

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE, IN TRUST
FOR REGISTERED HOLDERS OF LONG
BEACH MORTGAGE LOAN TRUST
2005-2, ASSET-BACKED
CERTIFICATES, SERIES 2005-2

Plaintiff,

v.

JOHN A. WELLER, JR. A/K/A JOHN
ALBERT WELLER, JR.; UNKNOWN
SPOUSE OF JOHN A. WELLER, JR.
A/K/A JOHN ALBERT WELLER, JR.;
STEVEN E. RUFFE; LIBERTY
CONSULTING LLC; TRI-FACTORS
INVESTMENT CORP.; THE CITY OF
CORAL GABLES, FLORIDA; and
MIAMI-DADE COUNTY, FLORIDA,

Defendants,

and

CITY OF CORAL GABLES,

Counterclaimant/Crossclaim
Plaintiff/Third-Party Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE, IN TRUST
FOR REGISTERED HOLDERS OF LONG
BEACH MORTGAGE LOAN TRUST
2005-2, ASSET-BACKED
CERTIFICATES, SERIES 2005-2

Counterclaim Defendant,

and

JOHN ALBERT WELLER, JR., and
STEVEN RUFFE,

Crossclaim Defendants.

and

SELECT PORTFOLIO SERVICING, INC.,
a foreign corporation, and SAFEGUARD
PROPERTIES MANAGEMENT, LLC d/b/a
SAFEGUARD PROPERTIES, LLC, a
foreign limited liability company,

Third-Party Defendants.

CASE NO.: 19-17740 CA 01 (04)

GENERAL JURISDICTION DIVISION

**CITY OF CORAL GABLES'S VERIFIED COUNTERCLAIM, CROSSCLAIM, AND
THIRD-PARTY COMPLAINT FOR EXPEDITED TEMPORARY AND PERMANENT
INJUNCTIVE RELIEF AND FOR DECLARATORY JUDGMENT**

Defendant/Counterclaimant/Crossclaim Plaintiff/Third-Party Plaintiff, CITY OF CORAL
GABLES ("CITY"), a Florida municipal corporation, sues the Plaintiff/Counterclaim Defendant,
Deutsche Bank National Trust Company, as Trustee, in Trust for Registered Holders of Long
Beach Mortgage Loan Trust 2005-2, Asset-Backed Certificates, Series 2005-2

("MORTGAGEE"); Defendant/Crossclaim Defendant, John Albert Weller, Jr. ("FORMER OWNER"); the current Property owner and former second mortgagee, Defendant/Crossclaim Defendant, Steven Ruffe ("CURRENT OWNER"); Third-Party Defendant, Select Portfolio Servicing, Inc., a foreign corporation and the first mortgage servicer ("SERVICER"); and Third-Party Defendant, Safeguard Properties Management, LLC d/b/a/ Safeguard Properties LLC, a foreign limited liability company and the Property Manager ("PROPERTY MANAGER")(the foregoing Counterclaim Defendants, Crossclaim Defendants, and Third-party Defendants are collectively referred to as "RESPONSIBLE PARTIES") and alleges:

Parties, Jurisdiction, and Venue Common to All Counts

1. The CITY is a Florida municipal corporation and is *sui juris*.
2. The FORMER OWNER is an individual, who is *sui juris*, and is the former owner of record, by virtue of a Warranty Deed recorded, on November 16, 1972, in Official Records Book 7990, at Page 57, of the Public Records of Miami-Dade County, of the property located at 5200 S.W. 88 Street (a/k/a N. Kendall Drive), Coral Gables, FL 33156-2124, bearing Miami-Dade County Property Appraiser's folio number 03-5106-003-0090, and legally described as:

That certain part of Lot 9, of HAMMOCK LAKE NO. 2, as recorded in Plat Book 51, at Page 81, of the Public Records of Miami-Dade County, Florida, being particularly described as follows:

Beginning at a point which is the juncture of the projection of the Northerly and Easterly boundary lines of said Lot 9, proceed South along the Easterly boundary line of said Lot 9, a distance of 140 feet to a point; thence, deflect Southerly and Westerly at an angle of 77° 53' 0", a distance of 204 feet, to a point which point is on a line which runs through the Northeasterly corner and Southeasterly corner of said Lot 9, which point is 72.56 feet from the Southwesterly corner of said Lot 9; thence run Northwesterly a distance of 179.92 feet, more or less, to the Northwesterly corner of said Lot 9, said point also being the Northeasterly corner of Lot 8, thence proceed in an Easterly direction along the Northerly boundary line of said Lot 9, a distance of 200 feet, more or less, to the Point of Beginning. ("Property").

