IN THE TWENTY-FIRST JUDICIAL CIRCUIT ST. LOUIS COUNTY
STATE OF MISSOURI

TITAN FISH TWO, LLC, a Kansas limited liability company, Plaintiff, v. NORTHSIDE REGENERATION, LLC, ***Serve:*** *PEM Agency Corporation* *1001 Boardwalk Spring Place* *O'Fallon, MO 63366* PAUL J. MCKEE, JR. ***Serve:*** *1001 Boardwalk Spring Place* *O'Fallon, MO 63366* PAUL J. MCKEE, JR. REVOCABLE TRUST DATED SEPTEMBER 19, 1990 ***Serve:*** *1001 Boardwalk Spring Place* *O'Fallon, MO 63366* Defendants.	)	Cause No. _____ Division No. _____

PETITION FOR BREACH OF CONTRACT AND APPOINTMENT OF RECEIVER

COMES NOW Plaintiff Titan Fish Two, LLC, by and through its counsel, and for its causes of action against Defendants Northside Regeneration, LLC, Paul J. McKee, Jr., and the Paul J. McKee, Jr. Revocable Trust dated September 19, 1990, hereby alleges as follows:

General Allegations

1. Plaintiff Titan Fish Two, LLC ("Plaintiff") is a Kansas limited liability company.

2. Defendant Northside Regeneration, LLC ("Northside") is a Missouri limited liability company in good standing. It may be served with process at the address set forth in the caption above.

3. Defendant Paul J. McKee, Jr., individually ("McKee") and in his capacity as Trustee of the Paul J. McKee Revocable Trust dated September 19, 1990 (the "McKee Trust", and collectively with McKee, the "Guarantors") is an individual residing at 12 Dunlora Lane, St. Louis County, Missouri He may be served with process at the address set forth in the caption above.

4. This Court has personal jurisdictional over the Defendants.

5. Pursuant to RSMo. § 508.010.2(2), venue is appropriate in St. Louis County, Missouri.

6. On or about October 25, 2007, Blairmont Associates Limited Company, a Missouri limited liability company ("BlairMont"), executed a Promissory Note in the original principal amount of $3,000,000.00 (the "BlairMont Note"), payable to the order of Corn Belt Bank and Trust Company ("Corn Belt"), evidencing a loan made by Corn Belt to BlairMont in the amount of $3,000,000.00. A true and correct copy of the BlairMont Note is attached hereto as **Exhibit A**, and is incorporated herein by reference.

7. The BlairMont Note is secured by, among other items, a certain Deed of Trust and Security Agreement (the "Blairmont Deed of Trust") dated October 25, 2007 and recorded on October 25, 2007 in the Office of the Recorder of Deeds for the City of St. Louis (the "Recorder's Office") in Book 10262007, Page 0193, encumbering certain real and personal property owned by Blairmont more particularly described in the Deed of Trust. A true and

correct copy of the BlairMont Deed of Trust is attached hereto as **Exhibit B**, and is incorporated herein by reference.

8. To induce Corn Belt to make the BlairMont Loan, Guarantors each executed that certain Limited Continuing Unconditional Guaranty, dated as of October 25, 2007, whereby Guarantors jointly and severally, unconditionally and absolutely guaranteed to Corn Belt the full and prompt payment of up to thirty-five percent (35%) of all BlairMont's obligations to Corn Belt pursuant to the BlairMont Note, as more particularly described therein (the "BlairMont Guaranty"). A true and correct copy of the BlairMont Guaranty is attached hereto as **Exhibit C**, and is incorporated herein by reference.

9. On or about October 25, 2007, N & G Ventures, L.C., a Missouri limited liability company ("N&G"), executed a Promissory Note in the original principal amount of $3,000,000.00 (the "N&G Note"), payable to the order of Corn Belt, evidencing a loan made by Corn Belt to N&G in the amount of $3,000,000.00. A true and correct copy of the N&G Note is attached hereto as **Exhibit D**, and is incorporated herein by reference.

