



In support of its motion, Lender states as follows:

#### UNDERLYING FACTS

1. This dispute involves the non-residential real estate and improvements thereon, located at and commonly known as the multi-unit residential apartment building at 5051 N Kenmore Ave, Chicago, Illinois (the "Real Estate"), and personal property located at or used in connection with the Real Estate (the "Personal Property" and, together with the Real Estate, the "Property"). The Property consists of a 35-unit residential apartment complex with approximately 20 leased units, and is not used as the Mortgagor's personal residence.

2. Lender filed its Verified Complaint to Foreclose Mortgage and for Other Relief involving the Property on February 17, 2011 (the "Complaint"). A true and correct copy of the Complaint is attached as Exhibit 1 to the Declaration of John F. Kennedy, which is attached hereto as Exhibit A. Lender requests the Court to take judicial notice of pleadings on file and to consider such matters as part of this proceeding.

3. In the Complaint, Lender brings an action against the following defendants: Martha Solomon ("Mortgagor"), The City of Chicago (the "City"), all Unknown Owners, and Non-Record Claimants (collectively, the "Defendants").

4. On or about November 10, 2006, Mortgagor executed that certain Promissory Note (the "Note") in the original principal amount of \$1,495,000.00. A true and correct copy of the Note is attached to the Complaint as Exhibit A.

5. The Note is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated November 10, 2006 (the "Mortgage"), executed and delivered to Washington Mutual Bank, a federal association ("WAMU") by the Mortgagor and later

assigned to Lender, pursuant to which the Mortgagor granted Lender a first-priority mortgage lien against the Property. A true and correct copy of the Mortgage is attached to the Complaint as Exhibit B.

8. On October 17, 2007, an Assignment of Security Instrument and Loan (the "Assignment"), which conveyed all of WAMU's interest in the Mortgage and related obligations, to Lender, was recorded with the Cook County, Illinois Recorder of Deeds as Document No. 0729002075. A true and correct copy of the Assignment is attached to the Complaint as Exhibit C.

9. The Note and the Mortgage, along with all other documents executed by Mortgagor and Guarantors evidencing, securing, or otherwise relating to the outstanding Loan are collectively referred to herein as the "Loan Documents."

10. Mortgagor is in default under the Loan Documents for the following reasons:

- a. Among other things, Mortgagor has failed to pay the required monthly payments under the Loan Documents for the months of October, November, and December, 2010, and January 2011. These events qualify as events of default under the Loan Documents. See Complaint, Exhibit A, § 3; Exhibit B, § 5.1(a).

11. Upon the occurrence of an event of default, Lender may take possession of the Property or have a receiver appointed. See Complaint, Exhibit B, § 5.3(a). The Mortgage states:

Upon the occurrence of any Event of Default... Lender may (a)  
Have a receiver appointed as a matter of right...

12. Lender possesses a superior interest in the Property to all of the Defendants.

13. Lender is not aware of any defense or claim that the Mortgagor possesses that would prevent Lender from obtaining judgment in the above-captioned lawsuit.

#### ARGUMENT IN SUPPORT OF APPOINTMENT OF RECEIVER

14. The immediate appointment of a receiver is appropriate. Lender is authorized by

Foreclosure Law, 735 ILCS § 5/15-1101 et seq., and the terms of its Loan Documents to take possession of the Property, is reasonably likely to prevail at the final hearing hereof, and is thus entitled by law to the relief sought herein.

15. The Illinois courts have held that under the Foreclosure Law, there is a statutory presumption that favors the lender's possession of nonresidential Property during the course of foreclosure proceedings. See Travelers Insurance Co. v. LaSalle National Bank, 200 Ill.App.3d 139, 558 N.E.2d 579, 146 Ill.Dec. 616 (2d Dist. 1990) (the presumptive right to possession during foreclosure lies with the mortgagee of nonresidential real estate).