A copy of the Warranty Deed is attached as Exhibit “A”. A copy of the Miami-Dade County Office of the Property Appraiser’s Summary Report for the Property is attached as Exhibit “B”.

3. The CURRENT OWNER is an individual, who is *sui juris*, and is the current owner of record of the Property, by virtue of a Certificate of Title, issued in the foreclosure action *Steven Ruffe v. John A. Weller, et al.*, Eleventh Judicial Circuit Court Case No. 2014-23506 CA 01 (24) recorded, on May 28, 2019, in Official Records Book 31458, at Page 2526, of the Public Records of Miami-Dade County. The CITY has named the FORMER OWNER as party to this action, in spite of the issuance of a certificate of title in favor of the CURRENT OWNER, because the FORMER OWNER filed a notice of appeal of the final judgment of foreclosure in the case cited above. Even if the foreclosure judgment is set aside, the CURRENT OWNER would still be a responsible party under the CITY’s Abandoned Real Property Ordinance, because the CURRENT OWNER was also the second mortgagee by virtue of a recorded mortgage. (See paragraph 18 of the Mortgagee’s Verified Complaint to Foreclose Mortgage and Reestablishment of Promissory Note – Stamped Cancelled (“Complaint”), which paragraph is incorporated herein by reference.)

4. The MORTGAGEE, is a trustee and a foreign corporation, is *sui juris*, and is the first mortgagee of the Property, by virtue of a Mortgage recorded, on January 7, 2005, in Official Records Book 22980, at Page 4250, of the Public Records of Miami-Dade County and a Corporate Assignment of Mortgage (“Assignment of Mortgage”), recorded on February 6, 2018, in Official Records Book 30853, at Page 4606, of the Public Records of Miami-Dade County. The Mortgage and Assignment of Mortgage are attached as Exhibits “B” and “C”, respectively of the Complaint. (See paragraphs 4 and 5 of the Complaint, which are incorporated herein by reference, as are Exhibits “B” and “C” of the Complaint.) The MORTGAGEE is also the

Mortgagee/Trustee of the Property on the CITY's Abandoned Real Property Registry. (See contact information for RESPONSIBLE PARTIES as listed on the CITY's Abandoned Real Property Registry, attached as Exhibit "D".)

5. The SERVICER is a foreign corporation, is *sui juris*, and is the mortgage servicer for the MORTGAGEE and the Asset Manager/Mortgage Servicer for the Property. See paragraph 9 of the Complaint, which is incorporated herein by reference, and the CITY's Abandoned Real Property Registry, attached as Exhibit "D".

6. The PROPERTY MANAGER is foreign limited liability company, is *sui juris*, and is the Property Manager for the Property. See the CITY's Abandoned Real Property Registry, attached as Exhibit "D".

7. The RESPONSIBLE PARTIES are all parties responsible for the maintenance of the Property and must correct any violations of the CITY Code on the Property, pursuant to Article VII, Chapter 34 of the CITY Code, entitled "Abandoned Real Property" ("Abandoned Real Property Ordinance"), and further described below.

8. These are actions for injunctive relief and declaratory judgment.

9. The CITY seeks an order compelling the RESPONSIBLE PARTIES to correct all of the violations on the Property of the CITY Code.

10. This court has subject matter jurisdiction pursuant to §§ 26.012(1) and (3), 86.011, and 162.21(8), Fla. Stat., and Fla. R. Civ. P. 1.610.

11. Venue is proper in Miami-Dade County, Florida, pursuant to § 47.011, Fla. Stat., because the CITY's enforcement action is brought against the RESPONSIBLE PARTIES for real property that is in located in Miami-Dade County, Florida and the allegations that give rise

to the causes of action in these claims relate to events that took place in Miami-Dade County, Florida.

