's liability policies related to the Property or other assets and in the discretion of Receiver (solely during the current premium period with respect to such insurance), receiving from Borrower's property insurance, insurance policies, and business interruption or rent loss insurance policies, appropriate waiver of subrogation clauses pursuant to which the Borrower's insurance carriers would waive all rights of subrogation against Receiver with respect to losses payable under such policies. Receiver is authorized to procure policies of insurance, including, but not limited to: property/general liability, auto liability, workers' compensation, employment practices liability, business interruption, boiler and machinery, builders risk, construction bonding, environmental, terrorism, professional liability, errors and omissions, property and casualty, and umbrella policies, in its sole discretion, as is customary for similarly situated properties and as it deems necessary should the Borrower's policy be deemed inadequate by Receiver, or should the Borrower's policy be terminated or lapse during the tenure of the receivership or fail to be in force at the time of the entry of this Order. In the event that Receiver obtains its own insurance, Receiver is authorized to cancel or cause Borrower to cancel any existing insurance. Any refund of a paid premium or a return of unearned premium will be paid to Receiver and be property of the receivership estate;

g. will report and pay all appropriate operating expenses, including, without limitation, Receiver's management fees, utility charges, the Property's insurance expenses, and Taxes related to operation of the receivership upon the Property after appointment of Receiver, as such expenses become due and will pay all other expenses related to the operation and management

of the Property as Receiver deems reasonably necessary in the exercise of its business judgment, in accordance with the Approved Budget (as defined herein). If the revenue generated by the Property is insufficient to pay such operating expenses, Noteholder from time-to-time may, but shall have no obligation to, advance funds to Receiver in an amount sufficient to pay such operating expenses as and when they come due, which advances will be deemed advances under the Note and the Loan Agreement, will be secured by the Property under the terms of the Note, Loan Agreement, Deed of Trust, and other Loan Documents and will accrue interest at the Default Rate. Receiver will not be liable for Borrower's claims, debts, obligations, actions, causes of action, costs, debts or expenses. Liabilities incurred by Receiver in its capacity as special receiver will be liabilities of the receivership estate and not liabilities of Receiver or its employees or agents, as long as Receiver acts in accordance with this Court's Order;

h. will maintain an accurate ledger or similar books of account and all receipts by and all disbursements made by it pursuant to this Order and will otherwise safely keep the operating statements and any other documents provided to it pursuant to this Order;

i. is authorized and directed: (i) to lease, rent, and license the Property and Borrower's other assets on such terms and conditions as are consistent with the provisions of the Loan Documents or on such other terms and conditions as may be approved in writing by Noteholder from time to time, (ii) to renew, extend, modify, amend, or terminate any lease, sublease, license, franchise, occupancy agreement and any other agreement, together with all modifications and amendments thereto, which relate to the use and occupancy of the Property or use of Borrower's other assets and other contracts and agreements relating to the Property and Borrower's assets on such terms and conditions as are consistent with the provisions of the Loan Documents or on such other terms and conditions as may be approved in writing by Noteholder from time to time, (iii) to execute and deliver such leases, such

renewals, extensions, modifications and amendments of any leases and such other contracts and agreements as may be reasonably required to carry out the provisions of this paragraph, (iv) to enforce the terms of any Lease for the Property, including the lease holdover provisions, and to commence eviction or unlawful detainer actions against any occupants and (v) to make such expenditures for improvements of the Property or Borrower's other assets as may be reasonably required to carry out the provisions of this paragraph and subject to any limitations set forth herein; provided, however, if Receiver determines that there is not or will not be a sufficient amount of funds to pay any expenditures set forth in this paragraph, Receiver will promptly notify Noteholder, and thereafter, if Noteholder is unwilling to advance to Receiver the balance of the amounts necessary to fully pay such expenditures or otherwise commit to the payment of such amounts, then Receiver will not execute any such lease, such renewal, extension, modification or amendment of a lease or other contract or agreement which would require such unfunded expenditure and Receiver will not be responsible for failure to have the money or to enter into the agreement;

j. is empowered to take all actions in Borrower's name without the necessity of any approval or consent of the members, managers, directors, officers, partners, trustees, or other persons that pursuant to Borrower's governance documents or applicable law would be legally required in the absence of the special receiver's appointment to approve or consent to such action, and

k. is empowered to obtain its own tax identification number(s) to assist in payment and preparation of taxes in connection with the receivership for the period beginning with the appointment of Receiver and continuing through termination of the receivership; provided, however, that Receiver will have no obligation to prepare or file income tax returns, or pay income taxes, for Borrower, nor will Receiver be obligated to pay any other taxes preceding the receivership period, except as set forth herein.