16. The Foreclosure Law severely circumscribes the exercise of the trial court's discretion not to appoint a receiver, as it directs the court to appoint a receiver whenever "a mortgagee entitled to possession so requests." Asset Guar. Reinsurance Co. v. American National Bank and Trust Co. of Chicago, 254 Ill.App.3d 713, 719, 627 N.E.2d 179, 183, 194 Ill.Dec. 63, 67 (1st Dist., 1993); Mellon Bank, N.A. v. Midwest Bank & Trust Co., 265 Ill.App.3d 859, 867, 638 N.E.2d 640, 645, 202 Ill.Dec. 772, 777 (1st Dist., 1993) (noting that the legislature's use of the word "shall" rather than "may" is evidence that trial courts were not intended to possess discretion regarding the award of possession once the Mortgage Law's requirement are met).

17. A mortgagee of non-residential property is entitled to possession when: (1) a mortgage and related written instruments entitle the mortgagee to possession; and (2) there is a reasonable probability that the mortgagee will prevail at hearing. See 735 ILCS 5/15-1701(b)(2). There is no obligation for Lender, as a nonresidential mortgagee, to allege misdeeds or omissions

on the part of the Mortgagor in order to be placed in possession. Travelers Ins. Co., 200 Ill.App.3d at 144, 558 N.E.2d at 582, 146 Ill.Dec. at 619.

18. First, Lender is entitled to appointment of a receiver by the explicit terms of the Mortgage. See Complaint, Exhibit B, §5.3(a).

19. Second, there is a reasonable probability that Lender will prevail at hearing. Mortgagor is in default, as defined in the Mortgage and other supporting Loan Documents, which gives Lender rights to the Property. Mortgagor has not paid when due, before any penalty attached, all taxes assessed against or applicable to the Real Estate. The appended affidavit of John F. Kennedy and the verified Complaint support the assertion that Mortgagor is in default under the Loan Documents. See Exhibit A, Affidavit of John F. Kennedy.

20. The Foreclosure Law does not elaborate on what a lender must show to establish this reasonable probability that it will prevail on its case. The courts, however, have added some clarity to this issue. "In Illinois, a proven default establishes a reasonable probability of success in a mortgage foreclosure action." Midwest Bank & Trust Co., 265 Ill.App.3d at 868, 638 N.E.2d at 646, 202 Ill.Dec. at 778 (citations omitted). "Whether a default in fact exists will typically turn on the interpretation of documentary evidence—a non-discretionary function." Id.

21. The courts have found that the second requirement was duly met when an affidavit attesting to defaults in a mortgage was filed in support of a motion for appointment of a receiver. Midwest Bank & Trust Co., 265 Ill.App.3d at 869, 638 N.E.2d at 646, 202 Ill.Dec. at 778. See also Travelers Insurance. Co., 200 Ill.App.3d at 146, 558 N.E.2d at 583, 146 Ill.Dec. at 620 (finding that Lender's foreclosure complaint and affidavit satisfied the trial court that there is a reasonable probability that Lender will prevail on its foreclosure complaint).

22. The entry of an order granting the relief sought will not unduly burden or prejudice the Defendants or the due administration of justice in this matter.

23. In order to retain possession of such nonresidential real estate, a Mortgagor must object to the mortgagee's request for possession and demonstrate "good cause." Travelers Ins. Co., 200 Ill.App.3d at 143, 558 N.E.2d at 581, 146 Ill.Dec. at 618 citing 735 ILCS 15-1701(b)(2). The mortgagors of nonresidential real estate are obliged to overcome the statutory presumption in favor of the mortgagee, if they are to retain possession of the mortgaged premises. Travelers Ins. Co., 200 Ill.App.3d at 143, 558 N.E.2d at 581-82, 146 Ill.Dec. at 618-19.