12. The Property contains code violations, because the single-family home and any accessory structures (collectively referred to as “Structure”) on the Property and the Property itself are not being maintained, and because the Property is being used for improper storage of equipment, derelict vehicles, and a trailer. (Photographs of the Structure and Property, taken on March 15, 2019 and June 19, 2019, are attached to the CITY’s Verified Answer and Affirmative Defenses (“Answer”) as Composite Exhibit “B”.) The Answer and its exhibits are incorporated herein by reference.

CITY’s Interests

Code Enforcement Liens

13. As alleged in paragraphs 3 and 7 of the Answer, the Property has been the subject of code enforcement complaints, since February 26, 2016, at which time the CITY brought a prior code enforcement case, against the FORMER OWNER (code enforcement case number: CE262550-022616)(“Prior Case”) that relates to the still existing CITY Code violations. The CITY released the lien it obtained in the Prior Case, pursuant to an agreement with the trustee in a bankruptcy case filed by the FORMER OWNER, in order to facilitate the sale of another property belonging to the FORMER OWNER. Since then, the CITY brought a second code enforcement action against the RESPONSIBLE PARTIES, who are responsible for maintenance of the Property, pursuant to Article VII of Chapter 34 of the CITY Code, entitled “Abandoned Real Property”. As of the moment the FORMER OWNER defaulted on the mortgage, all of the RESPONSIBLE PARTIES were required to maintain the Property in such a way as to correct any CITY code violations.

14. On July 11, 2019, the CITY issued Notices of Violation in code enforcement case number CE287341-070219)(“Notices”) against the RESPONSIBLE PARTIES, for the following violations of the stated CITY Code provisions:

- a) Section 34-55 of the CITY Code and Sections 219 and 220 of Chapter 105, Minimum Housing Code, of the CITY Code; to wit: failure to maintain the Property, including but not limited to, by allowing the following: overgrown vegetation, fallen leaves and dead vegetation to accumulate on the roof, dead palm tree and fronds and dead branches, and vines on the structure and roof and all over the Property;
- b) Sections 34-105 and 106 of the CITY Code; to wit: maintaining dilapidated and abandoned vehicles on private property that are not under a form fitting car cover with clips or in a garage;
- c) Sections 34-202 and 203 of the CITY Code; to wit: failure to register the Property as being in default of the mortgage and failure to maintain the Property;
- d) Sections 250, 251, 255, 275, and 278 of Chapter 105, Minimum Housing Code, of the CITY Code; to wit: As to the single-family home: dirty and damaged entrance column, collapsed roof that is also missing parts and is covered by tarps; damaged eaves and rotted wood; collapsed eaves and falling gutter; missing roof tiles; dirty and weathered wooden walls that need cleaning, sealing, and staining;
- e) Sections 226 and 255 of Chapter 105, Minimum Housing Code, of the CITY Code; to wit: failure to maintain accessory structures by allowing the following: fence is in disrepair, is missing boards, and is leaning over in places; gate is damaged and is off its hinges; and driveway/walkway is dirty, cracked, and in disrepair; roof garage is collapsing;
- f) Section 4-411 of the CITY Code; to wit: improper parking of trailer in a residential district; and
- g) Section 5-1803 of the CITY Zoning Code; to wit: outdoor storage of commercial landscape equipment (i.e., riding mowers)(“Violations”)(A copy of the Notices of Violation is attached to the Answer as Composite Exhibit “C”.)

15. To date, the only action that has been taken to correct the Violations is registering the property on the CITY’s Abandoned Real Property Registry, which only partially corrects violation (c) in the preceding paragraph.

16. Consequently, the RESPONSIBLE PARTIES have continued to violate the CITY Code by failing to:

- a) Remove the overgrown and dead vegetation from the Property, including, but not limited to, the live and dead vegetation from the roof;
- b) Cover, as required, repair, or remove dilapidated vehicles;
- c) Register the Property on the correct registry for properties in default of the mortgage and correct all code violations as set forth herein;
- d) Apply for, obtain, and pass final inspection on permit to repair or replace entrance column, roof, eaves, and gutter and clean, seal, and stain walls, and pass final inspection on color pallet approval to paint the Structure and building permits for the repairs, as required;
- e) Clean driveway/ walkway and apply for, obtain, and pass final inspection on all permits to repair or demolish the fence, garage, and driveway/walkway; and
- f) Remove trailer or place it within an enclosed garage. (“Corrective Action”).