4. “*Noteholder Approval*” means written consent (which may be via e-mail) either directly by Noteholder or Special Servicer or by Noteholder’s or Special Servicer’s counsel. “*Court Approval*” means approval by a specific order of the Court. “*Approval*” when appearing without a modifier means either Noteholder Approval or Court Approval.

5. Receiver is authorized to control, manage, recover, possess, and distribute all Rents derived from the Property and all funds from accounts holding Rents – or proceeds therefrom – derived from the Property.

6. Receiver is hereby vested with all powers, rights, and duties of special receivers to the greatest extent provided by law. As of the date of this Order, and until further order of this Court, Borrower and its manager and/or management company will comply with all duties required under applicable law, and are hereby enjoined from knowingly interfering with Receiver or its duly appointed agents or representatives in connection with the management or control over Borrower’s assets, the possession of the Property, the Rents, and personal property on the Property, and from interfering with the operations of Receiver as herein authorized. As of the date of this Order, said parties and entities are hereby ordered to promptly turn over possession of the Property and all assets of Borrower to Receiver together with Project Documents (it being understood that Borrower may retain copies of the same without any requirement for Borrower to expend funds for the preparation of the same if not now existing), equipment, physical or virtual keys, fobs, security codes, passwords, point of sale equipment, cash, bank accounts, accounts receivable, security deposits, pre-paid rent, petty cash, advance deposits, safe deposit boxes, royalties, issues, profits, income or other funds in bank accounts or other depository accounts for the Property, including any statements of deposit, advances or prepaid contracts or rent, credit card merchant accounts, such as Visa, MasterCard, American Express, and Discover, gift cards, records of advance deposits or payments, websites, social

media accounts, general ledgers, certificates of insurance, leases, environmental reports, memoranda, correspondence and other personal property pertaining to the Property if in the possession, custody, or control of Borrower or hereafter received or obtained. Within forty-eight (48) hours of the entry of this Order, Borrower will deliver its federal tax identification number to Receiver, which Receiver may use in accordance with the rights granted pursuant to this Order. Borrower will surrender possession and control of all vehicles and vehicle title and registration records used in the operation of the Property or that Borrower otherwise owns. Borrower will not terminate any paid-up insurance policy related to the Property or its other assets and will take such reasonable steps to have Receiver listed as an additional insured under each such policy and/or any other policies that Receiver procures for itself or the Property or Borrower's other assets pursuant to this Order. Notwithstanding anything to the contrary contained herein, Receiver will be responsible for obtaining insurance with respect to the Property as Receiver deems reasonable and necessary with any premiums to be paid from Rents or protective advances from Noteholder. Borrower will not terminate any utility service related to the Property or Borrower's other assets.

7. Borrower and its property manager are hereby further ordered and directed to promptly turn over to Receiver any and all Rents, income, cash, or funds on deposit collected by them or their agents arising out of the management, operation, or ownership of the Property and Borrower's other assets, including any and, to the extent permitted by applicable law, all tenant security deposits and any and all Rents, together with a complete accounting for such funds, and will make no further disbursement or distribution of said income, cash or funds. Borrower and its property manager are further enjoined and restrained from collecting any Rents, revenues, proceeds, or other sums payable with respect to the Property and Borrower's other assets. Should such parties come into possession of

any such Rents, revenues, proceeds, or other sums subsequent to the date of entry of this Order, any such party is hereby ordered and directed promptly to remit the same to Receiver in the form received.

8. Receiver is authorized to serve this Order on all of the financial institutions that maintain any of Borrower's bank accounts (or its agents holding funds related to the management and operation of the Property), and any such financial institution and any other persons in active concert or participation with Borrower will take such steps as are necessary to restrain or prevent Borrower from withdrawing, disbursing, distributing, or causing the diversion of any funds, cash, income, deposits in any of Borrower's bank accounts and Borrower, its agents and any such financial institution maintaining an account with such funds will immediately turnover all funds of Borrower in Borrower's or its agents' bank accounts to Receiver. Any financial institution maintaining Borrower's bank accounts will provide to Receiver a complete listing of account numbers under the name of Borrower. For each such account the financial institution will provide the current balance for each account and, upon request by Receiver, will provide monthly bank statements (and details of any such transactions as requested) for a period of up to two years prior to entry of this Order. The entry of this Order is without prejudice to Noteholder's right to challenge or contest the Borrower's historic allocation of expenses for the Property and Borrower's other assets or the Borrower's payment of debt service to the Noteholder or any other party from the Rents or income generated by the Property or Borrower's other assets.

