

**VIA FEDEX & DIGITAL PORTAL**

Clerk of the Court  
State of New York – Court of Appeals  
20 Eagle Street  
Albany, New York 12207

**Re: US Bank National Assoc. v Robert L. Gordons LLC**  
**APL – 2021-00064**

Dear Sir/Madam:

This firm represents Plaintiff-Respondent U.S. Bank, National Association, successor trustee to Bank of America, National Association as Successor by Merger to LaSalle Bank NA as Trustee for Washington Mutual Mortgage Pass-Through Certificates WaMu Series 2007-OA4 Trust (“Respondent”) in the above-referenced action. By way of letter, dated April 23, 2021, this Court advised that it will examine its subject matter jurisdiction with respect to the preliminary appeal statement submitted by Defendant-Appellant Robert L. Gordons LLC (“Appellant”) and directed the parties to submit a letter providing a Jurisdictional Response commenting on the propriety of this Court retaining subject matter jurisdiction. It is our understanding that this Court granted an extension to May 10, 2021 for the parties to submit their respective Jurisdictional Responses. Please accept this letter response to serve as Respondent’s Jurisdictional Response against the Court’s retention of subject matter jurisdiction.

**RELEVANT FACTUAL AND PROCEDURAL HISTORY**

By way of background, Respondent initially commenced a foreclosure action in the Supreme Court of New York, New York County (the “Trial Court”), under Index No. 106760/2010 (the “First Foreclosure Action”) in which Respondent sought to foreclose its mortgage lien secured by property located at 20 West Street, Unit 11H, New York, New York (the “Property”). Appellant moved and the court dismissed the First Foreclosure Action pursuant to CPLR 3215 (c) for failure to move for default within a year (the “Dismissal Order”).

Thereafter, pursuant to CPLR 205 (a), within six-months of the dismissal, Respondent commenced a new foreclosure action against Appellant in the Trial Court under Index: 850238/2018 (“Current Action”), in which Respondent sought to foreclose its mortgage lien secured by the Property. Appellant was named in the Action due to its status as a record owner of the Property.

On June 3, 2019, Respondent filed a motion for summary judgment seeking to establish its prima facie right to foreclosure and request a referee be appointed to calculate the amount due

and owing under the mortgage note (“Respondent’s MSJ”). On August 5, 2019, Appellant filed its own motion for summary judgment seeking dismissal based upon various arguments, including that the Current Action was in violation of the statute of limitations as it was commenced more than six-years from the commencement of the First Foreclosure Action (“Appellant’s MSJ”). Further, Appellant argued Respondent was not entitled to the protections of CPLR 205 (a) as the dismissal of the First Foreclosure Action was for neglect to prosecute.

After the motions were fully briefed and orally argued, on November 15, 2019, the Trial Court issued an order which denied Respondent’s MSJ and granted Appellant’s MSJ (the “MSJ Decision”). Within the MSJ Decision the Trial Court found that CPLR 205 (a) was inapplicable and the Current Action was therefore not timely commenced. The Trial Court dismissed the action based upon the expiration of the statute of limitations.

Respondent appealed the MSJ Decision to the New York Appellate Division, First Department (the “First Department”) on the grounds that the Trial Court improperly ruled that CPLR 205 (a) did not apply because the dismissal of the First Foreclosure Action was for a violation of CPLR 3215 (c) and the Dismissal Order did not contain any findings of specific conduct constituting neglect, demonstrating a general pattern of delay in proceeding with the litigation, which is explicitly required by CPLR 205 (a) to preclude recommencement of the action (the “Appeal”). After the Appeal was fully briefed, the First Department held oral argument on March 3, 2021.

While the decision on the appeal was pending, by way of Bargain and Sale Deed, dated March 15, 2021, and recorded in the Office of the City Register of the City of New York on March 29, 2021 Appellant transferred its ownership interest in the Property to Gokhvat Holdings LLC (the “Gokhvat Deed”). A true and correct copy of the Gokhvat Deed is attached hereto as **Exhibit 1**. Subsequently, Gokhvat Holdings LLC filed a separate action against Respondent in the United States District Court, Southern District of New York, seeking to quiet title to the Property based on the MSJ Decision (the “Gokhvat Action”). In that action, Gokhvat Holdings LLC referred to the Gokhvat Deed and asserted that it was the exclusive fee owner of the Property. A true and correct filed copy of the Complaint in the Gokhvat Action is attached hereto as **Exhibit 2**.

On March 25, 2021, the First Department unanimously granted the Appeal in its entirety and found that Respondent was entitled to the protections of CPLR 205 (a) and that the Current Action was timely commenced (“Appellate Decision”). The First Department also reversed the MSJ Decision, reinstated the underlying complaint and remanded the Respondent’s MSJ to the Trial Court for reconsideration.

On April 7, 2021, pursuant to CPLR 5601 (c), Appellant filed a Notice of Appeal to the Court of Appeals related to the Appellate Decision.

## LEGAL ANALYSIS

Section CPLR 5601 (c) is an appeal as of right, however prior to the Court of Appeals accepting jurisdiction, specific statutory requirements must be met. Section 5601 (c) provides that an appeal may be taken from an order of the appellate division in which a new trial or hearing is ordered and upon appellant stipulating upon judgment absolute. (*See* CPLR 5601 [c]).

In the Current Action, the Court of Appeals lacks jurisdiction over the instant appeal for at least three reasons: *first*, by divesting itself of any interest in the subject Property, Appellant no longer has standing to pursue the appeal of the Current Action and, therefore, this action is no longer appropriate for appellate review; *second*, the First Department did not order a new trial or hearing but merely remanded the action to the Trial Court for consideration of the previously filed Respondent's Motion; and *third*, Appellant's stipulation for judgment absolute is illusory because a decision denying Appellant's appeal would not be a final determination of the Current Action.

### **Appellant Lacks Standing to Challenge the Appellate Decision**

First and foremost, Appellant's Notice of Appeal is fatally defective and cannot be sustained because Appellant no longer has any interest in the Property. By conveying the Property to Gokhvat Holdings LLC, Appellant no longer has any interest in the Current Action and lacks standing to appeal the Appellate Decision or to even contest the Current Action.

It is well established that a party which transfers its interest in the subject property during the pendency of the foreclosure action lacks any standing to challenge the foreclosure or seek redemption of the property. (*See Totaram v Gibson*, 179 AD3d 451, 452 [1st Dept 2020] ("Defendant lacks standing to contest the judgment of foreclosure, because she conveyed her interest in the property while the foreclosure action was pending."); *see also Valiotis v Bekas*, 191 AD3d 1037, 1038 [2d Dept 2021] ("A party who conveys his or her interest in property that is the subject of a foreclosure action 'effectively divest[s]' himself or herself 'of standing to challenge [a] plaintiff's request for a judgment of foreclosure and sale.'"), quoting *Deutsche Bank Natl. Trust Co. v Patrick*, 173 AD3d 973, 974 [2d Dept 2019].)

Similarly, because Appellant has no interest in the subject matter of the appeal, it does not have any right to pursue its appeal to this Court. "Only an 'aggrieved party' has standing to appeal." (*Castaldi v 39 Winfield Assoc., LLC*, 22 AD3d 780, 781 [2d Dept 2005]; *see also* CPLR 5511; *Matter of Vanessa H. v Michael T.*, 188 AD3d 459, 460 [1st Dept 2020] (holding, "petitioner is not an aggrieved party and lacks standing to appeal"); *Midland Ins. Co. v Goldman*, 178 AD2d 146, 147 [1st Dept 1991] (denying the plaintiff's appeal because "plaintiff is not an aggrieved party and has not been adversely affected, so as to have standing to appeal".))