10. The N&G Note is secured by, among other items, a certain Deed of Trust and Security Agreement (the "N&G Deed of Trust") dated October 25, 2007 and recorded on October 25, 2007 in the Recorder's Office in Book 10262007, Page 0192, encumbering certain real and personal property owned by N&G more particularly described in the Deed of Trust. A true and correct copy of the N&G Deed of Trust is attached hereto as **Exhibit E**, and is incorporated herein by reference.

11. To induce Corn Belt to make the N&G Loan, Guarantors each executed that certain Limited Continuing Unconditional Guaranty, dated as of October 25, 2007, whereby Guarantors jointly and severally, unconditionally and absolutely guaranteed to Corn Belt the full

and prompt payment of up to thirty-five percent (35%) of all N&G's obligations to Corn Belt pursuant to the N&G Note, as more particularly described therein (the "N&G Guaranty"). A true and correct copy of the N&G Guaranty is attached hereto as **Exhibit F**, and is incorporated herein by reference.

12. On or about October 25, 2007, Noble Development Company, L.L.C., a Missouri limited liability company ("Noble"), executed a Promissory Note in the original principal amount of $3,000,000.00 (the "Noble Note"), payable to the order of Corn Belt, evidencing a loan made by Corn Belt to Noble in the amount of $3,000,000.00. A true and correct copy of the Noble Note is attached hereto as **Exhibit G**, and is incorporated herein by reference.

13. The Noble Note is secured by, among other items, a certain Deed of Trust and Security Agreement (the "Noble Deed of Trust") dated October 25, 2007 and recorded on October 25, 2007 in the Recorder's Office in Book 10262007, Page 0191, encumbering certain real and personal property owned by Noble more particularly described in the Deed of Trust. A true and correct copy of the Noble Deed of Trust is attached hereto as **Exhibit H**, and is incorporated herein by reference.

14. To induce Corn Belt to make the Noble Loan, Guarantors each executed that certain Limited Continuing Unconditional Guaranty, dated as of October 25, 2007, whereby Guarantors jointly and severally, unconditionally and absolutely guaranteed to Corn Belt the full and prompt payment of up to thirty-five percent (35%) of all Noble's obligations to Corn Belt pursuant to the Noble Note, as more particularly described therein (the "Noble Guaranty"). A true and correct copy of the Noble Guaranty is attached hereto as **Exhibit I**, and is incorporated herein by reference.

15. On or about October 25, 2007, VHS Partners, LLC, a Missouri limited liability company ("VHS"), executed a Promissory Note in the original principal amount of $3,000,000.00 (the "VHS Note"), payable to the order of Corn Belt, evidencing a loan made by Corn Belt to VHS in the amount of $3,000,000.00. A true and correct copy of the VHS Note is attached hereto as **Exhibit J**, and is incorporated herein by reference.

16. The VHS Note is secured by, among other items, a certain Deed of Trust and Security Agreement (the "VHS Deed of Trust") dated October 25, 2007 and recorded on October 25, 2007 in the Office of the Recorder of Deeds for the City of St. Louis (the "Recorder's Office") in Book 10262007, Page 0190, encumbering certain real and personal property owned by VHS more particularly described in the Deed of Trust. A true and correct copy of the VHS Deed of Trust is attached hereto as **Exhibit K**, and is incorporated herein by reference.

17. To induce Corn Belt to make the VHS Loan, Guarantors each executed that certain Limited Continuing Unconditional Guaranty, dated as of October 25, 2007, whereby Guarantors jointly and severally, unconditionally and absolutely guaranteed to Corn Belt the full and prompt payment of up to thirty-five percent (35%) of all VHS's obligations to Corn Belt pursuant to the VHS Note, as more particularly described therein (the "VHS Guaranty"). A true and correct copy of the VHS Guaranty is attached hereto as **Exhibit L**, and is incorporated herein by reference.

