



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION FOR...
May 28, 2021 13:38

By: TAMI HART KIRBY 0078473

Confirmation Nbr. 2265199

U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE

CV 21 948144

vs.

AIRPORT GARDENS HOTEL, LTD, ET AL

Judge: KELLY ANN GALLAGHER

Pages Filed: 28

payment of all necessary charges and expenses, and take other appropriate action as more specifically described in the attached Memorandum and proposed form of Order Appointing Receiver.

Defendant Airport Gardens Hotel, Ltd. (“**Borrower**”) is in default of its obligations under Sections 10.1 of the Loan Agreement, Article 2 of the Note and Article 7 of the Mortgage. As a result of the default, Lender is entitled to foreclose the Project. Further, Lender is entitled to the appointment of a receiver pursuant to the terms of the Mortgage attached to the Complaint as Exhibit 3, the terms of the Assignment of Rents attached to the Complaint as Exhibit 6, and R.C. 2735.01. A need exists to consider this Motion so that a receiver may be appointed as soon as possible to safeguard and protect the Project. A Memorandum is attached hereto, a proposed form of Order Appointing Receiver attached hereto as **Exhibit 1**, and the affidavit of Carly Beckman on behalf of the Plaintiff as **Exhibit 2**.

Respectfully submitted:

/s/ Tami Hart Kirby

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MEMORANDUM IN SUPPORT

I. INTRODUCTION.

Plaintiff U.S. Bank National Association, as Trustee, on behalf of the Registered holders of GS Mortgage Securities Corporation II, Commercial Mortgage Pass-Through Certificates, Series 2014-GC26, acting by and through LNR Partners, LLC, its special servicer (“**Plaintiff**” or “**Lender**”) is entitled to the appointment of a receiver to safeguard the collection and enforcement of a certain promissory note in favor of Lender in the original principal amount of \$14,500,000.00 (the “**Note**”) and to preserve and protect the Project.¹

Defendant Airport Gardens Hotel, Ltd. (“**Borrower**”) has breached its obligations pursuant to the terms of the Loan Agreement, Note, Mortgage, and corresponding Loan Documents. Thus, Lender is entitled to foreclose the Project, and to the appointment of a receiver to facilitate the collection of all rents, income, issues and profits from the real and personal property located at 4900 Emerald Court, Cleveland, Ohio 44135, being Parcel No. 029-05-004, which is commonly known as the Hilton Garden Inn Cleveland Airport, as more fully described in the Mortgage (collectively, the “**Project**”). The Project consists of a hotel.

The Mortgage contains provisions entitling Lender, upon an Event of Default, to the appointment of a receiver, to take charge of the Project, to collect the rents and make payment towards obligations owed by Borrower to Lender, and to take certain other actions. Therefore, the Lender is absolutely entitled to the appointment of a receiver pursuant to R.C. 2735.01(A)(2). Additionally, the appointment of a receiver is also warranted pursuant to the other provisions of R.C. 2735.01, *et seq.*

¹ Capitalized terms not defined herein shall have the meanings ascribed in Plaintiff's Complaint for Foreclosure and Other Relief (the “**Complaint**”).

Accordingly, this Court should authorize the appointment of a receiver on the terms and conditions provided herein in order to safeguard and preserve the Project and ensure the proper collection and application of rents and the collection of other collateral of Lender, to be used to satisfy the ongoing obligations owed to Lender.

II. FACTUAL BACKGROUND.

On or about October 1, 2014, Borrower executed and delivered the Note to the original lender Citigroup Global Markets Realty Corp. (the “**Original Lender**”). Plaintiff is the current holder of the Note. The Original Lender assigned all of its interests in the Loan Documents to Lender. Copies of the applicable assignment documents are hereafter further described and attached to Plaintiff’s Complaint. LNR Partners, LLC has been appointed special servicer by Lender.

Borrower has defaulted on the Loan Agreement and the Note by, among other things, failing to pay all amounts when and as due, as a result of which Plaintiff has hereby accelerated the maturity of the Note and demanded payment in full thereon. (Pl.’s Compl. at ¶¶ 8 - 9.) Pursuant to Section 8.1(g) of the Mortgage, upon an Event of Default by Borrower, Lender has the right to have a receiver appointed over the Project. Therefore, pursuant to R.C. 2735.01(A)(2), Lender is entitled to the appointment of a receiver because this is an action for the foreclosure and sale of the Project, the conditions of the Mortgage have not been performed, and the Borrower acquiesced in writing to the appointment of a receiver. Furthermore, pursuant to R.C. 2735.01(A)(3), Lender is entitled to the appointment of a receiver to enforce its contractual assignment of rents and leases set forth in the Mortgage and the Assignment of Rents. Lender is also entitled to the appointment of a receiver pursuant to R.C. 2735.01(A)(7) on the basis of equity.