Even if Appellant feels that the Appellate Decision "contains language or reasoning that [it] deems adverse to its interest", it is still not a basis for standing. (*See Castaldi*, 22 AD3d at 781; *see also Pennsylvania Gen. Ins. Co. v Austin Powder Co.*, 68 NY2d 465, 472-3 [1986] (same).) Likewise, the fact that Appellant is still a named party to the Second Foreclosure Action is not a sufficient basis for standing in this appeal because there is no realistic possibility

that the Appellate Decision will adversely affect Appellant in any way. (*See Hermitage Ins. Co. v 186-190 Lenox Rd., LLC*, 142 AD3d 422, 424 [1st Dept 2016] (holding that the named defendant Smith lacks standing to appeal as the “order and judgment appealed from does not impact any existing rights of Smith, she is not an ‘aggrieved party’ under CPLR 5511, because any effect the court’s declaration may have on her possible future interests is too remote and contingent to give her standing in this appeal.”))

Due to Appellant’s transfer of its interest in the Property to Gokhvat Holdings LLC, it no longer has a stake in the Current Action as it cannot be foreclosed upon or otherwise be affected by the foreclosure. As a result, it lacks standing to bring an appeal to this Court, and therefore, for this reason alone, this Court should reject Appellant’s appeal on jurisdictional grounds.

### **The Appellate Division Did Not Grant a New Trial or Hearing**

Pursuant to CPLR 5601 (c), an appeal may be taken to the Court of Appeals as of right, “from an order of the appellate division granting or affirming the granting of a new trial or hearing”. (CPLR 5601 [c]). This is simply not the case here.

In reaching a determination if the Appellate Division has ordered a new “trial or hearing”, the Court of Appeals has strictly interpreted it to mean a situation in which a trial or hearing has been held and the decision has been set aside. It is not meant for situations, such as this one, in which the matter had initially been dismissed and the Appellate Division reversed the dismissal and remitted the matter for a determination on the merits. (*See Benson v Bd. of Educ.*, 85 NY2d 847 [1995] (*sua sponte* dismissal of the CPLR 5601 [c] appeal because the appellate division did not grant a new trial or hearing but rather reversed the trial court’s judgment dismissing the underlying petition and remanded the matter for imposition of an appropriate sanction); *Maslow v Tobin*, 57 NY2d 753 [1982] (dismissing the appeal finding that where the appellate division reversed a dismissal based on lack of standing of the petitioner and remitted the matter for a determination as to the merits of the petition, the remittance was not a new hearing within the meaning of CPLR 5601 [c]); *Colton v Berman*, 20 NY2d 767 [1967] (denying motion for leave to appeal, under CPLR 5601 [c], because the appellate court did not direct a new hearing when it reversed the trial court’s order dismissing the tenant’s petition, and remanded the matter back for reconsideration of the motion).)

In the Current Action, similar to the decisions in *Tobin*, *Benson* and *Berman*, the Appellate Decision did not order a new trial or hearing. Instead, the First Department reversed the Trial Court’s dismissal of the Current Action and remanded the matter back to the Trial Court to consider the merits of Respondent’s MSJ. In accordance with this Court’s prior decisions, an order to remand a matter for reconsideration of a previously submitted motion after the trial court improperly dismissed the action, does not qualify as ordering a “new trial or hearing” within the definition of CPLR 5601 (c).

Further, the Court of Appeals has also strictly interpreted the requirement for a “new” trial or hearing. Specifically, where there has not been a prior trial, any order appealed from which directs a trial of the issues, does not qualify as an order granting a “new” trial from which an appeal may be taken to the Court of Appeals. (*See Highlands v Weyant*, 30 NY2d 948 [1972])



(finding that the Appellate Court’s reversal of the declaratory judgment and remanding the case for trial of factual issues was not a new trial under CPLR 5601 [c] as the prior motion practice was not a prior trial or hearing).)

Here, there were no trials held in the Current Action. Rather, the only litigation were the Appellant’s Motion to dismiss the complaint, which the Trial Court granted, and the Respondent’s Motion, which was denied by the Trial Court due to its dismissal of the complaint. Therefore, any argument that the remanding of the Current Action back to the Trial Court is a “new” hearing is unavailing.

### **The Stipulation for Judgment was Not Absolute**

Lastly, Appellant’s Stipulation for Judgment is illusory and not sufficient for the acceptance of an appeal as of right. Under CPLR 5601 (c), the appellant is required to stipulate “that, upon affirmance, judgment absolute shall be entered against him.” (CPLR 5601 [c].) Appellant’s stipulation is wholly insufficient for this purpose.

For the stipulation to be judgment absolute, it must effect a final determination of the action as to both liability and damages. (*See Miller v Perillo*, 49 NY2d 1044 [1980] (appeal dismissed upon the ground that the stipulation for judgment absolute was illusory and frustrated the purpose of CPLR 5601 [c] as it did not effect a final determination as to both liability and damages); *Lusenskas v Axelrod*, 81 NY2d 300, 301-2 [1993] (holding that a stipulation for judgment absolute must effect a final determination on liability and damages, “otherwise, it frustrates the underlying purpose of the statute, which it to avoid prolonged litigation and multiple appeals.”))

In the Current Action, Appellant’s Stipulation for Judgment is deficient because it does not effect a final determination as to liability and damages. Indeed, at the very most, the stipulation would bar Appellant from contesting Respondent’s entitlement to foreclosure on the Property. Yet, that would not be the end of the matter. Following the Trial Court’s determination that Respondent is entitled to foreclosure, an additional set of hearings must follow to determine the amount of outstanding debt that is owed to Respondent (*i.e.* damages). After the court-appointed referee makes a determination of damages, Respondent is obligated to move for Judgment of Foreclosure and Sale before being able to obtain any relief. Moreover, Appellant would not be prohibited from challenging any of these intermediary steps towards Judgment, or appealing the Trial Court’s decisions. Indeed, this is the exact type of case that this Court warned would frustrate the purpose of CPLR 5601 to avoid prolonged litigation and appeals. (*See Lusenskas*, 81 NY2d at 301-2.)

As the Appellate Decision was not a final judgment on the action, Appellant’s Stipulation for Judgment is both illusory and not absolute. (*See Bond v Giebel*, 21 NY3d 884 [2013] (appeal dismissed upon the ground that the order sought to be appealed does not finally determine the action).)

A second deficiency with Appellant’s Stipulation for Judgment is that it does not provide a final determination of this matter because it does not protect Respondent from further litigation

from other defendants. The facts of the First Foreclosure Action serve as an illustration of this issue. After the plaintiff obtained a determination that it was entitled to foreclosure and was granted an Order of Reference, but before final Judgment was granted, Appellant obtained ownership to the Property and subsequently intervened in the action. Once made a defendant, Appellant challenged the propriety of plaintiff's action, which ultimately led to the Trial Court dismissing it. Similarly, even if Appellant complies with the Stipulation of Judgment and does not proceed with further litigation, it would still be free to transfer its interest to a third party, who would be free to challenge the action and prolong the litigation. This is not a remote possibility – indeed, Appellant has already transferred its interest to Gokhvat Holdings LLC. This new owner may challenge the Second Foreclosure Action just as Appellant challenged the First Foreclosure Action after it obtained its interest after summary judgment was granted to the plaintiff. Moreover, it is also conceivable that the principal for Appellant could create a new corporate entity to obtain the ownership of the Property back from Gokhvat Holdings LLC and to continue its litigation against Appellant under that new party.

These examples all demonstrate that Appellant's Stipulation for Judgment is far from effecting a final determination of the liability and damages of this matter. Accordingly, an appeal as of right cannot lie.

Finally, an inescapable further deficiency with the Stipulation of Judgment is that since Appellant no longer has any interest in the subject Property, it has nothing to lose if this Court affirms the Appellate Decision. (*See Lusenskias*, 81 NY2d at 301 (holding that a stipulation of judgment is “deemed illusory if the appellant would lose nothing in the event of the Court’s affirmance of the Appellate Division order.”); *Goldberg v Elkom Co.*, 36 NY2d 914 [1975] (same).)

