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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FIRST BANK OF HIGHLAND PARK, a Division of First Bank Chicago, an Illinois Corporation, Plaintiff, v. THE FULTON BUILDING, LLC, an Illinois limited liability company; MICHAEL FEDEROW, an Individual; and UNKNOWN OWNERS AND NON-RECORD CLAIMANTS. Defendants.	No. 25 CH 10558 2701-09 W. Fulton St., Chicago, IL Calendar No. 64

REPLY IN SUPPORT OF VERIFIED
PETITION FOR THE APPOINTMENT OF A RECEIVER

Plaintiff/Mortgagee, First Bank of Highland Park ("First Bank"), by and through its attorneys, Ginsberg Jacobs LLC, and for its reply in support of its Petition to Appoint Daniel Hyman (Millennium Properties R/E) as receiver of the mortgaged premises in this matter, states as follows:

INTRODUCTION

This matter concerns the foreclosure of non-residential real estate located at 2701-09 W. Fulton St. in Chicago, Illinois (the "Property"). *Pl.'s Pet.*, at ¶ 2. On June 15, 2026, First Bank filed its Verified Petition for the Appointment of a Receiver on the basis that the subject mortgage permits the requested relief and because First Bank possesses a reasonable probability of prevailing on the final hearing of this matter owing to multiple defaults under the terms of the subject mortgage—including failure to make payments beginning on July 17, 2025 and upon the loan maturing on September 17, 2025 (the "Petition"). On August 12, 2026, Defendant, the Fulton Building, LLC ("Defendant"), filed its objection to the Petition, which does not deny that the

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subject mortgage authorizes a receiver on default and that it stopped making payments required by the subject note and mortgage (the "Loan Documents"). *Def.'s Objection to Pl.'s Petition*, at 1-6. Instead, Defendant asks this Court to deny the Petition for three reasons: (1) that First Bank negotiated in bad faith when the loan was delinquent and leading up to the maturity date; (2) that a refinancing is "in the offing;" and (3) that the property carries an "equity cushion." *Id.* In short, none of the foregoing constitute "good cause" under the Illinois Mortgage Foreclosure Law ("IMFL") to deny the appointment of a receiver. 735 ILCS 5/15-1701(b)(2). The first is barred as a matter of Illinois law and, in any event, describes conduct the Loan Documents expressly permit. The second rests on nothing more than an unsigned broker placement agreement—the very kind of speculative prospect Illinois courts have held insufficient. The third invokes a bankruptcy doctrine that Illinois courts have squarely held is "not a relevant consideration." As such, and as discussed more fully below, First Bank's Petition should be granted, and Daniel Hyman of Millennium Properties R/E should be appointed as receiver.

ARGUMENT

Section 15-1701(b)(2) of the IMFL provides in non-residential cases:

> if (i) the mortgagee is so authorized by the terms of the mortgage or other written instrument, and (ii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, the mortgagee shall upon request be placed in possession of the real estate, except that if the mortgagor shall object and show good cause.

735 ILCS 5/15-1701. In other words, the IMFL "creates a presumption in favor of the mortgagee's right to possession of nonresidential property during the pendency of a mortgage foreclosure proceeding and a mortgagor can retain possession only if it can show 'good cause' for permitting it to do so." *CenterPoint Props. Tr. v. Olde Prairie Block Owner, LLC*, 398 Ill. App. 3d 388, 392 (1st Dist. 2010) (internal citations omitted).

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I. Defendant Does Not Dispute First Bank Has Established Each Element Required for the Appointment of a Receiver.

First, the subject Mortgage authorizes the appointment of a receiver. Specifically, the "Rights and Remedies on Default" section of the Mortgage provides, "[u]pon the occurrence of an Event of Default . . . Lender shall have the right . . . to have a receiver appointed to take possession of all or any part of the Property." A copy of the Mortgage is attached as **Exhibit A** (see page 9, Sections "Collect Rents" and "Mortgagee in Possession").