9. In carrying out the duties contained in this Order, upon Approval, Receiver is authorized, but not required to employ attorneys, accountants, other professionals, contractors, managing agents, leasing agents, and any other persons, firms or corporations necessary or appropriate to the orderly and efficient management of the Property, but neither Noteholder Approval nor Court Approval is required if: (i) the expenditure is included in the Approved Budget; (ii) the

expenditure is for life-threatening or other health or safety emergency unknown at the time of Approval or arising after the Approval of the Approved Budget; or (iii) the aggregate amount will not exceed \$5,000.00 during the term of the appointment.

10. Receiver hereby succeeds to all licenses, contracts, permits, and privileges now held or owned by Borrower with respect to the Property and Borrower's other assets, and all rights, privileges, and responsibilities arising therefrom relating thereto, insofar as such licenses, contracts, permits, and privileges relate to the Property or Borrower's assets. Receiver will be entitled to obtain such licenses, permits, and privileges in its own name to the extent it deems they will be useful in the operations of the Property or Borrower's assets. Receiver may operate the Property and Borrower's other assets under any existing name or trade name.

11. During the term of the receivership, all tenants, bailees, or other persons in possession of the Property, Borrower's other assets, or any portion thereof are hereby directed to attorn to Receiver and, until further order of this Court: (i) are hereby directed to pay over to Receiver or its duly designated agent all Rents, revenues, proceeds or other sums payable with respect to the Property or Borrower's other assets which sums are now due and unpaid or hereafter become due, and (ii) are hereby enjoined and restrained from paying to Borrower or its agents, officers, directors, employees, or attorneys any such Rents, revenues, proceeds, or other sums.

12. Receiver will have the authority to operate under any business or other license currently held in the name of the Borrower or for the Property until Receiver is able to obtain new licenses or renew or modify the existing licenses. Receiver will have the authority to take all actions necessary to apply for and obtain new licenses and/or to renew or modify existing licenses, subject to Approval.

13. Within 30 days after entry of this Order, and monthly thereafter, and within 45 days after termination of the receivership, Receiver shall prepare a detailed operating report for the Property, including, without limitation, an income and expense statement, balance sheet and a cash flow analysis pertaining to the operations of the Property during the immediately preceding month. Receiver shall further prepare a proposed operating budget and capital budget for the remainder of 2023 for the Property (the “**Budget**”) within 45 days of the entry of this Order and thereafter each December 1 for the succeeding year. The Budget will be reviewed by Noteholder and be subject to Noteholder’s Approval. The Budget as approved shall be the “**Approved Budget**.” If the proposed Budget is not approved by Noteholder within thirty (30) days of submission by Receiver, the proposed Budget shall become the Approved Budget.

14. Receiver is authorized to make all necessary and proper maintenance, repairs, renewals, replacements, additions, and improvements to the Property and Borrower’s other assets as is necessary or appropriate to the orderly and efficient management and operation of the Property and assets, provided that that Receiver will not make any improvements, repairs and/or remediations that are not included in the Approved Budget (subject to availability of funds) having a cost of \$5,000.00 or more without first obtaining Noteholder Approval.

15. Receiver is hereby authorized to institute, carry on, and maintain all actions, suits, proceedings and procedures necessary: (a) for the proper management, operation, preservation and protection of the Property and Borrower’s other assets or to gain or recover possession of all or any part thereof; (b) for collection of any Rents or other income now due or hereafter to become due or fixed; and (c) for the removal of any tenant or other person unlawfully possessing, occupying or using any part of the Property or Borrower’s other assets. Receiver shall have no obligation to appear on behalf of Borrower, as a defendant in any legal proceeding and any order or judgment entered against

Borrower shall be the sole responsibility of Borrower, and shall not be deemed a judgment against Receiver or the receivership estate.

16. Receiver, in holding, retaining, managing, operating, preserving and protecting the Property, will not be bound by or otherwise subject to any existing purchase and sale agreement, management agreement, any real estate listing, brokerage, sales or leasing agreement, or any other obligation, contract or agreement, or existing financial obligation of the Borrower, other than leases, existing as of the date of this Order which relates to the ownership, use, leasing, management, maintenance, repair, preservation or operation of the Property.

17. Receiver may, in Receiver's sole discretion, offer employment to existing employees of Borrower or related parties (including, but not limited to, any management companies engaged by Borrower) to continue any business operations, and Borrower and its manager and/or management company or other entity hired by Borrower will cooperate with Receiver in such employment process.

