

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

**12042 WEST BROAD STREET HOLDINGS, LLC,**  
a Maryland limited liability company,

Plaintiff,

v.

**Henley SPW, LLC**  
a Virginia limited liability company  
Serve: Neil P. Amin  
2000 Ware Bottom Spring Road  
Chester, Virginia 23836


Defendant.

Civil Action No. CL20-9590

**COMPLAINT FOR APPOINTMENT OF  
SPECIAL RECEIVER**

Comes Now 12042 WEST BROAD STREET HOLDINGS, LLC, which brings this action against Defendant based upon Defendant's breach of contract and Defendant's wrongful and unlawful conversion of the revenues, rents and/or profits derived from certain real property that is collateral and security for a loan due and owing by Defendant. In support thereof Plaintiff respectfully states as follows:

1. 12042 WEST BROAD STREET HOLDINGS, LLC ("Plaintiff" or "Lender"), is a Maryland Limited Liability Company, located at 7501 Wisconsin Avenue, Suite 500 West-CWCAM, Bethesda, Maryland 20814, and brings this action. Plaintiff is the holder of a Promissory Note that is secured by the Property that is the subject of this suit.

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Deputy Clerk, Henrico Circuit Court

2. Defendant, HENLEY SPW, LLC (“Defendant”), is a Virginia limited liability company, with its principal place of business located 2000 Ware Bottom Spring Road, Chester, Virginia 23836.

3. The real estate that is the subject of this action is located in Henrico County, Virginia. The real estate is commonly known as the Hilton Richmond Hotel and Spa, located at 12042 West Broad Street, Richmond, Virginia 23233. The full legal description is provided in **Exhibit A**.

4. The Defendant owns and operates the Property, a full-service hotel with 254 guest rooms. The Property includes an on-site restaurant, spa, and other amenities that generate rent and/or revenue, as well as ongoing bookings for conference rooms, ball rooms, and associated food and drink services.

5. On October 11, 2013, the Defendant borrowed \$45,000,000.00 from JPMorgan Chase Bank National Association (“JPMorgan”). In connection with this loan, the Defendant executed and delivered to JPMorgan a Promissory Note (the “Note”) in the original principal amount of \$45,000,000.00. A true and correct copy of the Promissory Note is attached as **Exhibit B**.

6. The repayment of the indebtedness evidenced by the Note is secured by, among other things, a Deed of Trust, Assignment of Leases and Rents and Security Agreement dated October 11, 2013 (the “Deed of Trust”). The Deed of Trust was recorded in the Clerk’s Office of the Circuit Court for Henrico County, Virginia in Deed Book 5199, at Page 0481. A copy of the Deed of Trust is attached as **Exhibit C**. The Deed of Trust constitutes a first-priority lien and encumbrance upon the Property.

7. The repayment of the indebtedness evidenced by the Note is further secured by, among other things, a Loan Agreement, dated October 11, 2013, (the “Loan Agreement”). A copy of the Loan Agreement is attached as **Exhibit D**.

8. The repayment of the indebtedness evidenced by the Note is further secured by, among other things, an Assignment of Management Agreement and Subordination of Management Fees, dated October 11, 2013 (the “Assignment of Management Agreement”). A copy of the Assignment of Management Agreement is attached as **Exhibit E**.

9. The Note, Deed of Trust, Loan Agreement, and Assignment of Management Agreement have been assigned to Plaintiff and are collectively referred to as the “Loan Documents.”

10. Pursuant to an Assignment of Deed of Trust, Assignment of Leases and Rents and Security Agreement effective as of September 29, 2020 and recorded on October 2, 2020 in the Clerk’s Office of the Circuit Court for Henrico County, in Deed Book 06067, at Page 0353, the Deed of Trust was assigned to the Plaintiff. The Assignment of Deed of Trust, Assignment of Leases and Rents and Security Agreement is referred to as the “Loan Document Assignment” and is attached as **Exhibit F**.

11. The Defendant is in breach and events of default have occurred under and pursuant to the terms and conditions of the Loan Documents by, among other things, failing to pay monthly installments of principal, interest, and other amounts, including payments due on April of 2020 and after. The Defendant remains in default through the December 2020 payment.

12. The Defendant has also failed to cooperate with Lender and has failed to take other measures to cure defaults. On three separate occasions, Lender has proposed, and Borrower has rejected, proposed material modifications to the Loan Agreement aimed at

stemming the impact of the coronavirus pandemic. These Lender-provided relief packages included long-term and extensive relief intended to address default and avoid the appointment of a receiver and/or foreclosure.