Here, Appellant's only interest in this action was by virtue of its record ownership of the Property. Yet, by selling that interest to Gokhvat Holdings LLC, it no longer has any stake in the determination of the Second Foreclosure Action. Whether Respondent is successful in obtaining Judgment of Foreclosure and selling the Property or if the action is deemed barred by the statute of limitations, Appellant will be utterly unaffected. Indeed, the only party who faces any consequences from the appeal is Respondent, who, even if successful, will have been forced to incur litigation costs responding to this frivolous and inappropriate attempt by Appellant to seek an appeal to this Court.

Accordingly, for all the foregoing reasons, Respondent respectfully urges this Court to deny Appellant's application for an appeal. We thank the Court for its consideration of this submission and welcome the opportunity to address any questions or concerns the Court may have.

Respectfully submitted,

  
Kyle B. Stefanczyk

cc: Villanti Law Group PLLC (via First Class Mail & Email)

# **EXHIBIT 1**

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2021031601603001001EFB58

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 4**

**Document ID: 2021031601603001** Document Date: 03-15-2021 Preparation Date: 03-17-2021  
Document Type: DEED  
Document Page Count: 3

<b>PRESENTER:</b> NYLLCCO LLC 305 BROADWAY NEW YORK, NY 10007 212-267-6698	<b>RETURN TO:</b> NYLLCCO LLC 305 BROADWAY NEW YORK, NY 10007 212-267-6698
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**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
MANHATTAN	15	1131	Entire Lot 11H	20 WEST STREET
<b>Property Type: SINGLE RESIDENTIAL CONDO UNIT</b>				

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**


<b>GRANTOR/SELLER:</b> ROBERT L GORDONS LLC C/O: NYLLCCO LLC, 305 BROADWAY NEW YORK, NY 10007	<b>GRANTEE/BUYER:</b> GOKHVAT HOLDINGS LLC C/O: TELOS LEGAL CORP., 1012 COLLEGE RD., STE. 201 DOVER, DE 19904
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**FEES AND TAXES**

<b>Mortgage :</b>	Filing Fee:	
Mortgage Amount: \$ 0.00		\$ 125.00
Taxable Mortgage Amount: \$ 0.00	NYC Real Property Transfer Tax:	
Exemption:		\$ 1,250.00
TAXES: County (Basic): \$ 0.00	NYS Real Estate Transfer Tax:	
City (Additional): \$ 0.00		\$ 500.00
Spec (Additional): \$ 0.00		
TASF: \$ 0.00		
MTA: \$ 0.00		
NYCTA: \$ 0.00		
Additional MRT: \$ 0.00		
<b>TOTAL: \$ 0.00</b>		
Recording Fee: \$ 52.00		
Affidavit Fee: \$ 0.00		

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE  
CITY OF NEW YORK**

Recorded/Filed 03-19-2021 10:29  
City Register File No.(CRFN):  
2021000101924



*Annette McMill*  
City Register Official Signature



CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 15th day of March, in the year 2021

BETWEEN

ROBERT L GORDONS LLC  
c/o NYLLCCO LLC  
305 Broadway  
New York, NY 10001

party of the first part, and

Gokhvat Holdings LLC  
c/o Telos Legal Corp.  
1012 College Rd., Ste. 201  
Dover, DE 19904

party of the second part,

WITNESSETH, that the party of the first part, in consideration of

Ten (\$10.00) dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of New York, State of New York, known as and located at 20 West St., 11H, New York, NY being more particularly described in Schedule A attached hereto and made a part hereof

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:



ROBERT L GORDONS LLC  
By: Adam Plotch, Member

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of New York, ss:

On the 15<sup>th</sup> day of April in the year 2021, before me, the undersigned, personally appeared [redacted] personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

*Patricia Wong*  
NOTARY PUBLIC PATRICIA WONG  
Notary Public, State of New York  
Qualified in Queens County  
Certificate in New York County  
No. 01WO8027284  
Commission Expires 06/28/2023

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, a Notary Public in and for said State, personally appeared , the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in (if the place of residence is in a city, include the street and street number if any, thereof), that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto.

NOTARY PUBLIC

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

State of , County of , ss:

On the day of in the year , before me, the undersigned personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the (add the city or political subdivision and the state or country or other place the acknowledgement was taken).

NOTARY PUBLIC

Bargain & Sale Deed With Covenants

ROBERT L GORDONS LLC  
TO  
GOKHVAT HOLDINGS LLC

COUNTY: New York  
TOWN/CITY: New York  
PROPERTY ADDRESS: 20 West St., 11H, New York, NY  
SECTION:  
BLOCK: 15  
LOT: 1131

RETURN BY MAIL TO:



## SCHEDULE A

### PROPERTY DESCRIPTION

The Condominium Unit ("Unit") known as Unit No. 35A in the building designated by the street address of 20 West Street ("Building") in The Downtown Club Condominium ("Condominium"), Borough of Manhattan, County of New York, New York, New York 10004, said Unit being designated and described by the above Unit No. in a certain declaration dated April 3, 2006, made by New 19 West LLC pursuant to Article 9-B of the Real Property Law of the State of New York ("Condominium Act") establishing a plan for condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described below), which declaration was recorded in the Office of the Register of the City of New York, County of New York ("Register's Office") on April 19, 2006, under CRFN # 2006000215683 ("Declaration"). The Unit is also designated as Tax Lot 1131 in Block 15 of Section 1 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans of the Building, certified by Avinash K. Malhotra, Registered Architect on April 6, 2006, and filed with the Real Property Assessment Department of The City of New York on April 16, 2006, as Condominium Plan No. 1557 and also filed in the Register's Office on April 19, 2006, as Condominium Map No. CRFN # 2006000215682;

TOGETHER with an undivided 0.3038% interest in the Common Elements (as such term is defined in the Declaration);

### DESCRIPTION OF LAND

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of West Street, distant 75 feet southerly from the corner formed by the intersection of the easterly side of West Street with the southerly side of Morris Street;

RUNNING THENCE southerly along the easterly side of West Street, 78 feet 7 inches (78 feet 8 inches - Tax Map);

THENCE easterly in a straight line, 179 feet 9 inches (179 feet 10  $\frac{3}{4}$  inches - survey) (179 feet 9  $\frac{3}{4}$  inches - Tax Map) to a point on the westerly side of Washington Street (n/k/a Western Union International Plaza), distant 152 feet southerly from the corner formed by the intersection of the westerly side of Washington Street (n/k/a Western Union International Plaza) with the southerly side of Morris Street;

THENCE northerly along the westerly side of Washington Street (n/k/a Western Union International Plaza), 77 feet;

THENCE westerly parallel with the southerly side of Morris Street, 179 feet 7  $\frac{1}{4}$  inches (179 feet 8  $\frac{3}{4}$  inches - survey) (179 feet 7  $\frac{1}{2}$  inches - Tax Map) to the point or place of BEGINNING.

# **EXHIBIT 2**



PS SCT 11:16a.m 4/21/21  
st. Paul

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**  
for the SOUTHERN DISTRICT OF NEW YORK

GOKHVAT HOLDINGS LLC

*Plaintiff(s)*

v.