18. Receiver is hereby authorized, upon the written Approval by Noteholder, to list or enter into a listing agreement with a third party, or otherwise advertise for sale and to solicit offers to purchase the Property, to enter into a contract to sell the Property, and to sell the Property, on such terms as are acceptable and approved in writing prior to such sale by Noteholder, by way of public or private sale or other disposition 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. Receiver is further authorized to execute any documentation on behalf of Borrower as its attorney-in-fact to effectuate such sale(s), including, but not limited to, contracts for sale and purchase of the Property (in a form approved by Noteholder in writing) and, as may be applicable, any loan assignment and assumption documents in connection with a potential purchaser's assumption of the Loan Documents. Without limiting the generality of Receiver's rights set forth above in this paragraph, Noteholder shall be

permitted, from time to time, to contact any party or parties which may have an interest in purchasing the Property or which have made any proposal to purchase the Property and to discuss and negotiate the terms of such offer provided that Noteholder shall report the nature and content of such discussions and negotiations to Receiver periodically, and no such contact, discussion or negotiation with such party or parties shall render or cause or shall be deemed to render or cause Noteholder to be a mortgagee in possession of the Property or otherwise subject Noteholder to any liability under the Loan Documents or otherwise. Without limiting any of the general or specific powers granted herein, Noteholder is authorized and empowered to exercise all its rights and remedies with respect to a sale and/or foreclosure of all or portions of the Property pursuant to applicable law.

19. All persons having notice of this Order, and having written agreements with Borrower for the supply of goods and/or services, including without limitation, all landscape, pest control, utility or other services to the Property (collectively, “*Vendor Contracts*”), are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by Receiver to preserve and protect the Property, provided in each case the normal prices and charges for all such goods or services received after entry of this Order will be paid by Receiver in accordance with the ordinary course of business of the Borrower and such supplier, or such other practices as may be agreed upon by Receiver and the supplier, or as may be ordered by this Court. Should Receiver determine, in its sole discretion, that any Vendor Contracts are not beneficial to the continued operation and preservation of the Property, Receiver will have the right to terminate any such Vendor Contracts, subject to the terms of the applicable Vendor Contracts, including any termination rights contained therein, or upon such other terms as may be approved by this Court.

20. Borrower shall cause, and Receiver shall be authorized on Borrower's behalf to cause, Receiver and its agents to be named as an additional insured on any insurance policies covering the Property. Receiver may, in its discretion, or at the direction of Noteholder or its assigns, obtain insurance covering the Property, and such insurance expense shall be deemed a normal, ordinary, and necessary operating expense of the Property.

21. Borrower is hereby restrained and enjoined from making any transfer or other disposition of the Property and Borrower's other assets except to Receiver.

22. All persons, firms, corporations and governmental or regulatory agencies are restrained and enjoined from interfering with Receiver in the performance of its duties or from soliciting or accepting the Property, Borrower's other assets, or proceeds of the Property or Borrower's other assets from any person or entity, except as affirmatively approved by Receiver. Notwithstanding the foregoing, Henrico County shall not be enjoined from accessing the Property, inspecting the Property, issuing any notices of Borrower's violations of the Uniform Statewide Building Code and the Henrico County Code or pursuing *in personam* relief against Borrower related to such violations (collectively, the "***County Enforcement Actions***") to the extent that such County Enforcement Actions do not impact the Property or the Receiver's operation of the Property, unless those County Enforcement Actions that may impact the Property are in response to a violation that constitutes actual and immediate danger to the occupants or public or when life is endangered by the occupancy of an unsafe structure (a "***Life Safety Issue***"). In the event that a Life Safety issue arises that is not promptly resolved by the Receiver, Henrico County may act to resolve the Life Safety Issue through any lawful means that would be available to Henrico County in the absence of the receivership."

23. All persons, firms and corporations are hereby ordered and directed to turn over to Receiver all earnings, revenues, Rents, issues, profits, income, and deposits resulting from the Property and Borrower's other assets, and are further ordered and directed to turn over to Receiver all warranties, books, records, contracts, insurance policies, leases, and other documents and records relating to the Borrower's assets, including the Property or the management thereof, including, but not limited to, all mail received, and Receiver will give appropriate receipts for the same.