17. As of the date of the filing of these actions, the Violations continue to exist and the Corrective Action is still required to remedy the Violations.

18. Any and all conditions precedent to filing this action have been fulfilled, waived, or excused.

**COUNT I
TEMPORARY INJUNCTION AS TO FORMER OWNER**

19. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

20. A court applies the following four-part test to grant a temporary injunction:

A temporary injunction should only be granted where there is a showing of (1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) a substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweighs any possible harm to respondent, and (4) that the granting of the injunction will not disserve the public interest.

See Miami-Dade Cty. v. Fernandez, 905 So. 2d 213, 215 (Fla. 3d DCA 2005).

21. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v.*

Fernandez, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

22. In any event, the CITY has no adequate remedy at law to compel the FORMER OWNER to correct the Violations.

23. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

24. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

25. The harm the Property's neighbors suffer due to the Violations outweighs any potential harm to the FORMER OWNER by being compelled to correct the Violations and maintain the Property.

26. A temporary injunction is in the public interest to remedy the Violations, some of which constitute a threat to the public health, safety, and welfare and which have a negative impact on the quality of life in the neighborhood and lower the value of neighboring properties.

27. The FORMER OWNER is aware of the Violations, and continues to violate CITY ordinances. Under these extreme circumstances, the government has a clear legal right to relief and is entitled to a temporary injunction. *Metro. Dade County v. O'Brien*, 660 So. 2d 364, 365 (Fla. 3d DCA 1995).

28. Finally, the CITY requests that the bond be waived pursuant to Fla. R. Civ. P. 1.610(b).

COUNT II
PERMANENT INJUNCTION AS TO FORMER OWNER

29. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

30. The CITY, as a local government, has the power to seek injunctive relief, including a permanent injunction, as a means of enforcing compliance with its ordinances. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Investments, LLC*, 64 So. 3d 716, 722 (Fla. Dist. Ct. App. 2011); *Pal-Mar Water Mgmt. Dist. v. Martin Cnty.*, 377 So. 2d 752, 755 (Fla. Dist. Ct. App. 1979).

31. A party seeking permanent injunctive relief in Florida must demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest. *Hiles v. Auto Bahn Federation Inc.*, 498 So. 2d 997 (Fla. 4th DCA 1986).

32. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

33. In any event, the CITY has no adequate remedy at law to compel the FORMER OWNER to correct the Violations.

34. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

35. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

COUNT III
TEMPORARY INJUNCTION AS TO CURRENT OWNER

36. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

37. A court applies the following four-part test to grant a temporary injunction:

A temporary injunction should only be granted where there is a showing of (1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) a substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweighs any possible harm to respondent, and (4) that the granting of the injunction will not disserve the public interest.

See Miami-Dade Cty. v. Fernandez, 905 So. 2d 213, 215 (Fla. 3d DCA 2005).

38. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

39. In any event, the CITY has no adequate remedy at law to compel the CURRENT OWNER to correct the Violations.

40. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

41. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

42. The harm the Property's neighbors suffer due to the Violations outweighs any potential harm to the CURRENT OWNER by being compelled to correct the Violations and maintain the Property.

43. A temporary injunction is in the public interest to remedy the Violations, some of which constitute a threat to the public health, safety, and welfare and which have a negative impact on the quality of life in the neighborhood and lower the value of neighboring properties.

44. The CURRENT OWNER is aware of the Violations, and continues to violate CITY ordinances. Under these extreme circumstances, the government has a clear legal right to relief and is entitled to a temporary injunction. *Metro. Dade County v. O'Brien*, 660 So. 2d 364, 365 (Fla. 3d DCA 1995).

