

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH) CAUSE NO. 82D05-1710-MF-005520

U.S. Bank National Association, as Trustee, for the)
benefit of the holders of COMM 2014-CCRE17)
Mortgage Trust Commercial Mortgage Pass-)
Through Certificates,) **MOTION FOR IMMEDIATE**
) **APPOINTMENT OF RECEIVER**
Plaintiff,) **AND REQUEST EXPEDITED**
vs.) **HEARING**
)
Court Building Development, LLC, an Indiana)
limited liability company; Hulman Building)
Development, LLC, an Indiana limited liability)
company; Fendrich Plaza Development, LLC, an)
Indiana limited liability company; Kunkel Square)
LLC, an Indiana limited liability company; First)
Security Bank of Owensboro; T2 McCurdy, LLC;)
Arbor Realty Collateralized Loan Obligation 2013-)
1 Ltd.; The PrivateBank; First Financial Bank, NA;)
Alpha Mechanical Service, Inc., a Kentucky)
corporation)
)
Defendants.)

MOTION FOR IMMEDIATE APPOINTMENT OF RECEIVER AND
REQUEST FOR EXPEDITED HEARING

U.S. Bank National Association, as Trustee, for the benefit of the holders of COMM 2014-CCRE17 Mortgage Trust Commercial Mortgage Pass-Through Certificates ("Plaintiff"), by and through Midland Loan Service, a division of PNC Bank, National Association, acting solely in its capacity as Special Servicer, by and through its undersigned counsel, files this Motion for Immediate Appointment of Receiver and Request for Expedited Hearing ("Motion"), and moves the Court for an order appointing a receiver over property in Evansville, Indiana, at the following addresses (collectively, the "Real Estate"):

329-331 Main Street, Evansville, Indiana 47708;

100 E. Sycamore Street, Evansville, Indiana 47708;

15 John Street, Evansville, Indiana 47708;
122-123 N.W. Fourth Street, Evansville, Indiana 47708;
109 N.W. Third Street, Evansville, Indiana 47708; and
20 N.W. Fourth Street, Evansville, Indiana 47708.

Defendants Kunkel Square, LLC (“Kunkel”), Fendrich Plaza Development, LLC (“Fendrich”), Court Building Development, LLC (“CBD”), and Hulman Building Development, LLC (“Hulman”, together with Kunkel, Fendrich, and CBD, the “Defendants”), are the fee owners of the Real Estate, as more particularly set forth in the Complaint for Judgment and Foreclosure of Commercial Mortgages and Security Interest (“Complaint”) filed contemporaneously with this Motion.

Capitalized terms used but not otherwise defined in this Motion shall have the same meanings assigned to such terms in the Complaint.

In support of this Motion and pursuant to Rule 43(B) of the Indiana Rules of Trial Procedure, the Plaintiff incorporates by reference: (A) the Complaint, including all Exhibits attached thereto; and (B) the Affidavit in Support of Request for Immediate Appointment of a Receiver (the “Affidavit”), which is attached hereto as **Exhibit A**, and respectfully states as follows:

A. Request for Appointment of Receiver With Authority to Sell Real Estate.

1. Plaintiff is the holder of a first mortgage lien against the Real Estate and all Personal Property (collectively, the “Property”), which first and senior lien secures the indebtedness due and owing from Defendants to Plaintiff as more particularly described in the Complaint. (*See* all Exhibits attached to the Complaint; *see also* ¶ 4 & 7 of the Affidavit.)

2. Indiana statutory law requires the appointment of a receiver in a foreclosure action once the general conditions of Indiana Code (“I.C.”) Subsection 32-30-5-1(4), and one of the six conditions in Subsections 32-30-5-1(4)(A)-(F), are satisfied.

3. I.C. § 32-30-5-1(4) states in relevant part:

“(4) . . . upon motion by the mortgagee, the court **shall** appoint a receiver if, at the time the motion is filed, the property is not occupied by the owner as the owner’s principal residence and:

(A) it appears that the property is in danger of being lost, removed, or materially injured;

(B) it appears that the property may not be sufficient to discharge the mortgaged debt;

(C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

(D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession, of all or a portion of the property;

(E) the owner of the property is not personally liable for the debt secured by the mortgage; or

(F) all or any portion of the property is being, or is intended to be, leased for any purpose.”