Second, "a proven default establishes a reasonable probability of success in a mortgage foreclosure action." *CenterPoint*, 398 Ill. App. 3d at 392. Defendant has defaulted on its obligations to First Bank in at least four independent respects: (1) it failed to make the monthly payment of $13,009.87 due July 17, 2025 and has made no payments since July 23, 2025, including the final payment of all principal and interest due on the September 17, 2025 maturity date; (2) it failed to fund the real estate tax escrow beginning April 17, 2025; (3) it failed to timely furnish required financial documents and information; and (4) it failed to maintain the Property in compliance with applicable laws, ordinances and regulations. *Pl.'s Pet.*, at ¶ 7.

In its Objection, Defendant does not dispute that First Bank satisfied both of the necessary prongs for the appointment of a receiver. As such, unless Defendant can carry its burden of establishing "good cause" for why it should remain in possession, the Petition should be granted.

II. All of Defendant's "Good Cause" Arguments Fail.

The burden to establish good cause for the denial of the appointment of a receiver is on the mortgagor, not the mortgagee. *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 176 (2010). In this case, Defendant asserts three separate arguments in an attempt to establish good cause to deny First Bank's Petition. Specifically: (1) that First Bank acted in bad faith by refusing to extend the loan that was delinquent; (2) that there is an imminent refinancing; and (3)

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that there is an "equity cushion." For the reasons that follow, each argument fails for multiple reasons and should be disregarded by this Court.

A. FIRST BANK'S ALLEGED REFUSAL TO EXTEND THE DELINQUENT LOAN IS NOT BAD FAITH AND IS NOT A DEFENSE TO THE APPOINTMENT OF A RECEIVER.

As an initial matter, Defendant's argument with respect to bad faith and unclean hands—pertaining to extending the loan prior to maturity—completely overlooks the undisputed defaults pertaining to failed monthly payments, failed funding of the real estate tax escrow and failure to timely provide required financial documents and information. Compare *Pl.'s Pet.*, at ¶ 7 to *Def.'s Objection to Pl.'s Pet.*, at 3-4. As such, this Court need not look further to determine that Defendant's bad faith argument fails to establish that First Bank "contributed to the default" that provides the predicate for the Petition. *Id.* Nevertheless, First Bank will address Defendant's argument that its managing member, Michael Federow, "had several in person meetings with the [First Bank] to discuss an extension" and, after First Bank "agreed in principal[,] [sic] . . . about a week or so before the expiration of the loan [First Bank] declined the extension." *Def.'s Objection to Pl.'s Pet.*, at 3.

First, Illinois law bars reliance on the alleged oral extension. The Illinois Credit Agreements Act (the "Act") is applicable to commercial mortgages (815 ILCS 160/1) and provides that "a debtor may not maintain an action on or in any way related to a credit agreement unless the credit agreement is in writing, . . . and is signed by the creditor and the debtor" (815 ILCS 160/2). A creditor's "agreement . . . to modify or amend an existing credit agreement," including "rescheduling or extending installments," does not "give rise to a claim, counter-claim, or defense" unless it meets those writing and signature requirements. 815 ILCS 160/3; *Bank One, Springfield v. Roscetti*, 309 Ill. App. 3d 1048, 1053 (4th Dist. 1999) (holding the Act barred borrower's defense

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that rested on lender's alleged oral promise to modify the credit arrangement). In this case, Defendant's asserted extension was never reduced to a signed writing and Defendant does not allege otherwise. *Def.'s Objection to Pl.'s Petition*, at 3. In fact, Defendant's own affidavit says First Bank "agreed in principal [sic]" and then "declined the extension." *Id.* Therefore, its purported defense is barred as a matter of law.