III. LAW AND ARGUMENT.

Pursuant to R.C. 2735.01(A)(2), this Court must enforce the contractual provisions – as agreed to by Borrower – which entitle Plaintiff to the appointment of a receiver over the Project upon an event of default. In addition to the statutory provisions set forth in R.C. 2735.01(A)(2) – (3), Ohio courts have routinely held that a provision in a mortgage agreement whereby the mortgagor waives his entitlement to challenge the appointment of a receiver for the mortgaged property is valid and enforceable. *See e.g., Metropolitan Life Ins. Co. v. Triskett Illinois, Inc.*, 97 Ohio App.3d 228, 236 (1st Dist. 1994); *Manufacturers Life Ins. Co. v. Patterson*, 51 Ohio App.3d 99, 101 (8th Dist. 1988).

Moreover, where a contract provides for the right to a receiver, the procedural requirements of R.C. 2735.01 *et seq.* are waived. R.C. 2735.01(A)(2) – (3); *See Metropolitan Life Ins. Co.*, 97 Ohio App.3d at 236; *Manufacturers Life*, 51 Ohio App.3d at 100-101 (determining that a provision in the mortgage whereby the mortgagor consented to the appointment of a receiver for the mortgaged property was valid and enforceable); *Cypress Sav. Assn. v. Richfield Assoc.*, 1989 Ohio App. LEXIS, *3 (9th Dist. 1989) (holding that the “procedural requirements of Ohio Rev. Code §§ 2735.01 - 2735.06 may be contractually waived”); *Metropolitan Sav. Bank v. Papadelis*, 1995 Ohio App. LEXIS 4038 at *8 (9th Dist. 1995).

In the present case, the Mortgage and the Assignment of Rents entitle Lender to the appointment of a receiver upon an event of default. (Pl.’s Compl. at Ex. 3, § 8.1(g); Ex. 6, § 3.1.) Specifically, the Mortgage provides that the Lender has the right to have a receiver appointed over the Project without notice and without regard to the solvency of the Borrower or the adequacy of security. (Id.) In accordance with R.C. 2735.01(A)(2), this Court should enforce the parties’ contractual agreement to the appointment of a receiver over the Project. Furthermore, pursuant to

R.C. 2735.01(A)(3), Lender is entitled to the appointment of a receiver to enforce its contractual assignment of rents and leases as set forth in the Mortgage and the Assignment of Rents. Hence, the Court should appoint a receiver over the Project due to the event of default by Borrower, and Plaintiff's contractual and statutory entitlement to the appointment of a receiver.

Although Plaintiff's statutory right to a receiver under R.C. 2735.01(A)(2)- (3) is beyond dispute, Lender is also entitled to the appointment of a receiver pursuant to R.C. 2735.01(A)(7). R.C. 2735.01(A)(7) provides that a receiver may also be appointed in other cases beyond those enumerated in the statute, "in which receivers have been appointed by the usages of equity." Borrower has failed to comply with the Loan Documents. Given the risk of dissipation of assets or damage to Lender, equity supports the appointment of a receiver. Specifically, the conditions of the Mortgage have been broken. Borrower has failed to comply with its contractual obligations to Lender. Without a receiver, Plaintiff is without a meaningful remedy to realize upon the collateral that is security for its indebtedness. Given the risk of damage, destruction and loss to the Project, appointment of a receiver is necessary to take control of the personal and real property.

IV. APPOINTMENT OF TOM MOORE AS RECEIVER/PROPOSED ORDER.

A. Qualifications of the Proposed Receiver.

Lender respectfully requests that the Court appoint Tom Moore ("**Receiver**"), Vice President of Janus Hotel Management Services, LLC ("**Janus**") as receiver for this matter. Mr. Moore has previously served as a receiver in the Ohio Courts of Common Pleas, among other jurisdictions, Mr. Moore and Janus have extensive experience dealing with the operation, management, and control of commercial real estate, in particular hotels. The experience and skills of Mr. Moore and the resources afforded by Janus should enable Mr. Moore to manage and

operate the Project in a cost-effective fashion that is in the best interests of Lender, other creditors of Borrower, and the receivership estate. Mr. Moore has been contacted regarding the receivership addressed herein and is willing to serve as receiver.

Lender requests that the bond requirement be set at \$50,000.00. Therefore, Lender respectfully requests that the receiver appointed by this Court and Janus together receive a fee equal to the greater of three percent (3%) of gross revenues or \$5,000.00 per month, with an additional \$1,000 for accounting services. The qualifications of Mr. Moore are attached hereto as **Exhibit 3**, and are incorporated herein by this reference.