(See IND. CODE § 32-30-5-1(4)(A), (B), (C) and (F) (emphasis added).)

4. The appointment of a receiver under I.C. § 32-30-5-1(4) is mandatory once the requisite statutory conditions are met. *Farver v. DeKalb County Farm Bureau*, 576 N.E.2d 1361, 1363 (Ind. Ct. App. 1991) (finding the appointment of a receiver mandatory where the owners did not occupy the real estate in question as their principal residence and the owners agreed to the appointment of a receiver in two separate mortgages on part of the real estate in question); *Keybank Nat’l Ass’n v. Michael*, 737 N.E.2d 834, 847 (Ind. Ct. App. 2000) (holding the appointment of a receiver mandatory where the property in

question was not occupied as a residence and, within the loan workout agreement, the Defendant specifically agreed to the appointment of a receiver in the event of a default).

5. The appointment of a receiver over the Property is authorized under I.C. § 32-30-5-1(4) for the following reasons:

a. Plaintiff holds a valid, superior, and first lien against the Real Estate, together with all rents and profits derived from the Property, pursuant to the terms of the Mortgages and Rent Assignments. (*See* all Exhibits of the Complaint; *see also* ¶¶ 4, 7 & 8 of the Affidavit.)

b. No part of the Real Estate is occupied by Defendants as a principal residence. (*See* ¶ 9 of the Affidavit.)

c. Defendants agreed to the appointment of a receiver upon an event of default. *See* §§10(a)(vii) and 28(d) of the Mortgages, attached to the Complaint as Exhibits C, E, G, and I.

d. The Real Estate is intended to be leased for commercial purposes. (*See* ¶ 10 of the Affidavit.)

6. The Mortgages provides, without limitation, as follows:

ARTICLE XI RIGHTS AND REMEDIES

10. Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions....:

...

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the

solvency of the Mortgagor or of any person, firm or other entity liable for the payment of the Debt;

(See ¶ 10(a)(vii) of the Mortgages.)

28. (d) In connection with the rights of Mortgagee pursuant to Section 10(a)(vii) hereof, **Mortgagor hereby consents to the appointment of a receiver by Mortgagee** pursuant to Mortgagee's exercise of its remedies hereunder and under the other Loan Documents. (emphasis added)

(See ¶28(d) of the Mortgages)

7. Defendants have defaulted under the terms of the Note by failing to pay the Note as and when due and for permitting a mechanic's lien to be filed against the Hulman Property, resulting in a lawsuit that is pending in Vanderburgh County Superior Court. (See ¶ 11 of the Affidavit.)

8. By reason of the foregoing, the appointment of a receiver is authorized and mandatory, and a receiver should be appointed over the Property pursuant to I.C. §§ 32-30-5-1(4)(C), (E) and (F).

9. Pursuant to I.C. § 32-30-5-7(5), a receiver may sell property as authorized by the Court; and the Plaintiff seeks to have the Court appoint a receiver with the ability to market and sell the Property upon terms acceptable to Plaintiff and as approved by this Court and in accordance with applicable law.

10. Notwithstanding the preceding request, the Plaintiff reserves its right to have the Property sold in a foreclosure sale in accordance with applicable law.

11. Plaintiff proposes that the Court appoint Trident Pacific Real Estate Group, Inc. (by its agent Gregg Williams) ("Trident") as receiver over the Property. Trident has extensive experience with similar properties. Additional information on Trident is attached as **Exhibit B**. Trident will engage Summit Property Management ("Summit") as its local property manager. Summit is located in Evansville, Indiana, within blocks of the Property

and is very familiar with the Property and is an experienced local property manager. Additional information on Summit is attached as **Exhibit C**.

12. A proposed Order Appointing Receiver is filed contemporaneously with this Motion.

B. Request for Expedited Hearing.

1. Plaintiff requests that if the Court determines that a hearing must be scheduled prior to granting the relief sought in this Motion, that such hearing be scheduled for as immediate of a date as the Court's calendar will allow.

2. Plaintiff estimates that a hearing on this Motion would take no more than one hour.

WHEREFORE, Plaintiff respectfully requests that the Court appoint Trident as the receiver over the Property in accordance with the requests set forth in this Motion, and for all additional just and appropriate relief.

Respectfully submitted,

PLUNKETT COONEY, P.C.

/s/ Pamela A. Paige

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