18. On February 13, 2009, Corn Belt was closed by the Illinois Department of Financial and Professional Regulation, Division of Banking, and the Federal Deposit Insurance Corporation (the "FDIC") was named as receiver for Corn Belt.

19. On or about December 14, 2009, BlairMont, N&G, Noble, VHS and various other entities merged into Defendant Northside, leaving Defendant Northside as the surviving limited liability company.

20. The BlairMont Note, N&G Note, Noble Note and VHS Note are collectively referred to herein as the "Notes"; the BlairMont Deed of Trust, N&G Deed of Trust, Noble Deed of Trust and VHS Deed of Trust are collectively referred to herein as the "Deeds of Trust"; the BlairMont Guaranty, N&G Guaranty, Noble Guaranty and VHS Guaranty are collectively referred to herein as the "Guaranties"; and the real and personal property secured by the Deeds of Trust is collectively referred to as the "Collateral".

21. The Notes each matured on October 15, 2009, without payment of the entire outstanding balance thereof being made by Northside in accordance with the terms of the Notes.

22. On or about March 1, 2010 and effective February 9, 2010, the Federal Deposit Insurance Corporation ("FDIC"), as Receiver for Corn Belt, assigned to Multibank 2009-1 RES-ADC Venture LLC ("Multibank"), all of the rights, title and interest in and to the Notes, Deeds of Trust, Guaranties, and other documents executed in connection with the loans. Such assignments were evidenced by certain Omnibus Assignments and Allonges (except an Allonge for the Noble Note, for which a Lost Note Affidavit was provided) dated as of February 9, 2010 (the "Multibank Assignment Documents"). True and correct copies of the Multibank Assignment Documents are attached hereto as **Exhibit M** and are incorporated herein by reference.

23. On or about November 16, 2010, Multibank, Northside, McKee, McKee Trust, and other affiliates of Defendants (collectively, the "Obligors") entered into that certain Forbearance Agreement (the "Forbearance Agreement"), pursuant to which Multibank agreed to

refrain from exercising any of its rights and remedies to collect sums due and owing under the Notes (i) unless an Event of Default occurred under the Forbearance Agreement, and (ii) except as otherwise provided in the Forbearance Agreement. A true and correct copy of the Forbearance Agreement is attached hereto as **Exhibit N** and is incorporated herein by reference.

24. Northside, McKee, the McKee Trust and the other Obligors failed to satisfy the Settlement Obligations (as such terms are defined in the Forbearance Agreement). Specifically, Obligors failed to make (1) the First Phase II Payment as and when required by Section 4.5(b) of the Forbearance Agreement, and (2) the annual Phase I Paid Interest payment as and when required by Section 4.5(b) of the Forbearance Agreement.

25. On November 19, 2012, Multibank notified Obligors of the foregoing defaults by sending a Notice of Delinquency and Opportunity to Cure under Forbearance Agreement (the "Default Notice") in accordance with Section 5.1 of the Forbearance Agreement. A true and correct copy of the Default Notice is attached hereto as **Exhibit O** and is incorporated herein by reference.

26. Obligors failed to cure such defaults within fifteen (15) days following their receipt of the Default Notice, as required under the Forbearance Agreement. Such failure constitutes an Event of Default under Section 5.1 of the Forbearance Agreement.

27. Upon an event of default, the Forbearance Agreement provides the holder of the Notes and Security Agreement with the right to declare the termination of the Forbearance Period (as that term is defined therein) and to proceed to enforce its rights under the Notes, Guaranties and Deeds of Trust without further notice to the Obligors.

28. On or about March 9, 2015, Multibank assigned to Plaintiff all of the rights, title, and interest in and to the Notes, Deeds of Trust, Guaranties and all other documents executed in

connection with the loans. Such assignments were evidenced by certain Omnibus Assignments and Allonges (except an Allonge for the Noble Note, for which a Lost Note Affidavit was provided) dated as of March 9, 2015 and March 20, 2015, as applicable (the "Plaintiff Assignment Documents"). True and correct copies of the Plaintiff Assignment Documents are attached hereto as **Exhibit P** and are incorporated herein by reference.