U.S. BANK NATIONAL ASSOCIATION,  
~~SUCCESSOR TRUSTEE TO BANK OF AMERICA,~~  
NATIONAL ASSOCIATION AS SUCCESSOR BY  
MERGER TO LASALLE BANK NA AS TRUSTEE FOR  
WASHINGTON MUTUAL MORTGAGE PASS —  
THROUGH CERTIFICATES WAMU SERIES 2007 —  
OA4 TRUST; BANK OF AMERICA NATIONAL  
ASSOCIATIONS AS SUCCESSOR BY MERGER TO  
LASALLE BANK NA AS TRUSTEE FOR  
~~WASHINGTON MUTUAL MORTGAGE PASS —~~  
THROUGH CERTIFICATES WAMU SERIES 2007 —  
OA4 TRUST

Civil Action No. 1:21 —CV—02558

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To *(Defendant's name and address)* U.S. BANK, NATIONAL ASSOCIATION SUCCESSOR  
TRUSTEE TO BANK OF AMERICA NATIONAL ASSOCIATION  
AS SUCCESSOR BY MERGER TO LASALLE BANK NA AS  
TRUSTEE FOR WASHINGTON MUTUAL PASS —THROUGH  
CERTIFICATES WAMU SERIES 2007 —OA4 TRUST  
425 Walnut Street  
Cincinnati, Ohio 45202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

ROSENBERG FORTUNA LAITMAN LLP  
666 OLD COUNTRY RD.  
GARDEN CITY, NEW YORK 11530

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 3/25/2021 \_\_\_\_\_

*/s/ D. Howie*

Signature of Clerk or Deputy Clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GOKHVAT HOLDINGS LLC,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, NATIONAL ASSOCIATION AS  
SUCCESSOR BY MERGER TO LASALLE  
BANK NA AS TRUSTEE FOR WASHINGTON  
MUTUAL MORTGAGE PASS-THROUGH  
CERTIFICATES WAMU SERIES 2007-OA4  
TRUST; BANK OF AMERICA, NATIONAL  
ASSOCIATION AS SUCCESSOR BY MERGER  
TO LASALLE BANK NA AS TRUSTEE FOR  
WASHINGTON MUTUAL MORTGAGE PASS-  
THROUGH CERTIFICATES WAMU SERIES  
2007-OA4TRUST

Defendant.

Docket No.: \_\_\_\_\_ ( )

**VERIFIED COMPLAINT**

Plaintiff Gokhvat Holdings LLC (“Plaintiff”), by and through its counsel, Rosenberg, Fortuna & Laitman LLP, as and for its Complaint against the Defendants U.S. Bank National Association, Successor Trustee to Bank of America, National Association as Successor by Merger to LaSalle Bank NA as Trustee for Washington Mutual Mortgage Pass-Through Certificates WaMu Series 2007-OA4 Trust (“U.S. Bank”) and Bank of America, National Association as Successor by Merger to LaSalle Bank NA as Trustee for Washington Mutual Mortgage Pass-Through Certificates WAMU Series 2007-OA4Trust (“BOA”) hereby allege as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action pursuant to Article 15 of the Real Property Actions and Proceedings Law of the State of New York (“RPAPL”) to compel a determination of claims to real property located at 20 West Street, Unit 11H, New York, New York 10004, Block No. 15, Lot No. 1131, New York County (the “Premises”).

2. More specifically, Plaintiff seeks the cancellation and discharge of a certain mortgage encumbering the Premises, pursuant to RPAPL § 1501(4).

**PARTIES**

3. Plaintiff, the exclusive owner, in fee simple of the Premises, is a foreign limited liability company existing under the laws of the State of Delaware.

4. Plaintiff’s members are citizens of New York and Texas.

5. Upon information and belief, Defendant U.S. Bank is a corporation and citizen of Ohio.

6. Upon information and belief, Defendant BOA is a corporation and citizen of North Carolina.

**JURISDICTION AND VENUE**

7. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1332(a)(1) because the matter in controversy and intended benefit or the value of the right being protected and the injury being averted exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

8. Venue in this District is appropriate pursuant to 28 U.S.C. § 1391, as the Southern District of New York is the District where the subject Premises is located and because this is the District where a substantial amount of the activities forming the basis of this Complaint occurred.

**THE PREMISES**

9. Plaintiff is the exclusive owner, in fee simple, of the Premises, pursuant to a deed dated March 15, 2021.

**FIRST CAUSE OF ACTION – RPAPL §1501(4)**  
**(Against Defendant)**

10. According to the land records of the Premises, on or about March 30, 2007, non-parties Sherry Kim and Thomas D. Kim (the “Kims”) allegedly executed and delivered a mortgage in favor of Washington Mutual Bank, FA (“WaMU”) in the amount of \$368,000.00 (the “Mortgage”). The Mortgage was allegedly recorded in the Office of the City Register on April 16, 2007 as CRFN No. 2007000194901. A true and correct copy of the Mortgage is attached hereto as **Exhibit A**.

11. According to Court records, on or about August 20, 2018, Defendant US Bank initiated a foreclosure proceeding with respect to the Mortgage in New York County Supreme Court in an action entitled *U.S. Bank National Association, Successor Trustee to Bank of America, National Association as Successor by Merger to LaSalle Bank NA as Trustee for Washington Mutual Mortgage Pass-Through Certificates WaMu Series 2007-OA4 Trust v. Sherry Kim, et al.* Index Number 850238/2018 (the “Foreclosure Action”). It is Foreclosure Action, US Bank alleged to be the current holder and owner of the Note and Mortgage.



12. Summary judgment in favor of the defendant in the Foreclosure Action was granted by the Honorable Arlene P. Bluth, J.S.C., on November 15, 2019, on the grounds that the period allowed for the commencement of an action to foreclose the Mortgage had expired prior to the date the Foreclosure Action was commenced (“Summary Judgment.”)

13. The aforementioned Summary Judgment also dismissed the Foreclosure Action, and directed the cancellation of the “notice of pendency” that had been filed in the Foreclosure Action and against the Premises on August 20, 2018.

14. According to the land records for the Premises, it appears that the current owner and holder of the aforementioned Mortgage is Defendant BOA who is the last assignee of record. A true and correct copy of the assignment of mortgage dated October 7, 2009 and recorded in the Office of the City Register on November 30, 2009 as CRFN No. 2009000390649 is attached as **Exhibit B**.

15. However, upon information and belief, Defendant US Bank is the current owner and holder of the aforementioned Mortgage as evidenced by its commencement of the Foreclosure Action in 2018 and its allegations therein that it is the current owner and holder of the Mortgage.

16. The Mortgage interest is a property interest which is adverse to Plaintiff’s interest in the Premises.

17. Pursuant to New York law, the applicable statute of limitations period within which to commence an action to foreclose a mortgage is six (6) years.

18. It is well established that when a mortgage is payable in installments, there are separate causes of action for each installment accrued and the applicable statute of limitations period begins to run on the date each installment becomes due. However, once a mortgage debt is

accelerated, the entire amount becomes due and payable and the applicable six (6) year statute of limitations period begins to run on the entire mortgage debt.

19. The Summary Judgment constitutes a final judicial determination that the Mortgage is time-barred under the applicable statute of limitations period, and thus subject to extinguishment pursuant to N.Y. RPAPL § 1501(4).

20. Since the Foreclosure Action was determined to be time-barred, Defendants US Bank or BOA (whichever is the current owner and/or holder of the Mortgage) and their successors and/or assigns are now barred from commencing any action to foreclose on the Mortgage as against Plaintiff.

21. In light of the foregoing, Defendants US Bank and BOA have no just claim to an estate, trust, or other interest in the Premises.

22. As a result, Plaintiff is entitled to the cancellation and discharge of the Mortgage, as well as a determination that its interest in the Premises is free and clear of the same.

23. Plaintiff is similarly entitled to a declaration that Defendants US Bank, BOA, their successors and/or assigns, all persons or entities claiming under and/or acting in concert with Defendants US Bank and BOA, are forever barred and precluded from asserting any claims to an estate, trust or other interest in the subject Premises.

24. Upon information and belief, however, Defendants US Bank and/or BOA, based upon the aforementioned Mortgage, may claim an estate or interest in the Premises that is adverse to the Plaintiff.

25. Specifically, upon information and belief, Defendants US Bank and/or BOA may still claim to hold a valid lien on the Premises as mortgagee.

26. Any other claims which Defendants US Bank and/or BOA may make in connection with the subject Premises are unknown to Plaintiff.

27. Defendants US Bank and/or BOA are not in possession of the Premises.

28. Defendants US Bank and/or BOA's claimed interests in the Premises will interfere with Plaintiff's lawful and just rights in and to the Premises.

29. Upon information and belief, no other person or entity has claimed, or may claim any estate, trust, or other interest in the Premises other than the aforementioned Defendants US Bank and/or BOA.

30. Upon Information and belief, no Defendant herein is unknown or an infant, mentally retarded, mentally ill, or an alcohol abuser.