13. In addition, the Defendant has indicated that it does not wish to fund any operational shortfalls. The Defendant has failed to turn over financial reports regarding the Property, including accounts payable, increasing the risk that mechanic's liens or other encumbrances could be placed on the property due to operational shortfalls and/or the failure to pay vendors or other accounts payable.

14. The Defendant has further breached the Loan Agreement by refusing to comply with cash management provisions of the Loan Documents and has failed to surrender cash generated by the Property.

15. Upon information and belief, these facts indicate to Plaintiff that the Property is not being properly managed, that breaches of the Loan Documents are ongoing, and that further breaches of the Loan Documents have occurred or will occur without intervention.

16. Pursuant to a letter dated June 24, 2020 (the "Default Letter"), the Defendant was provided notice of the breach and default under and pursuant to the terms and conditions of the Loan Documents and demanded that the Defendant immediately pay to the Plaintiff all amounts outstanding under the Loan Documents. A copy of the letter is attached as **Exhibit G**.

17. As of the date of this Complaint, the Defendant has not paid the amounts due and owing, and the Defendant's breach and default under and pursuant to the terms and conditions of the Loan Documents is continuing.

18. As of December 1, 2020, the amount due and owing under and pursuant to the terms and conditions the Loan Documents was not less than \$46,849,321.40, and additional

amounts continue to accrue. This amount includes: the principal amount of \$40,276,469.50, accrued interest in the amount of not less than \$1,180,107.27, default interest in the amount of not less than \$1,197,106.18, and accrued late fees of not less than \$127,283.87. There are also other and further accruing fees, costs, charges and expenses that are or may be lawfully due and owing by the Defendant under and pursuant to the Loan Documents including, but not limited to, accrued and unpaid interest, default interest, late charges, advances, fees, escrow deficiencies, prepayment premiums, attorney fees, costs and expenses and other costs.

19. The Plaintiff has fully performed all its obligations under the Loan Documents.

20. The Deed of Trust expressly provides that, upon the occurrence any default thereunder, the Plaintiff shall have the absolute right to collect any rents that may be due the Defendant as owner of the Property:

Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to...exercise of all rights and powers of Borrower with respect to the property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof.

Ex. C § 7.1(h)(iv).

21. The Deed of Trust also provides that all rents shall be assigned to the Plaintiff and provides the Plaintiff with the right to collect said rents upon default. *See id.* § 1.2.

22. As a result of the Defendant's breach and default under and pursuant to the terms and conditions the Loan Documents and as expressly authorized and permitted by the Loan Documents, the Plaintiff intends to exercise its remedies with respect to the Property in accordance with the terms and conditions of the Loan Documents by selling and disposing of the Property at public auction by the Deed of Trust trustee.

23. Pursuant to the terms and conditions of the Loan Documents, the Plaintiff has a duly perfected first-priority lien and encumbrance upon all rents, issues, income, fees, receivables, revenues, deposits, accounts, cash, issues, and profits arising from or attributable to the Property.

24. The Plaintiff is entitled to the immediate appointment of a receiver for the Property, as additional security and as a matter of absolute right to the Plaintiff, and without reference to the adequacy or inadequacy of the value of the Property, or to the solvency or insolvency of the Defendant, all as more particularly set forth in the Loan Documents. *See id* § 7.1(g); *see also* § 7.1(h)(v) (providing for payment of rents to receiver).

25. In furtherance thereof, Plaintiff requests that the Court appoint Crescent Hotel Management Services, LLC (“Crescent”) to serve as a special receiver for the Property. Crescent is an international hotel management company with a place of business in Fairfax, Virginia. Crescent has substantial experience with operating, managing, and marketing similar properties.

26. The immediate appointment of a special receiver is imperative because continuity of operations for the Property is vital for Plaintiff to maximize its proceeds at the foreclosure sale. The multitude of guest rooms, rents due and owing, operation of the restaurant and spa, reservation and use of various meeting and conference rooms, and overall operations, means that the Property must remain open and running while the foreclosure sale is conducted. This includes allowing prospective buyers the opportunity to enter and inspect the property and its books and records.

27. There is an imminent and significant risk that, upon learning of the intention of the Plaintiff to notice and conduct a foreclosure sale of the Property pursuant to the terms and conditions of the Deed of Trust, the Defendant may permit the condition of the Property to

deteriorate. Additionally, while the foreclosure sale is pending, the Defendant will have little if any incentive to maximize cash flow from the Property and may not provide complete information to current tenants and vendors, or prospective bidders, nor engage in further management activities.

28. There is a substantial likelihood that by appointing a special receiver, and allowing Plaintiff to take control and possession of the Property in advance of a foreclosure sale, that the Plaintiff will be better able to maximize the proceeds of such a foreclosure sale by allowing potential bidders at such a sale to understand the condition, use and operation of the Property and the current and potential rents and profits that can be derived therefrom. This is even more imperative given that there is no equity in the Property, which may be worth as little as \$26 million in the face of over \$46 million in debt to Plaintiff.