Second, the implied covenant of good faith cannot override First Bank's express rights. Defendant argues the Mortgage contains an implied covenant of good faith and fair dealing and First Bank breached it by supposedly agreeing to extend the loan but changing its mind "at the last minute." *Def.'s Objection to Pl.'s Petition*, at 3-4. While every contract contains an implied covenant of good faith and fair dealing, it is invoked "'when one party is given broad discretion in performing its obligations under the contract.'" *RBS Citizens, Nat. Ass'n v. RTG-Oak Lawn, LLC*, 407 Ill. App. 3d 183, 190 (1st Dist. 2011). "The purpose of this duty 'is to ensure that parties do not take advantage of each other in a way that could not have been contemplated at the time the contract was drafted or do anything that will destroy the other party's right to receive the benefit of the contract.'" *Def.'s Objection to Pl.'s Petition*, at 3-4; *McCleary v. Wells Fargo Securities, L.L.C.*, 2015 IL App (1st) 141287, ¶ 19. However, Illinois law is settled that "parties to a contract are entitled to enforce its terms to the letter, and an implied covenant of good faith cannot overrule or modify the express terms of a contract." *Bank One, Springfield*, 309 Ill. App. 3d at 1060. In other words, declining to extend a loan past its stated maturity is not the exercise of contractual discretion; it is enforcement of the express terms of the subject note. *N. Tr. Co. v. VIII S. Michigan Assocs.*, 276 Ill. App. 3d 355, 367-68 (1st Dist. 1995) (holding that the covenant of good faith and fair dealing does not enable a party to read an obligation into a contract that does not exist and no bad faith arises when a lender has no obligation to renew the loan, and merely enforces its terms).

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In this case, Defendant's Objection is devoid of argument that First Bank had any obligation to renew the delinquent loan and/or did anything other than enforce the terms of the Loan Documents. *Def.'s Objection to Pl.'s Petition*, at 3-4. As such, Defendant's bad faith argument is further deficient.

Third, a non-residential mortgagee need not disprove borrower defenses to obtain possession; the mortgagor bears the burden of showing good cause, and a proven default supplies the requisite reasonable probability of success. *Bank of Am., N.A.*, 401 Ill. App. 3d at 166, 176; *Travelers Ins. Co. v. LaSalle Nat. Bank*, 200 Ill. App. 3d 139, 143-44 (2nd Dist. 1990). Not only does Defendant fail to dispute the existence of defaults under the Loan Documents, it fails to establish a possible loan extension went beyond mere purported discussions. Notably, in *Bank of America, N.A. v. 108 N. State Retail LLC*, the court rejected the very argument Defendant advances—that ongoing extension negotiations excused the default—holding the lender "had no obligation to modify the loan" and affirming appointment of a receiver "in light of the statutory presumption." *Bank of America, N.A.*, 401 Ill. App. 3d at 177.

Therefore, in consideration of the foregoing, Defendant's bad faith/unclean-hands theory fails to establish "good cause" to deny the appointment of a receiver.

B. THE CLAIMED REFINANCING IS SPECULATIVE AND DOES NOT OVERCOME THE STATUTORY PRESUMPTION.

Defendant's imminent refinancing argument relies on *CenterPoint Properties Tr. v. Olde Prairie Block Owner, LLC,* which recognizes that "if while a motion for the appointment of a receiver is under consideration, the mortgagor presents evidence to the trial court that it *has* a commitment from an investor to provide funds for the development of the property or it *has* obtained a loan from another lender to refinance and that the appointment of receiver would likely impede those transactions, the trial court may find there is good cause to permit the mortgagor to

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retain possession in the interim." *CenterPoint Props. Tr.*, 398 Ill. App. 3d at 396. However, in the same opinion, the court cautioned that if it were "to hold that a mortgagor can establish good cause simply by showing that a receiver will make it more difficult to attract investors, lenders or buyers, it is likely that the exception would swallow the rule." *Id.* As such, it went further and held that any such "transaction must be imminent and not merely a possibility at some unknown time in the future." *Id.* Applying that standard, the court in *CenterPoint Properties Tr. v. Olde Prairie Block Owner, LLC*, affirmed the appointment of a receiver where the mortgagor "presented no evidence showing that it has a commitment from a lender to refinance the loan." *CenterPoint Props. Tr.*, 398 Ill. App. 3d at 396.