45. Finally, the CITY requests that the bond be waived pursuant to Fla. R. Civ. P. 1.610(b).

COUNT IV
PERMANENT INJUNCTION AS TO CURRENT OWNER

46. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

47. The CITY, as a local government, has the power to seek injunctive relief, including a permanent injunction, as a means of enforcing compliance with its ordinances. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Investments, LLC*, 64 So. 3d 716, 722 (Fla. Dist. Ct. App. 2011); *Pal-Mar Water Mgmt. Dist. v. Martin Cnty.*, 377 So. 2d 752, 755 (Fla. Dist. Ct. App. 1979).

48. A party seeking permanent injunctive relief in Florida must demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest. *Hiles v. Auto Bahn Federation Inc.*, 498 So. 2d 997 (Fla. 4th DCA 1986).

49. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v.*

Fernandez, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

50. In any event, the CITY has no adequate remedy at law to compel the CURRENT OWNER to correct the Violations.

51. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

52. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

COUNT V TEMPORARY INJUNCTION AS TO MORTGAGEE

53. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

54. A court applies the following four-part test to grant a temporary injunction:

A temporary injunction should only be granted where there is a showing of (1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) a substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweighs any possible harm to respondent, and (4) that the granting of the injunction will not disserve the public interest.

See Miami-Dade Cty. v. Fernandez, 905 So. 2d 213, 215 (Fla. 3d DCA 2005).

55. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

56. In any event, the CITY has no adequate remedy at law to compel MORTGAGEE to correct the Violations.

57. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

58. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

59. The harm the Property's neighbors suffer due to the Violations outweighs any potential harm to MORTGAGEE by being compelled to correct the Violations and maintain the Property.

60. A temporary injunction is in the public interest to remedy the Violations, some of which constitute a threat to the public health, safety, and welfare and which have a negative impact on the quality of life in the neighborhood and lower the value of neighboring properties.

61. MORTGAGEE is aware of the Violations, and continues to violate CITY ordinances. Under these extreme circumstances, the government has a clear legal right to relief and is entitled to a temporary injunction. *Metro. Dade County v. O'Brien*, 660 So. 2d 364, 365 (Fla. 3d DCA 1995).

62. Finally, the CITY requests that the bond be waived pursuant to Fla. R. Civ. P. 1.610(b).

**COUNT VI
PERMANENT INJUNCTION AS TO MORTGAGEE**

63. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

64. The CITY, as a local government, has the power to seek injunctive relief, including a permanent injunction, as a means of enforcing compliance with its ordinances. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Investments, LLC*, 64 So. 3d 716, 722

(Fla. Dist. Ct. App. 2011); *Pal-Mar Water Mgmt. Dist. v. Martin Cnty.*, 377 So. 2d 752, 755 (Fla. Dist. Ct. App. 1979).

65. A party seeking permanent injunctive relief in Florida must demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest. *Hiles v. Auto Bahn Federation Inc.*, 498 So. 2d 997 (Fla. 4th DCA1986).

66. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

67. In any event, the CITY has no adequate remedy at law to compel MORTGAGEE to correct the Violations.

68. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

69. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

COUNT VII TEMPORARY INJUNCTION AS TO SERVICER

70. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

71. A court applies the following four-part test to grant a temporary injunction:

A temporary injunction should only be granted where there is a showing of (1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) a substantial likelihood of success on the merits, (3) that the

threatened injury to petitioner outweighs any possible harm to respondent, and (4) that the granting of the injunction will not disserve the public interest.

See Miami-Dade Cty. v. Fernandez, 905 So. 2d 213, 215 (Fla. 3d DCA 2005).

72. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

73. In any event, the CITY has no adequate remedy at law to compel SERVICER to correct the Violations.

74. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

75. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

76. The harm the Property's neighbors suffer due to the Violations outweighs any potential harm to SERVICER by being compelled to correct the Violations and maintain the Property.

77. A temporary injunction is in the public interest to remedy the Violations, some of which constitute a threat to the public health, safety, and welfare and which have a negative impact on the quality of life in the neighborhood and lower the value of neighboring properties.

78. SERVICER is aware of the Violations, and continues to violate CITY ordinances. Under these extreme circumstances, the government has a clear legal right to relief and is entitled to a temporary injunction. *Metro. Dade County v. O'Brien*, 660 So. 2d 364, 365 (Fla. 3d DCA 1995).