B. Proposed Order Appointing Receiver.

Attached hereto as Exhibit 1 and incorporated herein is a proposed form of Order Appointing Receiver (the “**Proposed Order**”) which provides for the appointment of Mr. Moore as receiver and also provides for the retention of Janus Hotel Management Services, LLC as the property management company. The Proposed Order also contains provisions regarding the powers and authority of the receiver and concerns other aspects of the receivership. All of the provisions of the Proposed Order are hereby incorporated herein as part of the relief requested pursuant to this Motion. Lender respectfully requests that the Court adopt and incorporate all of the provisions of the Proposed Order in its order appointing any receiver in this case.

V. RESERVATION OF RIGHTS.

Lender reserves all rights under the loan documents with respect to the Project, and as to any Defendants, and to take any other actions to protect the rights and interests of Lender in the Project and other collateral, and to recover obligations owed by Borrower to Lender.

VI. CONCLUSION.

For the foregoing reasons, Lender respectfully requests that the Court: (i) enter the proposed form of Order Appointing Receiver, and (ii) grant such other and further relief as may be just and proper.

Respectfully submitted:

/s/ Tami Hart Kirby

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

On the date of filing, a true copy of *Plaintiff's Motion for the Appointment of a Receiver* was served in accordance with Civ. R. 5 on the following:

Airport Gardens Hotel, Ltd.
835 Sharon Drive, Suite 400
Westlake, Ohio 44145

Airport Gardens Hotel, Ltd.
c/o David Crisafi, Statutory Agent
1109071 Old Detroit Road
Suite 100 A, Lower Level
Rocky River, OH 44116

DHospitality
c/o mail Center
9450 SW Gemini Drive #7790
Beaverton, Oregon 97008-7105

DHospitality
1819 Walcutt Road
Unit 1
Columbus, Ohio 43228

MKS Hotel Development, Ltd.
2935 Kenny Road, Suite 255
Columbus, Ohio 43221

The Sherwin Williams Company
1321 N. Industrial Parkway #1000
Brunswick, Ohio 44212

The Sherwin Williams Company
c/o DeHaan & Bach, L.P.A.
25 Whitney Drive, Suite 106
Milford, Ohio 45150

CT Corporation System, as Representative
330 N. Brand Blvd., Suite 700
Glendale, California 91203
Attn: SPRS

W. Christopher Murray II, Treasurer
of Cuyahoga County, Ohio
2079 East 9th Street
Cleveland, Ohio 44115

/s/ Tami Hart Kirby
Tami Hart Kirby, Esq. (0078473)

IN THE CUYAHOGA COUNTY, OHIO
COURT OF COMMON PLEAS

U.S. BANK, NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE BENEFIT OF THE
REGISTERED HOLDERS OF GS MORTGAGE
SECURITIES CORPORATION II,
COMMERCIAL MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2014-
GC26, by and through its special servicer, LNR
Partners, LLC,

CASE NO.:

JUDGE

Plaintiff,

v.

AIRPORT GARDENS HOTEL, LTD., *et al.*

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR APPOINTMENT OF A RECEIVER**

This cause came on to be heard upon the Motion (the "**Motion**") of Plaintiff U.S. Bank National Association, as Trustee, on behalf of the Registered holders of GS Mortgage Securities Corporation II, Commercial Mortgage Pass-Through Certificates, Series 2014-GC26, acting by and through LNR Partners, LLC, its special servicer ("**Plaintiff**" or "**Lender**"), pursuant to Ohio Revised Code § 2735.01, *et seq.* and the Mortgage (as that term is defined below) for the appointment of a receiver herein to take charge of, preserve, manage, maintain, protect and collect the rents, profits and revenues from the Project, as that term is defined in the Complaint filed herein (the "**Complaint**"), which is an action to foreclose a commercial real estate mortgage. Upon consideration of the Motion, the Court, being duly advised in the premises, and for good cause shown hereby grants the Motion.

IT IS THEREFORE ORDERED that Tom Moore (“**Receiver**”), Vice President of Janus Hotel Management Services, LLC (“**Janus**”) be, and hereby is, appointed Receiver herein over certain real estate and personal property associated therewith, more specifically:

a. That certain land and improvements located at 4900 Emerald Court, Cleveland, Ohio 44135, being Parcel No. 029-05-004, which is a hotel commonly known as the Hilton Garden Inn Cleveland Airport, as more fully described in the Mortgage attached as Exhibit 3 to Plaintiff’s Complaint herein (the “**Real Estate**”); and

b. Any Personal Property (as that term is defined in the Complaint) associated with the Real Estate (the Real Estate and the Personal Property together are hereinafter sometimes collectively the “**Project**”).

IT IS FURTHER ORDERED that the Receiver is authorized to engage Janus Hotel Management Services, LLC to manage the Project.