29. Plaintiff is the current owner and holder of the Notes, Deeds of Trust and Guaranties, is in possession of the original Notes (executed by each of the respective entities which have been merged into Northside), and is the party entitled to enforce the terms of the Notes, Deeds of Trust and Guaranties. Plaintiff has declared the Forbearance Period terminated, and seeks to enforce its rights under the Notes, Deeds of Trust and Guaranties.

Count I – Breach of the Notes

30. Plaintiff incorporates and realleges the foregoing paragraphs as if fully set forth herein.

31. Plaintiff has complied with each and every term of the Notes and Forbearance Agreement, and all conditions precedent to bringing this action have been satisfied.

32. Northside has defaulted on its payment obligations under each of the Notes and Forbearance Agreement, and is obligated to immediately pay Plaintiff the outstanding indebtedness due under the Notes.

33. Demand has been made upon Defendant Northside for all amounts due and owing under the Notes, but Northside has refused to honor its payment obligations under the Notes.

34. As of April 3, 2015, there remains due and owing on the BlairMont Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, other charges due under the

BlairMont Note totaling $15,547.02, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

35. As of April 3, 2015, there remains due and owing on the N&G Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, other charges due under the N&G Note totaling $15,465.40, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

36. As of April 3, 2015, there remains due and owing on the Noble Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, other charges due under the Noble Note totaling $15,547.05, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

37. As of April 3, 2015, there remains due and owing on the VHS Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, other charges due under the VHS Note totaling $15,556.55, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

38. Under the terms of the Notes, Plaintiff is entitled to recover its expenses and costs of collection, including reasonable attorneys' fees.

WHEREFORE, Plaintiff Titan Fish Two, LLC prays for judgment against Defendant Northside Regeneration, LLC, for the principal sum of $12,000,000.00; accrued interest under the Notes totaling $5,604,555.12 in the aggregate; other charges due under the Notes totaling $62,116.04; interest accruing at the per diem rate of $3,041.08 for each day after April 3, 2015 that payment is not received; post-judgment interest at the contract rate specified in each of the Notes equal to (i) the Prime Rate (as published in the Wall Street Journal), plus 1.00%, plus (ii) the default rate margin of 5.00%, resulting in a current contract rate of interest of 9.25%; its

expenses, court costs and attorneys' fees incurred herein, and for such further relief as the Court deems just and proper.

Count II – Breach of the Guaranties

39. Plaintiff incorporates and realleges the foregoing paragraphs as if fully set forth herein.

40. By virtue of Northside's default under and breach of the Notes, Defendants McKee and McKee Trust are obligated, jointly and severally, to pay Plaintiff an amount equal to 35% of the outstanding indebtedness of Northside under the Guaranties.

41. As of April 3, 2015, there remains due and owing on the BlairMont Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

42. As of April 3, 2015, there remains due and owing on the N&G Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

43. As of April 3, 2015, there remains due and owing on the Noble Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

44. As of April 3, 2015, there remains due and owing on the VHS Note the principal sum of $3,000,000.00, accrued interest of $1,401,138.78, and interest accruing at the per diem rate of $760.27 for each day after April 3, 2015 that payment is not received.

45. Demand has been made upon the Defendants McKee and McKee Trust for all amounts due and owing under the Guaranties as of the date of such demand, but Defendants

McKee and McKee Trust have refused to honor their obligations under the Guaranties or pay the amounts due thereunder.

46. The Guaranties provide that Plaintiff is entitled to recover up to 35% of its costs of collection, including attorneys' fees, from Defendants McKee and McKee Trust.