The preceding is akin to the factual circumstance before this Court in the sense that Defendant has presented no evidence showing it has a commitment from a lender to refinance the loan. Instead, Defendant attaches an unexecuted "Exclusive Loan Placement Agreement" with Luna Capital Funding ("Luna")—a finance broker—to "use its best efforts to solicit, negotiate and obtain financing on behalf of [Defendant] . . . through August 30, 2027." *Def.'s Objection to Pl.'s Petition*, at 4; see also a copy of the Exclusive Loan Placement Agreement, which was attached to Defendant's Objection, and is attached as **Exhibit B**. Moreover, Defendant's Objection and the affidavit attached in support fail to identify an imminent lender and, instead, merely state Luna is still "working on a package to provide to the interested lenders." *Def.'s Objection to Pl.'s Petition*, at 4 and Ex. A. In short, Defendant has presented an unexecuted broker agreement that evidences a hope to refinance, as opposed to a commitment to refinance. The foregoing is precisely the mere possibility of future financing that Illinois courts have held does not overcome the statutory presumption and, in fact, even less than what the court in *Bank of America, N.A. v. 108 N. State Retail LLC* determined was insufficient to establish "good cause." In *Bank of America,* the

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borrower at least argued negotiations were in progress, but that was not enough. Here, Defendant has failed to even show it is in negotiations to potentially refinance—much less have a commitment to refinance.

Lastly, according to the terms of the Exclusive Loan Placement Agreement, a condition of Luna's engagement is a representation from Defendant that "there are no delinquencies or defaults under any deed of trust, mortgage, property taxes" on the Property. *See Exhibit B*. The foregoing underscores how unreliable the prospect of refinancing is, and First Bank cannot be expected to wait indefinitely while Defendant attempts to obtain financing.

C. AN "EQUITY CUSHION" IS NOT A RELEVANT CONSIDERATION UNDER THE IMFL.

Defendant's argument that First Bank's request for the appointment of a receiver should be denied because it is adequately protected by an "equity cushion" is based solely upon a single sentence in the affidavit of Defendant's corporate counsel, estimating equity "[b]ased upon the information available to us at this time"—with no appraisal, no valuation methodology, and no supporting documentation. *Def.'s Objection to Pl.'s Petition*, at 5 and Ex. A. In short, an unsupported lay estimate cannot carry a mortgagor's burden. Additionally, Illinois courts have expressly rejected the "adequately protected" concept in the context of whether to appoint a receiver. *Travelers Ins. Co. v. LaSalle Nat. Bank*, 200 Ill. App. 3d 139, 144 (2nd Dist. 1990) ("whether the mortgagee is 'adequately protected' is not a relevant consideration under the statute. Section 15-1701(b)(2) does not limit a mortgagee's right to possession in such a manner."). In contrast, the authority cited by Defendant in purported support of its argument are bankruptcy decisions applying the Bankruptcy Code's adequate protection standard—and have no relevance in this context. As such, Defendant's "equity cushion" argument fails.

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CONCLUSION

Because Defendant has offered no legally cognizable basis to rebut the statutory presumption in First Bank's favor, its objection should be overruled. First Bank respectfully requests that this Court grant its Verified Petition and enter an order appointing Daniel Hyman of Millennium Properties R/E as receiver of the Property at 2701-09 W. Fulton Street, Chicago, Illinois, with all powers and duties set forth in Section 15-1704 of the IMFL, together with such further relief as the Court deems just and equitable.

Dated: August 19, 2026

Respectfully submitted by,

FIRST BANK OF HIGHLAND PARK

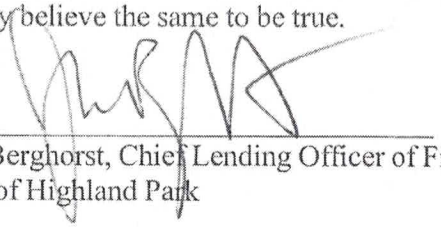
By: */s/ James D. Trail*
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Reply in Support of Verified Petition for Appointment of Receiver are true and correct, except as to matters stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.



John Berghorst, Chief Lending Officer of First Bank of Highland Park

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CERTIFICATE OF SERVICE

James D. Trail, an attorney, certifies that on August 19, 2026, he served a copy of the attached Reply in Support of Verified Petition for the Appointment of a Receiver by email to:

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