As of the Effective Date,¹ the Receiver will have the full power and authority to: (1) take immediate possession of, manage, maintain, preserve, protect and operate, as well as to demand and collect the revenues and rents from, the Project, as more fully described the Mortgage, (2) maintain the Project and make any necessary repairs thereto, (3) maintain adequate security protection for the Project, (4) purchase necessary materials and supplies to continue operation of the Project, and all other property particularly defined and described in the Mortgage, (5) enter into lease agreements, lease modification agreements and lease extension agreements for the Project, and (6) take the other actions described in Section 2735.04 of the Ohio Revised Code.

¹ “Effective Date” shall be upon the Receiver posting the bond and taking the Receiver’s oath required herein.

More specifically, the Receiver shall have the right to:

(a) take exclusive custody, control and possession of the Project, enter and inspect the Project, and manage and operate the Project;

(b) preserve and hold the Project and perform all acts necessary to preserve the value of the Project to prevent any loss, damage or injury to it;

(c) initiate, defend, prosecute, compromise, adjust, intervene in, dispose of or become a party to any actions or proceedings in state, federal or foreign jurisdictions necessary to preserve and protect the Project and carry out the Receiver's duties pursuant to this Order;

(d) with the prior written consent of Lender and approval of this Court, select, engage and employ attorneys, brokers and other professionals as the Receiver deems advisable or necessary in the performance of his duties;

(e) issue subpoenas to obtain records pertaining to the Project and to conduct discovery in this action;

(f) open and use one or more bank accounts as designated depositories for funds used for the deposit of collected receipts and other revenues generated by or related to the Project;

(g) except to the extent the Borrower has already turned over to Lender, take possession and control of the funds, including tenant security deposits: (i) in all Project operating accounts in the name of Borrower or any variation thereof, (ii) arising from the operation of the Project in the possession or control of Borrower or its management company, or (iii) in any other bank accounts containing funds associated with the Project, and in the event Borrower does not turn over such funds to the Receiver immediately, all such banks at which the account(s) is/are located are hereby ordered and directed to immediately turnover all funds constituting revenues from the Project in

such account(s) and all documents related to such account(s), to the extent that they pertain to the Project, to the Receiver or to the Receiver's representative;

(h) endorse as necessary, present for payment and/or collect any check, money order, credit card account or other form of payment payable to Borrower constituting revenues from the Project;

(i) collect, hold and preserve all rents, revenues, income, profits and other benefits of and generated by the Project (collectively, the "**Revenues of the Project**"), whether arising before or after entry of this Order;

(j) enter into such contracts as may be necessary to operate, maintain and preserve the Project, including without limitation advertising agreements and other agreements relating to the Project;

(k) pay from the Revenues of the Project the ordinary and necessary expenses of owning, operating and maintaining the Project, as well as emergency expenses and expenses related to necessary major repairs (collectively, the "**Expenses of the Project**" and singularly an "**Expense of the Project**") incurred from and after the date of the Receiver's appointment pursuant to a budget approved by Plaintiff (the "**Approved Budget**"), provided, however, that notwithstanding anything to the contrary herein, the Receiver may spend no more than \$5,000.00 per month on expenditures not set forth in the Approved Budget without the prior written consent of Plaintiff, unless the Receiver reasonably concludes that the need for any such expenditures is an emergency;

(l) maintain and control the Project as necessary to prevent diminution of the Project's value, including but not limited to the maintenance of licenses, certifications and permits, the payment of real estate taxes, personal property taxes and any other taxes or assessments against

the Project, the payment of premiums in connection with the casualty or other insurance policies relating to the Project (collectively the “**Policies**”), the payment of utility charges and other Expenses of the Project incurred from and after the date of the Receiver’s appointment, and the payment of utility charges for services provided to Borrower prior to the Effective Date by a public utility regulated by the Public Utilities Commission of Ohio pursuant to a filed and approved tariff;

(m) add the Receiver and Plaintiff as additional insureds, lender loss payee and loss payees, as applicable, under the Policies, and, with the prior written approval of Plaintiff, purchase and/or substitute any such other insurance as may be reasonably necessary to provide the insurance coverage required under the terms of the Mortgage, naming Plaintiff as an additional insured and lender loss payee, as applicable, under any such insurance policies;

(n) take immediate possession and control of all of Borrower’s right, title and interest in and to all proceeds from any claims made or to be made under any of the Policies, as well as the right to act on behalf of the named insured under the Policies, and to settle and compromise any such claims made or to be made with respect thereto;

(o) with the prior written consent of Plaintiff, pay such other Expenses of the Project as may have been incurred prior to the date of the Receiver’s appointment as the Receiver deems reasonably necessary and appropriate to insure the continued efficient operation of the Project, but except for the foregoing and for pre-receivership expenses the Receiver is required by law to pay, the Receiver need not pay expenses incurred prior to the date of the Receiver’s appointment;