31. Upon information and belief, no judgment granted herein will affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant otherwise, could afterward become entitled to a beneficial estate or interest in the Premises, and every person in being who would have entitled to such estate or interest, if such event had happened immediately before the commencement of the action, is named as a party hereto.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

**WHEREFORE**, Plaintiff respectfully demands judgement as follows

- a. Cancelling and discharging the Mortgage, or in the alternative, declaring the Mortgage to be unenforceable;
- b. Adjudging the estate and interest of Plaintiff in the Premises to be free and clear from any estate, encumbrance, or other interest of Defendants US Bank and/or BOA, their successors and/or assigns and all persons or entities claiming under and/or acting in concert with said Defendants;
- c. Declaring that Defendants US Bank and/or BOA, their successors and/or assigns and all persons or entities claiming under and/or acting in concert with said Defendants, be forever barred and precluded from asserting any claims to an estate, encumbrance, trust, or other interest in the subject Premises;
- d. Directing the New York County Clerk's Office upon payment of proper fees, to cancel, discharge, and remove the Mortgage recorded in Office of the City Register on April 16, 2007 as CRFN No. 2007000194901, as against the Premises;
- e. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses; and
- f. Granting other and such further relief as the Court may deem just and proper.

Dated: Garden City, New York  
March 24, 2021

**ROSENBERG FORTUNA  
& LAITMAN, LLP**

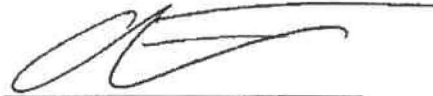
By: 

**ANTHONY R. FILOSA, Esq.**  
Attorneys for Plaintiff  
666 Old Country Road, Suite 810  
Garden City, New York 11530  
(516) 228-6666  
AF4563



**CERTIFICATION**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.



ANTHONY R. FILOSA  
AF4563

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GOKHVAT HOLDINGS LLC,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, NATIONAL ASSOCIATION AS  
SUCCESSOR BY MERGER TO LASALLE  
BANK NA AS TRUSTEE FOR WASHINGTON  
MUTUAL MORTGAGE PASS-THROUGH  
CERTIFICATES WAMU SERIES 2007-OA4  
TRUST,

Defendant.

Docket No.: \_\_\_\_\_ ( )

**ATTORNEY VERIFICATION**

**ANTHONY R. FILOSA, Esq.**, an attorney at law, duly admitted to practice in the Courts of the State of New York and the United States District Court for the Southern District of New York, affirms under penalties of perjury that:

I am the attorney for the Plaintiff, GOKHVAT HOLDINGS LLC, in the above-entitled action. I have read the foregoing Summons and Verified Complaint and know the contents thereof, and upon information and belief, I believe the matters alleged therein to be true.


The reason this verification is made by me and not by the Plaintiff, GOKHVAT HOLDINGS LLC, is because the Plaintiff is not located in the county in which its attorney maintains an office.

The source of my information and the grounds of my beliefs are privileged communications and/or a review of the documents contained in the file.

Dated: Garden City, New York  
March 24, 2021

**ROSENBERG FORTUNA  
& LAITMAN, LLP**

By:

A handwritten signature in black ink, appearing to be 'A. Filosa', written over a horizontal line.

**ANTHONY R. FILOSA, Esq.**  
Attorneys for Plaintiff  
666 Old Country Road, Suite 810  
Garden City, New York 11530  
(516) 228-6666

# Exhibit B

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2007040401783005003EC69C

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 29**

Document ID: 2007040401783005

Document Date: 03-30-2007

Preparation Date: 04-11-2007

Document Type: MORTGAGE

Document Page Count: 27

**PRESENTER:**

FIRST ACRE TITLE SERVICES, INC.  
460 BERGEN BOULEVARD, SUITE 305  
PALISADES PARK, NJ 07650  
201-592-9931

**RETURN TO:**

WASHINGTON MUTUAL BANK, FA  
2210 ENTERPRISE DRIVE  
DOC OPS M/S FSCE 440  
FLORENCE, SC 29501

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
MANHATTAN	15	1131	Entire Lot 11H	20 WEST STREET

Property Type: SINGLE RESIDENTIAL CONDO UNIT

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or Document ID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**MORTGAGOR/BORROWER:**

SHERRY E. KIM  
20 WEST STREET, UNIT 11H  
NEW YORK, NY 10004

**MORTGAGEE/LENDER:**

WASHINGTON MUTUAL BANK, FA  
2273 N. GREEN VALLEY PARKWAY, SUITE 14  
HENDERSON, NV 89014

Additional Parties Listed on Continuation Page

**FEES AND TAXES**

<b>Mortgage</b>		
Mortgage Amount:	\$	368,000.00
Taxable Mortgage Amount:	\$	404,800.00
Exemption:		339EE
<b>TAXES:</b> County (Basic):	\$	1,163.61
City (Additional):	\$	1,036.64
Spec (Additional):	\$	0.00
TASF:	\$	1,012.00
MTA:	\$	749.92
NYCTA:	\$	0.00
Additional MRT:	\$	0.00
<b>TOTAL:</b>	\$	3,962.17
Recording Fee:	\$	172.00
Affidavit Fee:	\$	8.00

Filing Fee:	\$	0.00
NYC Real Property Transfer Tax:	\$	0.00
NYS Real Estate Transfer Tax:	\$	0.00

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE  
CITY OF NEW YORK**



Recorded/Filed 04-16-2007 12:54  
City Register File No.(CRFN):  
2007000194901

*Annette McMill*

City Register Official Signature

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2007040401783005003CC41C

**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 29**

Document ID: 2007040401783005  
Document Type: MORTGAGE

Document Date: 03-30-2007

Preparation Date: 04-11-2007

**PARTIES**

**MORTGAGOR/BORROWER:**  
THOMAS D. KIM  
20 WEST STREET, UNIT 11H  
NEW YORK, NY 10004

Return To:  
WASHINGTON MUTUAL BANK, FA  
2210 ENTERPRISE DR  
FLORENCE, SC 29501  
DOC OPS M/S FSCE 440

Prepared By:  
THOMAS ZACHARIAH

ZNY1 \_\_\_\_\_ (Space Above This Line For Recording Data) \_\_\_\_\_  
M39 \_\_\_\_\_ 4-031

### MORTGAGE

**WORDS USED OFTEN IN THIS DOCUMENT**

(A) "Security Instrument." This document, which is dated MARCH 30, 2007 together with all Riders to this document, will be called the "Security Instrument."  
(B) "Borrower." SHERRY E. KIM AND THOMAS D. KIM

whose address is 20 WEST STREET, UNIT 11H, NEW YORK, NY 10004  
sometimes will be called "Borrower" and sometimes simply "I" or "me."


(C) "Lender." WASHINGTON MUTUAL BANK, FA

will be called "Lender." Lender is a corporation or association which exists under the laws of THE UNITED STATES OF AMERICA. Lender's address is 2279 N. GREEN VALLEY PARKWAY, SUITE 14, HENDERSON, NV 89014

(D) "Note." The note signed by Borrower and dated MARCH 30, 2007, will be called the "Note." The Note shows that I owe Lender THREE HUNDRED SIXTY EIGHT THOUSAND AND 00/100

Dollars (U.S. \$ 368,000.00 )

NEW YORK - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

 -6(NY) 000501 Form 3033 1/01  
Page 1 of 17 Initials *TZ*  
VMP Mortgage Solutions, Inc. (800)521-7251





plus interest and other amounts that may be payable. I have promised to pay this debt in Periodic Payments and to pay the debt in full by APRIL 01, 2037

(E) "Property." The property that is described below in the section titled "Description of the Property," will be called the "Property."

(F) "Loan." The "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Sums Secured." The amounts described below in the section titled "Borrower's Transfer to Lender of Rights in the Property" sometimes will be called the "Sums Secured."

(H) "Riders." All Riders attached to this Security Instrument that are signed by Borrower will be called "Riders." The following Riders are to be signed by Borrower [check box as applicable]:

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Condominium Rider   | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law." All controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions will be called "Applicable Law."