79. Finally, the CITY requests that the bond be waived pursuant to Fla. R. Civ. P. 1.610(b).

**COUNT VIII
PERMANENT INJUNCTION AS TO SERVICER**

80. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

81. The CITY, as a local government, has the power to seek injunctive relief, including a permanent injunction, as a means of enforcing compliance with its ordinances. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Investments, LLC*, 64 So. 3d 716, 722 (Fla. Dist. Ct. App. 2011); *Pal-Mar Water Mgmt. Dist. v. Martin Cnty.*, 377 So. 2d 752, 755 (Fla. Dist. Ct. App. 1979).

82. A party seeking permanent injunctive relief in Florida must demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest. *Hiles v. Auto Bahn Federation Inc.*, 498 So. 2d 997 (Fla. 4th DCA1986).

83. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

84. In any event, the CITY has no adequate remedy at law to compel SERVICER to correct the Violations.

85. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

86. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

COUNT IX
TEMPORARY INJUNCTION AS TO PROPERTY MANAGER

87. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

88. A court applies the following four-part test to grant a temporary injunction:

A temporary injunction should only be granted where there is a showing of (1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) a substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweighs any possible harm to respondent, and (4) that the granting of the injunction will not disserve the public interest.

See Miami-Dade Cty. v. Fernandez, 905 So. 2d 213, 215 (Fla. 3d DCA 2005).

89. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

90. In any event, the CITY has no adequate remedy at law to compel PROPERTY MANAGER to correct the Violations.

91. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

92. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

93. The harm the Property's neighbors suffer due to the Violations outweighs any potential harm to PROPERTY MANAGER by being compelled to correct the Violations and maintain the Property.

94. A temporary injunction is in the public interest to remedy the Violations, some of which constitute a threat to the public health, safety, and welfare and which have a negative impact on the quality of life in the neighborhood and lower the value of neighboring properties.

95. PROPERTY MANAGER is aware of the Violations, and continues to violate CITY ordinances. Under these extreme circumstances, the government has a clear legal right to relief and is entitled to a temporary injunction. *Metro. Dade County v. O'Brien*, 660 So. 2d 364, 365 (Fla. 3d DCA 1995).

96. Finally, the CITY requests that the bond be waived pursuant to Fla. R. Civ. P. 1.610(b).

COUNT X
PERMANENT INJUNCTION AS TO PROPERTY MANAGER

97. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

98. The CITY, as a local government, has the power to seek injunctive relief, including a permanent injunction, as a means of enforcing compliance with its ordinances. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Investments, LLC*, 64 So. 3d 716, 722 (Fla. Dist. Ct. App. 2011); *Pal-Mar Water Mgmt. Dist. v. Martin Cnty.*, 377 So. 2d 752, 755 (Fla. Dist. Ct. App. 1979).

99. A party seeking permanent injunctive relief in Florida must demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4)

consideration of the public interest. *Hiles v. Auto Bahn Federation Inc.*, 498 So. 2d 997 (Fla. 4th DCA1986).

100. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. *Miami-Dade Cty. v. Fernandez*, 905 So. 2d at 215; *P.M. Realty v. City of Tampa*, 779 So. 2d 404, 406 (Fla. 2d DCA 2000), *Rich v. Ryals*, 212 So. 2d 641, 643 (Fla. 1968)

101. In any event, the CITY has no adequate remedy at law to compel PROPERTY MANAGER to correct the Violations.

102. There is a substantial likelihood of success on the merits as this action is based upon substantiated and continuing violations of the CITY Code. *Miami-Dade County v. Fernandez*, 905 So. 2d at 216.

103. The CITY and its citizens have a clear public interest in compliance with the CITY's ordinances. *Id.*

WHEREFORE, as to Counts I through X, the CITY respectfully requests that this Court:

(1) issue, on an expedited basis, an immediate temporary injunction, pursuant to Fla. R. Civ. P. 1.610, and a permanent injunction that compels RESPONSIBLE PARTIES to take all of the Corrective Action in order to remedy the ongoing code violations for which it is responsible;

(2) issue, on an expedited basis, an immediate temporary injunction, pursuant to Fla. R. Civ. P. 1.610, and a permanent injunction that compels RESPONSIBLE PARTIES to take all action necessary to maintain the property for which it is responsible in compliance with the CITY Code;

(3) retain jurisdiction of this matter for the purpose of enforcing this Court's order, including, but not limited to, by appointing a receiver pursuant to Fla. R. Civ. P. 1.620, and

imposing sanctions, including, but not limited to, finding RESPONSIBLE PARTIES in contempt, if they do not promptly comply; and

(4) grant any other relief the Court deems proper.