(p) with the prior written consent of Plaintiff and approval of the Court, borrow funds and apply for the issuance of Receiver Certificates if reasonably necessary for the operation and maintenance of the Project;

(q) pay over to Plaintiff all Revenues of the Project not used by the Receiver to pay Expenses of the Project in accordance with this Order, excepting reserves included in the Approved Budget to maintain, protect, preserve, manage and operate the Project (collectively the **“Reserves”**);

(r) comply with all requirements of all governmental authorities relating to the ownership or operation of the Project;

(s) hire on a contract basis personnel necessary to maintain, operate and preserve the Project, provided that Receiver must obtain Plaintiff’s written consent before hiring any affiliates of Receiver, and retain, hire and terminate management and other personnel;

(t) subject to paragraph k above, contract for and obtain such services (including utilities), supplies, equipment, inventory and goods as are reasonably necessary to operate, preserve and protect the Project or for the continued operation of the Project. The Receiver shall also have the authority to terminate any contract Receiver determines in good faith not be in the best interest of the Project;

(u) use Borrower’s tax ID number(s) for any purpose consistent with this Order but only in accordance with applicable law;

(v) obtain a surety bond (interest or noninterest bearing) for any amounts in any bank account(s) in excess of the FDIC insurance limit; and

(w) apply to this Court for such additional powers and authority which such Receiver may feel necessary for the operation and protection of the Project.

IT IS FURTHER ORDERED that the Receiver may negotiate with any and all persons concerning the use and/or leasing of the Project or any portion thereof or to terminate any lease Receiver determines in good faith not be in the best interest of the Project, and may, with the prior

written consent of Plaintiff, enter into any lease agreement, lease modification agreement or lease extension agreement in his capacity as Receiver. The Receiver may, in connection with any such use or lease of the whole or a portion of the Project, pay a reasonable commission of the gross lease price, in an amount approved in advance by Plaintiff in writing.

IT IS FURTHER ORDERED that Borrower provides in timely fashion to the Receiver any information in its possession or control needed to file the tax returns referenced below, together with any and all financial and other information deemed necessary by the Receiver for the performance of his duties herein, and that all persons having assets, records, books and documents pertaining to the Project be, and they are hereby, ORDERED to immediately deliver the same to the Receiver, including without limitation: (1) a current rent roll containing tenant contact information, together with occupant ledgers and a current aged account receivable/delinquency report, (2) an aged listing of all trade payables and other payables, (3) except to the extent the Borrower has already turned over to Lender, all rents, security deposits, receipts and income of the Project (including petty cash, if any), and notwithstanding anything to the contrary herein, the Receiver shall not be required to return any security deposit not turned over to the Receiver, unless ordered by the Court or approved in writing by the Plaintiff, (4) all tax assessments, bills and liens related to the Project, (5) all licenses pertaining to the Project, including governmental permits and approvals and liquor licenses and related permits and approvals, and documents pertaining to same, (6) all Policies pertaining to the Project, (7) all leases, subleases, royalty agreements, trademarks, telephone exchanges, licenses, assignments and other agreements, and all other documents, communications and correspondence relating thereto, including those relating to pending leases or renewals, (8) all documents pertaining to past, current or future construction with respect to any part of the Project, including construction contracts, drawings and plans, (9) all documents

pertaining to safety and environmental laws, regardless whether required to be kept under applicable law, together with all reports, surveys, inspections, orders, citations, warnings and notices regarding the same, (10) all existing or pending service contracts, (11) all documents identifying and summarizing all pending litigation related to the Project and/or by or against Borrower impacting the Project (excluding this action), (12) all on-site employee payroll records, employee files and employment applications, (13) all documents, books, records and computer files, and all passwords needed to access Borrower's e-mail accounts and all other records concerning the income and operation and management of the Project, (14) a current list of utilities and utility accounts, (15) a current inventory of all equipment, furniture, vehicles and supplies, (16) all technical manuals for all systems, together with operating procedures, (17) year-to-date 2020 operating statements, (18) Borrower's 2019 operating and capital improvement budgets, both in paper and electronic form, (19) all certificates of occupancy, (20) all tenant and vendor insurance certificates, (21) all computer equipment, software, management files and passwords needed to access all software and computer files maintained at any on-site management office(s), together with all off-site financial records, (22) all marketing and advertising material used to market the Project, and (23) all keys and security codes to the Project.

IT IS FURTHER ORDERED that Receiver shall have the right to continue to operate under all existing licenses, including any such liquor license and related permit and/or approval issued with respect to the Project by the Ohio Department of Commerce, Division of Liquor Control; provided; however, that Receiver also has the obligation to comply after the date of this Order with all applicable laws with respect to such license, including the transfer of the license and related permit into the name of the Receiver.