29. The relief requested is clearly warranted in light of the continuing breach and default by the Defendant, and the clear contractual entitlement to the appointment of a receiver as set forth in the Loan Documents.

30. The Plaintiff will suffer immediate, irreparable, and material loss and injury unless a special receiver is immediately appointed with the authority to perform, among other tasks: (i) collect and properly account for the rents generated by the Property; (ii) ensure the timely payment of all ordinary and necessary operating expenses associated with the Property to the extent of rents collected with a balance of such rents being applied to the amount due and owing under the Loan Documents; (iii) ensure that the Defendant's books and records related to the Property are properly maintained and not subject to change or alteration; (iv) ensure that the Property is properly maintained; (v) ensure that the Defendant's obligations under the leases

executed with the tenants at the Property are being met; and (vi) afford access to the Property to interested bidders and purchasers.

31. Pursuant to Section 8.01-591 of the Virginia Code and the express terms of the Loan Documents, there is sufficient evidence that the Plaintiff is entitled to the appointment of a Special Receiver to enter upon, take possession of, manage, and operate the Property, collect the rents, apply any rents in excess of ordinary and usual operating expenses at the property to amounts due and owing under the Loan Documents, and to do such other further acts as are reasonably necessary and proper in order to administer the Property until consummation of the foreclosure sale of the Property or further order of the Court.

32. The Plaintiff has no adequate remedy at law to enforce its rights with respect to the collection of rents and profits derived from the Property other than the appointment of a special receiver.

WHEREFORE, Plaintiff respectfully seeks the entry of an Order:

1. Designating and appointing Crescent Hotel Management Services LLC as the Special Receiver to take immediate possession, custody and control of the Property as permitted in the Loan Documents and at law, pending consummation of the foreclosure sale of the Property or further order of this Court;

2. Granting the Special Receiver, without liability for any obligations (including expenses) arising or incurred prior to the entry of an order of its appointment, the right, power and authority to collect the rents and profits from the Property, remit to Plaintiff any cash flow in excess of ordinary and necessary operating expenses associated with the usual and customary operation and management of the Property, perform all tasks permitted and contemplated by the Loan Documents and customarily performed by a Special Receiver under Virginia law, and



perform such additional tasks as required by the Special Receiver including, but not limited to, those listed in the attached **Exhibit H**;

3. Ordering and directing that the Defendant, any and all of its principals, agents, employees, and representatives, and any and all persons or entities acting in concert therewith, to: (i) immediately deliver possession and control of the Property to the Special Receiver, subject to the lawful rights of any tenants currently occupying the Property; (ii) immediately deliver and account for any and all rents, issues, income, fees, receivables, revenues, deposits, accounts, cash, issues and profits arising from or attributable to the Property to the Special Receiver; (iii) immediately turn over to the Special Receiver any and all books, records, accounts, leases, and such other contracts, documents and information as the Special Receiver may require in connection with the administration and management of the Property; and (iv) immediately prepare and submit to the Special Receiver a verified accounting of all rents from the Property and all expenses incurred with respect to the Property and all deposits associated with the Property, regardless of when collected.

4. Requiring that the Defendant, and any person or entity with actual or constructive notice of the terms and conditions of the Loan Documents to which the rents, issues, and profits obtained from the Property may have been paid or transferred, to immediately place all rents, issues, and profits obtained from the Property in a segregated account;

5. For costs of suit and attorney fees as permitted by the Loan Documents in an amount adjudged reasonable by the Court; and

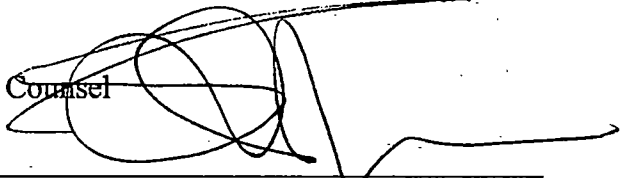
6. For such other relief as to the Court may seem just and equitable.

Dated: December 2, 2020

**12042 WEST BROAD STREET HOLDINGS, LLC**, a  
Maryland limited liability company

By: U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR THE BENEFIT OF THE  
REGISTERED HOLDERS OF J.P. MORGAN  
CHASE COMMERCIAL MORTGAGE  
SECURITIES TRUST 2013-C16, COMMERCIAL  
MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2013-C16, its sole member/manager, by and  
through CWCapital Asset Management LLC, a  
Delaware limited liability company, solely in its  
capacity as Special Servicer for the Trust

By Counsel



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