**COUNT XI: DECLARATORY RELIEF
AS TO FORMER OWNER**

104. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

105. Pursuant to § 86.011, Fla. Stat., this Court has jurisdiction to declare rights, status, and other equitable or legal relations between the parties whether or not other relief could be claimed.

**COUNT XII: DECLARATORY RELIEF
AS TO CURRENT OWNER**

106. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

107. Pursuant to § 86.011, Fla. Stat., this Court has jurisdiction to declare rights, status, and other equitable or legal relations between the parties whether or not other relief could be claimed.

**COUNT XIII: DECLARATORY RELIEF
AS TO MORTGAGEE**

108. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

109. Pursuant to § 86.011, Fla. Stat., this Court has jurisdiction to declare rights, status, and other equitable or legal relations between the parties whether or not other relief could be claimed.

**COUNT XIV: DECLARATORY RELIEF
AS TO SERVICER**

110. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

111. Pursuant to § 86.011, Fla. Stat., this Court has jurisdiction to declare rights, status, and other equitable or legal relations between the parties whether or not other relief could be claimed.

**COUNT XV: DECLARATORY RELIEF
AS TO PROPERTY MANAGER**

112. The CITY incorporates by reference paragraphs 1 through 18 above, as if fully stated herein.

113. Pursuant to § 86.011, Fla. Stat., this Court has jurisdiction to declare rights, status, and other equitable or legal relations between the parties whether or not other relief could be claimed.

WHEREFORE, as to Counts XI through XV, the CITY respectfully requests that this Court:

(1) enter an order that adjudges, decrees, and declares the rights and other legal relations regarding the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

(2) award the CITY its reasonable attorney's fees and costs pursuant to § 34-205(b) of the CITY code;

(3) retain jurisdiction of this matter for the purpose of enforcing this Court's order, including, but not limited to, by appointing a receiver pursuant to Fla. R. Civ. P. 1.620, and

imposing sanctions, including but not limited to finding the RESPONSIBLE PARTIES in contempt, if they do not promptly comply; and

(4) grant any other relief the Court deems proper.

VERIFICATION

Pursuant to § 92.525, Fla. Stat., under penalties of perjury, I declare that I have read the foregoing City of Coral Gables's Verified Counterclaim, Crossclaim, and Third-Party Complaint for Temporary and Permanent Injunctive Relief and for Declaratory Judgment, and that the facts alleged and stated therein are true and correct to the best of my knowledge and belief.

s/ Adolfo Garcia
Code Enforcement Officer
City of Coral Gables

DATED ON: July 19, 2019

Respectfully submitted,

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By: s/ Alexander L. Palenzuela
Alexander L. Palenzuela
Florida Bar No.: 946095

CERTIFICATE OF SERVICE

I hereby certify that the forgoing document has been furnished to Norman Holmes, *Counsel for Plaintiff*, Robertson, Anschutz & Schneid, P.L., 6409 Congress Ave., Ste. 100, Boca Raton, FL 33487, primary email: mail@rasflaw.com, secondary email: nholmes@rasflaw.com; and David Sherman, Assistant County Attorney, *Counsel for Miami-Dade County*, Stephen P. Clark Center, 111 N.W. 1 St., Ste. 2810, Miami, FL 33128, primary email: yvaldes@miamidade.gov, Joy B. Spill, Simon & Simon, P.A. *Counsel for Defendant Tri-factors Investment Corp.*, 9500 S. Dadeland Blvd., Ste., 708, Miami, FL 33156-2849, primary email:

joy@simonsimonlaw.com, secondary email: lisette@simonsimonlawfirm.com, and gary@simonsimonlawfirm.com; by email on this 19th day of July, 2019.

s/Alexander L. Palenzuela
Alexander L. Palenzuela