IT IS FURTHER ORDERED that the Receiver is authorized to enter into a short-term license (or franchise) agreement, or to operate the Project under an assignment of any existing license agreement with the existing licensor during the pendency of the receivership, under terms satisfactory to the Receiver and Lender, for the operation of the Project. Notwithstanding any provision to the contrary, the Receiver is authorized to pay license and advertising fees as part of the operation of the Project. The Receiver is also authorized to communicate, negotiate, or otherwise deal with any licensor with regard to any Borrower performance under any applicable license agreement, including but not limited to, curing any possible default or renewing such agreement. The Receiver or the Receiver's property manager shall have the option to cure any existing defaults under the governing license agreement, but shall not have the obligation to do so. The Receiver shall not be obligated to pay termination fees or liquidated damages under any governing license agreement.

IT IS FURTHER ORDERED that Borrower provides to the Receiver, within five days of service of this Order, a written summary of the current status of all insurance and taxes, and that Borrower not cancel any existing insurance coverage with respect to the Project or any portion of the Project for at least 90 days after the Effective Date without the Receiver's express written consent, unless Borrower has replaced that coverage with equal or greater coverage from insurers acceptable to the Receiver.

IT IS FURTHER ORDERED that the Receiver and Janus be compensated for their services each month, with the Receiver and Janus together receiving a fee equal to the greater of three percent (3%) of gross revenues or \$5,000.00 per month, with an additional \$1,000 for accounting services. For purposes of clarification, there will not be two separate fees paid to the Receiver and Janus.

IT IS FURTHER ORDERED that by making this request for the appointment of a receiver, the Plaintiff does not render itself liable for the costs and expenses of the Receiver or Borrower, or any other costs or expenses, nor is it required to advance funds to the Receiver to meet working capital needs of the Project. Further, the Plaintiff may, in its sole discretion and without further order of this Court, use any of the funds currently in its possession, or which are remitted to it by the Receiver during the course of this receivership in any manner it determines is necessary, including for the payment of its fees and expenses (including its counsel's fees and expenses) or interest or principal payments on the Note. If there are not sufficient revenues to pay the Receiver's compensation, then any funds advanced by Plaintiff for that purpose shall be treated as part of the indebtedness secured by the Mortgage.

IT IS FURTHER ORDERED that each month, the Receiver shall forward to Lender the Net Proceeds realized by the Receiver from the Project for the immediately preceding calendar month. "**Net Proceeds**" means gross receipts, from whatever source, less the Reserves, expenses and other items authorized herein or by the Court to be paid. Plaintiff shall credit such Net Proceeds received by it to costs and expenses permitted to be recovered by it and to the indebtedness evidenced by the Note (as that term is defined in the Complaint herein) in any order it elects in its sole discretion.

IT IS FURTHER ORDERED that, in accordance with Local Rule 26.0(A), as soon as practical after his appointment, and not more than thirty (30) days after taking possession of the Project, the Receiver shall file an inventory with the Court.

IT IS FURTHER ORDERED that, in accordance with Local Rule 26.0(B), the Receiver shall file with the Court for approval no less frequently than once every calendar quarter, by the

20th day after the end of each such quarter, an accounting of his receipts and expenditures as Receiver, including any fees paid to the Receiver per this Order.

IT IS FURTHER ORDERED that the Receiver shall provide a monthly report to the Plaintiff within 20 days after the last day of the first month of the entry of this Order and by the 20th of each month thereafter, consisting of the following: (i) a monthly and year-to-date operating statement with detailed income and expense information, (ii) a rent roll for the Project dated as of the end of each such month, stating the name of each tenant, the portion of the premises leased, the rent and other income paid by each such tenant and the term of the lease, (iii) a current aged delinquency report listing each tenant and the status of any delinquent rent, (iv) a leasing status report listing any active new leasing or lease renewal prospects along with the respective lease terms being discussed, and (v) a bank reconciliation to insure all the sources and uses of cash are included on the monthly operating statement.

IT IS FURTHER ORDERED that because this receivership relates to a mortgage foreclosure action of a specific real estate Project and is not a general receivership, the Receiver need not notify known creditors of Borrower of the receivership or perform any claims administration tasks (such as soliciting proofs of claim from potential or known creditors, determining the identity and priority of any creditors' claims, and calculating any pro-rata distribution among creditors).