24. In Travelers Insurance Co., 200 Ill. App. 3d at 146, 558 N.E.2d at 583, the court found that the mortgagee of nonresidential real estate duly satisfied the two statutory requirements entitling it to be placed in possession of the mortgaged premises when it submitted a copy of the mortgage which authorized such possession to the trial court; and the mortgagee's foreclosure complaint and affidavit satisfied the trial court that there was a reasonable probability that Lender would prevail on its foreclosure complaint in Travelers Insurance Co., 200 Ill. App. 3d at 146, 558 N.E.2d at 583. Similarly, Lender has appended the Mortgage as Exhibit B to the Complaint, showing that Lender is entitled to possession of the Property, submitted a verified complaint, and an affidavit in support of this Motion attached hereto as Exhibit A.

#### **REQUEST TO APPOINT ERIC J. JANSSEN AS RECEIVER**

25. Lender has established the necessary grounds for the appointment of a receiver and nominates Eric J. Janssen as receiver ("Receiver"). Under the statute, "Whenever a receiver is to be appointed, the mortgagee shall be entitled to designate the receiver. If the Mortgagor or any other party to the foreclosure objects to any such designation or designations and shows

good cause, or the court disapproves the designee, the mortgagee in such instance shall be entitled to make another designation.” 735 ILCS 5/15-1702(b).

26. A request that a receiver be appointed may be made by motion, and shall be supported by affidavit. 735 ILCS 5/15-1706. The requisite affidavit by proposed receiver, Eric J. Janssen (“Receiver’s Affidavit”), is appended hereto as Exhibit B, and states that proposed receiver Eric J. Janssen:

- a. is not related by blood or marriage to a party or attorney in this action;
- b. is not an attorney for, or, of counsel for any party in this action;
- c. is not an officer, director, stockholder, or employee of a corporation the assets of which are in question; and
- d. does not stand in any relation to the subject of the controversy that would tend to interfere with the impartial discharge of his duties as an officer of this Court.

27. The proposed Receiver’s curriculum vitae, which is attached as Exhibit 1 to the Receiver’s Affidavit, demonstrates that the proposed Receiver is experienced in the maintenance, management and daily operation of Property similar to the Property, and has experience as a receiver.

28. Lender recommends that the proposed receiver be appointed with powers pursuant to 735 ILCS § 5/15-1704(b), including possession of the Property subject to the Mortgage during this foreclosure proceeding, and have full power and authority to operate, manage, conserve, market, and sell such Property. See 735 ILCS § 5/15-1704(b)(1).

29. Lender proposes that Eric J. Janssen be appointed as receiver based on his qualifications. A draft order appointing receiver, based on this Court’s Model Receivership Order, is attached hereto as Exhibit C.

WHEREFORE, U.S. Bank National Association, as Trustee for the Registered Holders of

WAMU Commercial Mortgage Securities Trust 2006-SL1 Commercial Mortgage Pass-Through Certificates, Series 2006-SL1, as Lender in the above-captioned lawsuit and mortgagee respectfully requests:

- a. that this honorable Court immediately appoint a receiver for the Real Estate and the Personal Property located at and commonly known as 5051 N Kenmore Ave, Chicago, Illinois; with full authority to administer the Property pursuant to Section 5/15-1704 of the Illinois Mortgage Foreclosure Law, and have all the usual powers of receivers in like cases, including the power to market the property and, upon approval of the court, to sell the property, and submits that Eric J. Janssen is qualified to provide such services and to serve as receiver for such Property. In this regard, Mortgagor and its agents should be required forthwith to turn over all leases, books, records, keys, maintenance contracts, accounts, rents, papers and other such items and information as will enable effective conservation, operation and management of the Property;
- b. and for such other and further relief as this Court deems just and equitable.

Respectfully submitted,  
**U.S. Bank National Association, as Trustee for  
the Registered Holders of WAMU Commercial  
Mortgage Securities Trust 2007-SL2  
Commercial Mortgage Pass-Through  
Certificates, Series 2007-SL2**

Dated: May 26, 2011

By:   
One of Its Attorneys

Jason L. Pyrz  
POL SINELLI SHUGHART P.C.  
161 N. Clark St., Suite 4200  
Chicago, IL 60601  
(312) 819-1900  
Cook County Firm No. 47375