24. Without limiting any of the general or specific powers granted herein, Receiver is hereby vested with all of the powers, rights, and duties provided to receivers under applicable law, and will have no liability for any acts or omissions taken with respect to Borrower, the Property, or pursuant to this Order except to the extent arising due to Receiver's gross negligence, fraud, illegal acts or willful misconduct. Any risk, obligation or liability incurred by Receiver in connection with the receivership (other than arising due to Receiver's gross negligence, fraud, illegal acts or willful misconduct) will be the risk, obligation or liability of the receivership estate, to be satisfied from the revenues and profits of the receivership estate.

25. In order to promote judicial efficiency, all persons who receive actual or constructive notice of this Order are enjoined in any way from disturbing the special receivership assets or from prosecuting any judicial or regulatory proceedings (including collection or enforcement proceedings) that involve Receiver, the special receivership assets, or the Property unless such person or persons first obtain the permission of this Court.

26. No individual or entity may sue Receiver with respect to the Property or this Order without first obtaining permission of the Court.

27. Receiver will serve a copy of this Order on counsel for Borrower and all persons entitled to notice of the proceeding affecting the Property. Receiver will serve a copy of this Order or

provide notice of the entry of this Order on such creditors and customers of Borrower as it deems necessary and appropriate. All persons, firms, and corporations on whom this Order may be served will take notice of the terms and provisions hereof.

28. Finding good cause exists for immediate execution, this Order constitutes a writ of possession commanding any authorized officer in Henrico County, Virginia to cause the Receiver to take possession of Borrower's assets, including, but not limited to, the Property, all documents, equipment, cash, money on deposit and other personal property pertaining to the operation and management of said Property, and to deliver the same to Receiver as provided by law.

29. In the event of a conflict between the scope of the powers and duties of Receiver described in Virginia Code § 8.01-591 *et seq.* and the powers and duties described in this Order, the terms of this Order will control.

30. Receiver will, during the pendency of this action, have the right to apply to this Court for further instructions or directions, or authority.

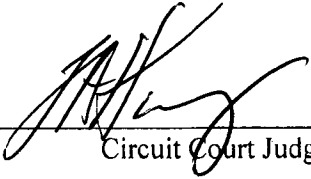
31. This cause is retained for such other and further orders as may be necessary or appropriate, including any request by Receiver to be relieved of its duties as provided herein. Upon sale of the Property, via foreclosure sale, receiver's sale or other disposition, Receiver will be discharged of its duties to operate and manage the Property.

32. In the event any person, firm or corporation subject to this Order is unable to comply with this Order's terms, such party may seek modification of such terms on motion of the Court.

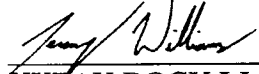
33. This Order and the relief granted herein is without prejudice to any and all claims for relief that Noteholder may have against Borrower, any of Borrower's affiliates, Guarantor or any other guarantors of the Debt, or others arising out of the Loan Documents or at law, including,

but not limited to, separate legal or equitable claims and causes of action that might otherwise have been brought with this action.

Dated: 11/8/23

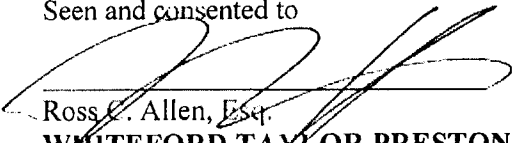

Circuit Court Judge

We ask for this:


KUTAK ROCK LLP

Peter J. Barrett (VSB # 46179)
Jeremy S. Williams (VSB # 77469)
Adolyn C. Wyatt (VSB # 97746)
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (804) 644-1700
Peter.Barrett@kutakrock.com
Jeremy.Williams@kutakrock.com
Adolyn.Wyatt@kutakrock.com
*Counsel for Wells Fargo Bank, National Association,
as Trustee for Morgan Stanley Capital I Trust 2021-L6,
Commercial Mortgage Pass-Through Certificates, Series 2021-6*

Seen and consented to


Ross C. Allen, Esq.
WHITEFORD TAYLOR PRESTON LLP
1021 E. Cary Street, Suite 1700
Richmond, VA 23219
rallen@whitefordlaw.com
*Counsel for Apex Glenwood VA, LLC
and Aron Poretz*

SCHEDULE I

Receivership Monthly:	\$300 per hour \$3,000 minimum
	Reimbursement of all out of pocket expenses
Property Management/Accounting:	Third Party with Plaintiff consent
Construction Management per project (if needed):	
The first \$250,000 is billed at	5%
The second \$250,000 is billed at:	4%
All remaining amounts are billed at:	3%

SCANNED
BDG

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NOV 03 2023

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CLERK'S OFFICE
HENRICO CIRCUIT COURT

Scanned 11/09/2023

Copies sent to:

Counsel for Plt. ☒

Counsel for Def. ☒

LCL