IT IS FURTHER ORDERED that the Receiver and his employees, agents, affiliates, and attorneys are entitled to rely on all outstanding rules of law and Court orders and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. No person or entity shall file suit against the Receiver, or take other action against the Receiver, without an Order of this Court permitting the suit or action; provided, however, that no prior Court

Order is required to file a motion in this action to enforce or interpret the provisions of this Order or any other Order of this Court in this action. In no event shall the Receiver or his employees, agents, affiliates, and attorneys be liable to any entity for their good faith compliance with their duties and responsibilities as Receiver or as agent for the Receiver, nor shall the Receiver or his agents be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith or gross negligence, or in reckless disregard of their duties. The Receiver shall have no liability for any existing environmental issues at the Project. The Receiver and his employees, agents, affiliates, and attorneys shall be indemnified and held harmless out of the receivership assets for all costs and expenses, including reasonable attorneys' fees, incurred as a result of such actions, except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith or gross negligence, or in reckless disregard of their duties.

IT IS FURTHER ORDERED that although the Receiver shall have possession and control of the Project, the Receiver shall not take title to the Project. Title to the Project shall remain in the name of Borrower until foreclosed on by Plaintiff, in which case title to the Project shall remain in the name of Borrower until confirmation of the Sheriff's sale and the delivery of the deed from the Sheriff.

IT IS FURTHER ORDERED that the Receiver shall prepare and file any tax returns stemming from the Project and the operation of the Project as may be required by law, but that the Receiver shall have no responsibility to prepare or file for Borrower or its affiliates any state or federal income or other tax returns (including income, personal property, commercial activity, gross receipts, sales and use, or other tax returns), other than to provide Borrower with information

in the Receiver's possession that may be necessary for Borrower to prepare and file such tax returns.

IT IS FURTHER ORDERED that Borrower has neither possession nor control of any rights to income derived from the Project, and that all persons be, and they are hereby, enjoined from interfering with the Receiver in the performance of the duties imposed herein.

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

IT IS FURTHER ORDERED that the Receiver shall furnish bond, with surety to be approved by the Clerk of this Court, in the sum of \$50,000.00, conditioned according to law.

IT IS SO ORDERED.

Judge

SUBMITTED BY:

/s/ Tami Hart Kirby

Tami Hart Kirby (0078473)

Emma M. Walton (0100024)

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Attorneys for Plaintiff

IN THE CUYAHOGA COUNTY, OHIO
COURT OF COMMON PLEAS

U.S. BANK, NATIONAL)	CASE NO.:
ASSOCIATION, AS TRUSTEE FOR)	
THE BENEFIT OF THE REGISTERED)	JUDGE
HOLDERS OF GS MORTGAGE)	
SECURITIES CORPORATION II,)	MAGISTRATE
COMMERCIAL MORTGAGE PASS-)	
THROUGH CERTIFICATES, SERIES)	
2014-GC26, by and through its special)	<u>AFFIDAVIT OF CARLY BECKMAN IN</u>
servicer, LNR Partners, LLC,)	<u>SUPPORT OF PLAINTIFF'S MOTION</u>
)	<u>FOR THE APPOINTMENT OF A</u>
Plaintiff,)	<u>RECEIVER</u>
)	
v.)	
)	
AIRPORT GARDENS HOTEL, LTD., et)	
al.)	

Defendants.

Carly Beckman (“**Affiant**”), first being duly sworn, deposes and states:¹

1. She is an Asset Manager of LNR Partners, LLC, which is the special servicer for the loan evidenced by the Note held by Plaintiff U.S. Bank National Association, as Trustee, on behalf of the Registered holders of GS Mortgage Securities Corporation II, Commercial Mortgage Pass-Through Certificates, Series 2014-GC26 (the “**Plaintiff**” or “**Lender**”). She is duly authorized to make this Affidavit, and represents that she has personal knowledge of the matters contained herein.

¹ Capitalized terms not defined herein shall have the meanings set forth in Plaintiff's Complaint.

2. She is familiar with the loan to Airport Gardens Hotel, Ltd. (“**Borrower**”) held by Plaintiff (the “**Loan**”). Her responsibilities include the oversight and servicing of the Loan, and she has personal knowledge of the books and records of LNR Partners, LLC and Plaintiff as they pertain to the Loan. Such books and records are maintained in the ordinary course of business of LNR Partners, LLC and Plaintiff.

3. Plaintiff is the owner and holder of a certain Promissory Note in the original principal amount of \$14,500,000.00 (the “**Note**”) and Mortgage and Security Agreement (the “**Mortgage**”) both of which were executed by Borrower. True copies of the Note and the Mortgage (together with the allonges and assignments) were attached as Exhibits to the Complaint filed in this matter.

4. Borrower has defaulted on its obligations under the Note and Mortgage by failing to make payments when and as due. Plaintiff has notified Borrower of the default and has accelerated the indebtedness evidenced by the Note. The Note remains unpaid in full.