(J) "Community Association Dues, Fees, and Assessments." All dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization will be called "Community Association Dues, Fees, and Assessments."

(K) "Electronic Funds Transfer." "Electronic Funds Transfer" means any transfer of money, other than by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Some common examples of an Electronic Funds Transfer are point-of-sale transfers (where a card such as an asset or debit card is used at a merchant), automated teller machine (or ATM) transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items." Those items that are described in Section 3 will be called "Escrow Items."

(M) "Miscellaneous Proceeds." "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than Insurance Proceeds, as defined in, and paid under the coverage described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) Condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of Condemnation or sale to avoid Condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property. A taking of the Property by any governmental authority by eminent domain is known as "Condemnation."

(N) "Mortgage Insurance." "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment." The regularly scheduled amount due for (i) principal and interest under the Note, and (ii) any amounts under Section 3 will be called "Periodic Payment."

(P) "RESPA." "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

Initials *SK*

**BORROWER'S TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY**

I mortgage, grant and convey the Property to Lender subject to the terms of this Security Instrument. This means that, by signing this Security Instrument, I am giving Lender those rights that are stated in this Security Instrument and also those rights that Applicable Law gives to lenders who hold mortgages on real property. I am giving Lender these rights to protect Lender from possible losses that might result if I fail to:

- (A) Pay all the amounts that I owe Lender as stated in the Note including, but not limited to, all renewals, extensions and modifications of the Note;
- (B) Pay, with interest, any amounts that Lender spends under this Security Instrument to protect the value of the Property and Lender's rights in the Property; and
- (C) Keep all of my other promises and agreements under this Security Instrument and the Note.

**DESCRIPTION OF THE PROPERTY**

I give Lender rights in the Property described in (A) through (G) below:

(A) The Property which is located at 20 WEST STREET, UNIT 11H

NEW YORK (City, Town or Village), New York 10004 (Street)  
 This Property is in NEW YORK County. It has the following legal (Zip Code)  
 description:

THE LEGAL DESCRIPTION IS ATTACHED HERETO AS A SEPARATE EXHIBIT AND IS MADE A PART HEREOF.

- (B) All buildings and other improvements that are located on the Property described in subsection (A) of this section;
- (C) All rights in other property that I have as owner of the Property described in subsection (A) of this section. These rights are known as "easements and appurtenances attached to the Property;"
- (D) All rights that I have in the land which lies in the streets or roads in front of, or next to, the Property described in subsection (A) of this section;
- (E) All fixtures that are now or in the future will be on the Property described in subsections (A) and (B) of this section;
- (F) All of the rights and property described in subsections (B) through (E) of this section that I acquire in the future; and
- (G) All replacements of or additions to the Property described in subsections (B) through (F) of this section and all Insurance Proceeds for loss or damage to, and all Miscellaneous Proceeds of the Property described in subsections (A) through (F) of this section.

Initials *JK-TC*

The Condominium Unit (hereinafter referred to as the "Unit") in the building (hereinafter referred to as the "Building") known as **The Downtown Club Condominium** and by the Street Number 18-20 West Street also known as 19 West Street also known as 18 Joe DiMaggio Highway also known as 28-32 Washington Street, County of New York, State of New York, said Unit being designated and described as Residential Unit No. 11H in a Declaration dated April 3, 2005 made by New 19 West LLC, pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter referred to as the "Condominium Act") establishing a Plan for Condominium Ownership of the Building and the Land (hereinafter to as the "Land") upon which the building is situate (which land is more particularly described below) which Declaration was recorded in the New York County Register's Office on April 19, 2006 as CRFN 2006000215683, (which Declaration and Amendments (if applicable) thereto are hereinafter collectively referred to as the "Declaration"). This Unit is also designated as Tax Lot 1131 in Block 15 of the County of New York on the Tax Map of the Real Property Assessment Department and on the Floor Plans of the Building, Certified by Avinash K. Malhotra, Architects, on April 6, 2006 and filed with the Real Property Assessment Department as Condominium Plan No. 1557 and also filed in the New York County Register's Office on April 19, 2006 as Condominium Map No. CRFN2006000215682.

TOGETHER with an undivided 0.2859% interest in the Common Elements (as such term is defined in the Declaration).

ALL that certain plot, piece, or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of West Street distant 75 feet southerly from the corner formed by the intersection of the easterly side of West Street with the southerly of Morris Street;

THENCE southerly along the easterly side of West Street 78 feet 7 inches ( 78 feet 8 inches-Tax Map);

THENCE easterly in a straight line 179 feet 9 inches (179 feet 10  $\frac{1}{4}$  inches- survey) 179 feet 9  $\frac{1}{4}$  inches-Tax Map) to a point on the westerly side of Washington Street (now known as Western Union International Plaza) distant 152 feet southerly from the corner formed by the intersection of the westerly side of Washington Street (now known as Western Union International Plaza) with the southerly side of Morris Street;

THENCE northerly along the westerly side of Washington Street (now known as Western Union International Plaza), 77 feet;

THENCE westerly parallel with the southerly side of Morris Street 179 feet 7  $\frac{1}{4}$  inches (179 feet 8  $\frac{1}{4}$  inches-survey) (179 feet 7  $\frac{1}{2}$  inches-Tax Map) to the point or place of BEGINNING.

**BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY**

I promise that: (A) I lawfully own the Property; (B) I have the right to mortgage, grant and convey the Property to Lender; and (C) there are no outstanding claims or charges against the Property, except for those which are of public record.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which Lender suffers because someone other than myself has some of the rights in the Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of such rights.

**PLAIN LANGUAGE SECURITY INSTRUMENT**

This Security Instrument contains promises and agreements that are used in real property security instruments all over the country. It also contains other promises and agreements that vary in different parts of the country. My promises and agreements are stated in "plain language."

**COVENANTS**

I promise and I agree with Lender as follows:

**1. Borrower's Promise to Pay.** I will pay to Lender on time principal and interest due under the Note and any prepayment, late charges and other amounts due under the Note. I will also pay all amounts for Escrow Items under Section 3 of this Security Instrument.

Payments due under the Note and this Security Instrument shall be made in U.S. currency. If any of my payments by check or other payment instrument is returned to Lender unpaid, Lender may require my payment be made by: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location required in the Note, or at another location designated by Lender under Section 15 of this Security Instrument. Lender may return or accept any payment or partial payment if it is for an amount that is less than the amount that is then due. If Lender accepts a lesser payment, Lender may refuse to accept a lesser payment that I may make in the future and does not waive any of its rights. Lender is not obligated to apply such lesser payments when it accepts such payments. If interest on principal accrues as if all Periodic Payments had been paid when due, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until I make payments to bring the Loan current. If I do not do so within a reasonable period of time, Lender will either apply such funds or return them to me. In the event of foreclosure, any unapplied funds will be applied to the outstanding principal balance immediately prior to foreclosure. No offset or claim which I might have now or in the future against Lender will relieve me from making payments due under the Note and this Security Instrument or keeping all of my other promises and agreements secured by this Security Instrument.

**2. Application of Borrower's Payments and Insurance Proceeds.** Unless Applicable Law or this Section 2 requires otherwise, Lender will apply each of my payments that Lender accepts in the following order:

First, to pay interest due under the Note;

Next, to pay principal due under the Note; and

Next, to pay the amounts due Lender under Section 3 of this Security Instrument.

Such payments will be applied to each Periodic Payment in the order in which it became due.

Any remaining amounts will be applied as follows:

First, to pay any late charges;

Next, to pay any other amounts due under this Security Instrument; and

Next, to reduce the principal balance of the Note.

If Lender receives a payment from me for a late Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the late Periodic Payment and the late charge. If more than one Periodic Payment is due, Lender may apply any payment received from me: First, to the repayment of the Periodic Payments that are due if, and to the extent that, each payment can be paid in full; Next, to the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due.