WHEREFORE, Plaintiff Titan Fish Two, LLC prays for judgment against Defendants Paul J. McKee, Jr. and the Paul J. McKee, Jr. Revocable Trust dated September 19, 1990, for the sum of $4,200,000.00, representing 35% of the outstanding principal balance of the Notes; $1,961,594.29, representing 35% of the accrued interest under the Notes; interest accruing at the per diem rate of $1,064.68 for each day after April 3, 2015 that payment is not received, representing 35% of the per diem interest under the Notes; post-judgment interest at 35% of the contract rate specified in each of the Notes equal to (i) the Prime Rate (as published in the Wall Street Journal), plus 1.00%, plus (ii) the default rate margin of 5.00%, resulting in a current contract rate of interest of 9.25%; an amount equal to 35% of its expenses, court costs and attorneys' fees incurred herein; and for such further relief as the Court deems just and proper.

Count III – Replevin

47. Plaintiff incorporates and realleges the foregoing paragraphs as if fully set forth herein.

48. The Deeds of Trust each provide Plaintiff with a security interest for the payment of the indebtedness represented by the Notes in the Collateral, which includes certain personal property, "including without limitation, fixtures, machinery, appliances, equipment, furniture, claims, demands and causes of actions, licenses, permits, contracts and agreements and other general intangibles . . ." (collectively, the "Personal Property").

49. Pursuant to the Deeds of Trust and Mo. Rev. Stat. § 400.9-609, Plaintiff is entitled to repossess the Personal Property and sell it in partial satisfaction of the indebtedness owed by Northside under the Notes.

50. By reason of Northside's defaults under the Notes and Deeds of Trust, Plaintiff has superior rights to immediate possession of the Personal Property than does Northside.

51. Northside is exercising unauthorized control over the Personal Property, and has deprived Plaintiff of its right to possess the Personal Property.

52. Because Northside has failed to provide information to Plaintiff concerning the identity and location of the Personal Property, Plaintiff is currently unaware of the specific items constituting the Personal Property and the total value of the Personal Property.

53. The Personal Property has not yet been seized under any legal process.

54. Plaintiff is in danger of losing the Personal Property, or having the value of the Personal Property significantly impaired, unless it is permitted to immediately obtain possession of the assets or such assets are otherwise secured.

WHEREFORE, Plaintiff Titan Fish Two, LLC prays that the Court order that (a) the Sheriff of the City of St. Louis, Missouri shall take possession of the Personal Property and deliver it to Personal Property for disposition, (b) Northside immediately surrender and deliver the Personal Property to Plaintiff, (c) the reasonable expenses of the taking of the Personal Property be taxed against Northside, and (d) Plaintiff be awarded all such other relief as the Court deems just and proper.

Count IV – Receivership

55. Plaintiff incorporates and realleges the foregoing paragraphs as if fully set forth herein.

56. The Deeds of Trust give Plaintiff, in effect, a security interest in all of the Collateral described therein, including certain real estate and all Personal Property (both tangible and intangible) owned by Northside.

57. The Deeds of Trust also entitle Plaintiff to the appointment of a receiver over all or any part of the Collateral secured thereby, with the power to, *inter alia*, protect and preserve such Collateral.

58. In addition, because Northside has failed to provide a detailed scheduled of the identity and existence of all of the Collateral, and has thus far failed to deliver such Collateral to Plaintiff, Plaintiff is unable to take actions on its own behalf to protect and preserve such Collateral.

59. Accordingly, a receiver is necessary to keep, preserve and protect the Collateral pending resolution of this matter.

WHEREFORE, Plaintiff Titan Fish Two, LLC prays that the Court appoint a receiver to be designated by Plaintiff to operate and manage the Collateral with the usual powers and duties of a receiver, award the reasonable attorneys' fees and expenses that Plaintiff has incurred and will incur to protect its rights under the Notes and Deeds of Trust, and award all such other relief as the Court deems just and proper.

Respectfully submitted,

LEWIS RICE LLC

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