5. There is due and owing from Borrower to Plaintiff on the indebtedness evidenced by the Note as of May 24, 2021 of the principal sum of \$13,282,220.47, together with: interest, late charges, a prepayment premium, attorneys’ fees, and other charges and obligations due pursuant to the Note and other Loan Documents, which obligations continue to accrue, together with interest on the unpaid principal balance of the Note at the default rate of 10.08% per annum, various interest and other amounts paid advanced or otherwise incurred by Plaintiff and not reimbursed by Borrower, a prepayment premium, attorneys’ fees and costs expended, the exact amount to be determined at the time of judgment, amounts that Plaintiff may advance for the preservation and security of the Project, and interest on such advances from the dates made, less

any remaining escrow, reserve, and suspense funds held by Plaintiff pursuant to the Mortgage and other Loan Documents.

6. The Mortgage is a lien encumbering the Project. The Project includes a hotel commonly known as Hilton Garden Inn Cleveland Airport located at 4900 Emerald Court, Cleveland, Ohio 44135, being Parcel No. 029-05-004 as more fully described in the Mortgage (“**Real Estate**”), and Borrower’s interest in the Personal Property associated with the Real Estate (collectively, the “**Project**”).

7. A receiver is necessary to preserve and protect the Project during the pendency of this foreclosure, and particularly, to collect the revenues and profits from the Project so that it is not dissipated while Plaintiff proceeds with the rights and remedies afforded to it under the law.

[Executed Signature Page to Follow]

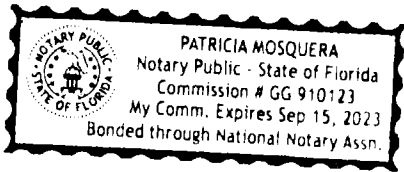
FURTHER AFFIANT SAYETH NAUGHT.



Carly Beckman

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

Sworn to before me and subscribed in my presence this 24th day of May, 2021, by Carly Beckman; such individual is personally known to me or has produced a driver's license as identification.



[NOTARIAL SEAL]

Signature 
Print Name: Patricia Mosquera

NOTARY PUBLIC, State of Florida

Florida Commission No. GG 910123

My Commission Expires Sept. 15, 2023

Responsibilities included dual management of two hotels, directly manage and supervise all operations of a 175 room Holiday Inn Holidome Resort and a 40 room Holiday Inn Express. Directly managed and supervised a staff of 15 managers and 110 hourly associates. The Holiday Inn is a full service Holidome Resort hotel; facilities include a restaurant, sports lounge, health club, indoor and outdoor pools, indoor 18-hole miniature golf, interactive game room and 11, 000 square feet of banquet and meeting space, with combined annual revenue of \$5.1 million dollars. The Holiday Inn Express is a 40 room limited service hotel with annual revenue of \$1 million dollars. I accomplished an 18.2% increase in profit and a 12% increase in RevPar.

11/96 to 3/00

Meristar Hotels and Resorts Inc.

General Manager

Holiday Inn Select Bucks Co., Trevoese, Pennsylvania

Directly managed and supervised all operations of a 215 room Holiday Inn Select. Directly managed and supervised a staff of 17 managers and 120 hourly associates. The Holiday Inn Select is a full service hotel; facilities include a restaurant, sports lounge, gift shop, health club with an indoor pool and 9,000 square feet of banquet and meeting space, with combined total revenues of \$8.4 million dollars. Had direct responsibility and supervision of a \$4.9 million dollar complete renovation of all rooms and public space. Helped to accomplish a 10.8% increase in profit, 12.3% increase in RevPar and 13.4% increase in revenue over previous year.

General Manager

Hilton Suites, Lexington, Kentucky

Responsibilities included direct management and supervision of all departments of a 174-suite, 4 diamond luxury property. Directly managed and supervised a staff of 10 managers and 79 hourly associates. I accomplished a 13.7% revenue growth, a 16.6% RevPar growth, a 3% increase in occupancy and a 12% increase in average rate, with annual revenue of \$5.4 million dollars. I also held dual responsibility as the Food and Beverage Director of the property.

3/93 to 11/96

Servico Hotels & Resorts

General Manger

Holiday Inn and Hampton Inn, Dothan, AL

Responsibilities included dual management of two newly acquired hotels, which included diligence and takeover procedures of one full service, and one limited service hotels. Directly managed and supervised a staff of 12 managers and 72 hourly associates. The Holiday Inn was a 102 room full service hotel with one restaurant and bar and 3,600 square feet of banquet facilities and the Hampton Inn was a 113 room limited service hotel, with the two hotels combined annual revenue of \$4.5 million dollars.

ACHIEVMENTS:

- General Manager of the Year 1999, Meristar Hotels and Resorts.
- Elected to EHOVE College Executive Advisory Board 2000-2004.
- President North East Ohio General Managers Association 2006-2009.
- General Manager of the year 2004 and 2006, Janus Hotels and Resorts.
- Certified Hotel Administrator Degree, Certified Food and Beverage Executive Degree.