Voluntary prepayments will be applied as follows: First, to any prepayment charges; and Next, as described in the Note.

Any application of payments, Insurance Proceeds, or Miscellaneous Proceeds to principal due under the Note will not extend or postpone the due date of the Periodic Payments or change the amount of those payments.

**3. Monthly Payments For Taxes And Insurance.**

**(a) Borrower's Obligations.**

I will pay to Lender all amounts necessary to pay for taxes, assessments, water charges, sewer rents and other similar charges, ground leasehold payments or rents (if any), hazard or property insurance covering the Property, flood insurance (if any), and any required Mortgage Insurance, or a Loss Reserve as described in Section 10 in the place of Mortgage Insurance. Each Periodic Payment will include an amount to be applied toward payment of the following items which are called "Escrow Items:"

- (1) The taxes, assessments, water charges, sewer rents and other similar charges, on the Property which under Applicable Law may be superior to this Security Instrument as a Lien on the Property. Any claim, demand or charge that is made against property because an obligation has not been fulfilled is known as a "Lien;"
- (2) The leasehold payments or ground rents on the Property (if any);
- (3) The premium for any and all insurance required by Lender under Section 5 of this Security Instrument;
- (4) The premium for Mortgage Insurance (if any);
- (5) The amount I may be required to pay Lender under Section 10 of this Security Instrument instead of the payment of the premium for Mortgage Insurance (if any); and
- (6) If required by Lender, the amount for any Community Association Dues, Fees, and Assessments.

After signing the Note, or at any time during its term, Lender may include these amounts as Escrow Items. The monthly payment I will make for Escrow Items will be based on Lender's estimate of the annual amount required.

I will pay all of these amounts to Lender unless Lender tells me, in writing, that I do not have to do so, or unless Applicable Law requires otherwise. I will make these payments on the same day that my Periodic Payments of principal and interest are due under the Note.

The amounts that I pay to Lender for Escrow Items under this Section 3 will be called "Escrow Funds." I will pay Lender the Escrow Funds for Escrow Items unless Lender waives my obligation to pay the Escrow Funds for any or all Escrow Items. Lender may waive my obligation to pay to Lender Escrow Funds for any or all Escrow Items at any time. Any such waiver must be in writing. In the event of such waiver, I will pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Escrow Funds has been waived by Lender and, if Lender requires, will promptly send to Lender receipts showing such payment within such time period as Lender may require. My obligation to make such payments and to provide receipts will be considered to be a promise and agreement contained in this Security Instrument, as the phrase "promises and agreements" is used in Section 9 of this Security Instrument. If I am obligated to pay Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Lender may pay that amount and I will then be obligated under Section 9 of this Security Instrument to repay to Lender. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 of this Security Instrument and, upon the revocation, I will pay to Lender all Escrow Funds, and in amounts, that are then required under this Section 3.

I promise to promptly send to Lender any notices that I receive of Escrow Item amounts to be paid. Lender will estimate from time to time the amount of Escrow Funds I will have to pay by using existing assessments and bills and reasonable estimates of the amount I will have to pay for Escrow Items in the future, unless Applicable Law requires Lender to use another method for determining the amount I am to pay.

Lender may, at any time, collect and hold Escrow Funds in an amount sufficient to permit Lender to apply the Escrow Funds at the time specified under RESPA. Applicable Law puts limits on the total amount of Escrow Funds Lender can at any time collect and hold. This total amount cannot be more than the maximum amount a lender could require under RESPA. If there is another Applicable Law that imposes a lower limit on the total amount of Escrow Funds Lender can collect and hold, Lender will be limited to the lower amount.

**(b) Lender's Obligations.**

Lender will keep the Escrow Funds in a savings or banking institution which has its deposits insured by a federal agency, instrumentality, or entity, or in any Federal Home Loan Bank. If Lender is such a savings or banking institution, Lender may hold the Escrow Funds. Lender will use the Escrow Funds to pay the Escrow Items no later than the time allowed under RESPA or other Applicable Law. Lender will give to me, without charge, an annual accounting of the Escrow Funds. That accounting will show all additions to and deductions from the Escrow Funds and the reason for each deduction.

Lender may not charge me for holding or keeping the Escrow Funds, for using the Escrow Funds to pay Escrow Items, for making a yearly analysis of my payment of Escrow Funds or for receiving, or for verifying and totaling assessments and bills. However, Lender may charge me for these services if Lender pays me interest on the Escrow Funds and if Applicable Law permits Lender to make such a charge. Lender will not be required to pay me any interest or earnings on the Escrow Funds unless either (1) Lender and I agree in writing that Lender will pay interest on the Escrow Funds, or (2) Applicable Law requires Lender to pay interest on the Escrow Funds.

**(c) Adjustments to the Escrow Funds.**

Under Applicable Law, there is a limit on the amount of Escrow Funds Lender may hold. If the amount of Escrow Funds held by Lender exceeds this limit, then there will be an excess amount and RESPA requires Lender to account to me in a special manner for the excess amount of Escrow Funds.

If, at any time, Lender has not received enough Escrow Funds to make the payments of Escrow Items when the payments are due, Lender may tell me in writing that an additional amount is necessary. I will pay to Lender whatever additional amount is necessary to pay the Escrow Items when the payments are due, but the number of payments will not be more than 12.

When I have paid all of the Sums Secured, Lender will promptly refund to me any Escrow Funds that are then being held by Lender.

**4. Borrower's Obligation to Pay Charges, Assessments and Claims.** I will pay all taxes, assessments, water charges, sewer rents and other similar charges, and any other charges and fines that may be imposed on the Property and that may be superior to this Security Instrument. I will also make ground rents or payments due under my lease if I am a tenant on the Property and Community Association Dues, Fees, and Assessments (if any) due on the Property. If these items are Escrow Items, I will do this by making the payments as described in Section 3 of this Security Instrument. In this Security Instrument, the word "Person" means any individual, organization, governmental authority or other party.

I will promptly pay or satisfy all Liens against the Property that may be superior to this Security Instrument. However, this Security Instrument does not require me to satisfy a superior Lien if: (a) I agree, in writing, to pay the obligation which gave rise to the superior Lien and Lender approves the way in which I agree to pay that obligation, but only so long as I am performing such agreement; (b) in good faith, I argue or defend against the superior Lien in a lawsuit so that in Lender's opinion, during the lawsuit, the superior Lien may not be enforced, but

only until the lawsuit ends; or (c) I secure from the holder of that other Lien an agreement, approved in writing by Lender, that the Lien of this Security Instrument is superior to the Lien held by that Person. If Lender determines that any part of the Property is subject to a superior Lien, Lender may give Borrower a notice identifying the superior Lien. Within 10 days of the date on which the notice is given, Borrower shall pay or satisfy the superior Lien or take one or more of the actions mentioned in this Section 4.

Lender also may require me to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with the Loan, unless Applicable Law does not permit Lender to make such a charge.

5. Borrower's Obligation to Maintain Hazard Insurance or Property Insurance. I will obtain hazard or property insurance to cover all buildings and other improvements that now are, or in the future will be, located on the Property. The insurance will cover loss or damage caused by fire, hazards normally covered by "Extended Coverage" hazard insurance policies, and any other hazards for which Lender requires coverage, including, but not limited to earthquakes and floods. The insurance will be in the amounts (including, but not limited to, deductible levels) and for the periods of time required by Lender. What Lender requires under the last sentence can change during the term of the Loan. I may choose the insurance company, but my choice is subject to Lender's right to disapprove. Lender may not disapprove my choice unless the disapproval is reasonable. Lender may require me to pay either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect the flood zone determination or certification. If I disagree with the flood zone determination, I may request the Federal Emergency Management Agency to review the flood zone determination and I promise to pay any fees charged by the Federal Emergency Management Agency for its review.

If I fail to maintain any of the insurance coverages described above, Lender may obtain insurance coverage, at Lender's option and my expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage will cover Lender, but might or might not protect me, my equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. I acknowledge that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that I could have obtained. Any amounts disbursed by Lender under this Section 5 will become my additional debt secured by this Security Instrument. These amounts will bear interest at the interest rate set forth in the Note from the date of disbursement and will be payable with such interest, upon notice from Lender to me requesting payment.

All of the insurance policies and renewals of those policies will include what is known as a "Standard Mortgage Clause" to protect Lender and will name Lender as mortgagee and/or as an additional loss payee. The form of all policies and renewals will be acceptable to Lender. Lender will have the right to hold the policies and renewal certificates. If Lender requires, I will promptly give Lender all receipts of paid premiums and renewal notices that I receive.

If I obtain any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy will include a Standard Mortgage Clause and will name Lender as mortgagee and/or as an additional loss payee.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to the insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company for loss or damage to the Property is called "Insurance Proceeds." Unless Lender and I otherwise agree in writing, any Insurance Proceeds, whether or not the underlying insurance was required by Lender, will be used to repair or to restore the damaged Property unless: (a) it is not economically feasible to make the repairs or restoration; (b) the use of the Insurance Proceeds for that purpose would lessen the protection

Initials: SK JK



given to Lender by this Security Instrument; or (c) Lender and I have agreed in writing not to use the Insurance Proceeds for that purpose. During the period that any repairs or restorations are being made, Lender may hold any Insurance Proceeds until it has had an opportunity to inspect the Property to verify that the repair work has been completed to Lender's satisfaction. However, this inspection will be done promptly. Lender may make payments for the repairs and restorations in a single payment or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires otherwise, Lender is not required to pay me any interest or earnings on the Insurance Proceeds. I will pay for any public adjusters or other third parties that I hire, and their fees will not be paid out of the Insurance Proceeds. If the repair or restoration is not economically feasible or if it would lessen Lender's protection under this Security Instrument, then the Insurance Proceeds will be used to reduce the amount that I owe to Lender under this Security Instrument. Such Insurance Proceeds will be applied in the order provided for in Section 2. If any of the Insurance Proceeds remain after the amount that I owe to Lender has been paid in full, the remaining Insurance Proceeds will be paid to me.

If I abandon the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim, Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 of this Security Instrument or otherwise, I give Lender my rights to any Insurance Proceeds in an amount not greater than the amounts unpaid under the Note and this Security Instrument. I also give Lender any other of my rights (other than the right to any refund of unearned premiums that I paid) under all insurance policies covering the Property, if the rights are applicable to the coverage of the Property. Lender may use the Insurance Proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Borrower's Obligations to Occupy The Property.** I will occupy the Property and use the Property as my principal residence within 60 days after I sign this Security Instrument. I will continue to occupy the Property and to use the Property as my principal residence for at least one year. The one-year period will begin when I first occupy the Property. However, I will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if Lender agrees in writing that I do not have to do so. Lender may not refuse to agree unless the refusal is reasonable. I also will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if extenuating circumstances exist which are beyond my control.

**7. Borrower's Obligations to Maintain And Protect The Property And to Fulfill Any Lease Obligations.**

**(a) Maintenance and Protection of the Property.**

I will not destroy, damage or harm the Property, and I will not allow the Property to deteriorate. Whether or not I am residing in the Property, I will keep the Property in good repair so that it will not deteriorate or decrease in value due to its condition. Unless it is determined under Section 5 of this Security Instrument that repair is not economically feasible, I will promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or Condemnation (as defined in the definition of Miscellaneous Proceeds) proceeds are paid because of loss or damage to, or Condemnation of, the Property, I will repair or restore the Property only if Lender has released those proceeds for such purposes. Lender may pay for the repairs and restoration out of proceeds in a single payment or in a series of progress payments as the work is completed. If the insurance or Condemnation proceeds are not sufficient to repair or restore the Property, I promise to pay for the completion of such repair or restoration.

**(b) Lender's Inspection of Property.**

Lender, and others authorized by Lender, may enter on and inspect the Property. They will do so in a reasonable manner and at reasonable times. If it has a reasonable purpose, Lender may inspect the inside of the home or other improvements on the Property. Before or at the time an inspection is made, Lender will give me notice stating a reasonable purpose for such interior inspection.

8. Borrower's Loan Application. If, during the application process for the Loan, I, or any Person or entity acting at my direction or with my knowledge or consent, made false, misleading, or inaccurate statements to Lender about information important to Lender in determining my eligibility for the Loan (or did not provide Lender with such information), Lender will treat my actions as a default under this Security Instrument. False, misleading, or inaccurate statements about information important to Lender would include a misrepresentation of my intention to occupy the Property as a principal residence. This is just one example of a false, misleading, or inaccurate statement of important information.

9. Lender's Right to Protect Its Rights in The Property. If: (a) I do not keep my promises and agreements made in this Security Instrument; (b) someone, including me, begins a legal proceeding that may significantly affect Lender's interest in the Property or rights under this Security Instrument (such as a legal proceeding in bankruptcy, in probate, for Condemnation or Forfeiture (as defined in Section 11), proceedings which could give a Person rights which could equal or exceed Lender's interest in the Property or under this Security Instrument, proceedings for enforcement of a Lien which may become superior to this Security Instrument, or to enforce laws or regulations); or (c) I have abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and Lender's rights under this Security Instrument.

Lender's actions may include, but are not limited to: (a) protecting and/or assessing the value of the Property; (b) securing and/or repairing the Property; (c) paying sums to eliminate any Lien against the Property that may be equal or superior to this Security Instrument; (d) appearing in court; and (e) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Lender can also enter the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, have utilities turned on or off, and take any other action to secure the Property. Although Lender may take action under this Section 9, Lender does not have to do so and is under no duty to do so. I agree that Lender will not be liable for not taking any or all actions under this Section 9.

I will pay to Lender any amounts, with interest, which Lender spends under this Section 9. I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will pay interest on those amounts at the interest rate set forth in the Note. Interest on each amount will begin on the date that the amount is spent by Lender. This Security Instrument will protect Lender in case I do not keep this promise to pay those amounts with interest.

If I do not own, but am a tenant on the Property, I will fulfill all my obligations under my lease. I also agree that, if I acquire the full title (sometimes called "Fee Title") to the Property, my lease interest and the Fee Title will not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, I will pay the premiums for the Mortgage Insurance. If, for any reason, the Mortgage Insurance coverage ceases to be available from the mortgage insurer that previously provided such insurance and Lender required me to make separate payments toward the premiums for Mortgage Insurance, I will pay the premiums for substantially equivalent Mortgage Insurance coverage from an alternate mortgage insurer. However, the cost of this Mortgage Insurance coverage will be substantially equivalent to the cost to me of the previous Mortgage Insurance coverage, and the alternate mortgage insurer will be selected by Lender.

If substantially equivalent Mortgage Insurance coverage is not available, Lender will establish a non-refundable "Loss Reserve" as a substitute for the Mortgage Insurance coverage. I will continue to pay to Lender each month an amount equal to one-twelfth of the yearly Mortgage Insurance premium (as of the time the coverage lapsed or ceased to be in effect). Lender will retain these payments, and will use these payments to pay for losses that the Mortgage Insurance

would have covered. The Loss Reserve is non-refundable even if the Loan is ultimately paid in full and Lender is not required to pay me any interest on the Loss Reserve. Lender can no longer require Loss Reserve payments if: (a) Mortgage Insurance coverage again becomes available through an insurer selected by Lender; (b) such Mortgage Insurance is obtained; (c) Lender requires separately designated payments toward the premiums for Mortgage Insurance; and (d) the Mortgage Insurance coverage is in the amount and for the period of time required by Lender.

If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separate payments toward the premiums for Mortgage Insurance, I will pay the Mortgage Insurance premiums, or the Loss Reserve payments, until the requirement for Mortgage Insurance ends according to any written agreement between Lender and me providing for such termination or until termination of Mortgage Insurance is required by Applicable Law. Lender may require me to pay the premiums, or the Loss Reserve payments, in the manner described in Section 3 of this Security Instrument. Nothing in this Section 10 will affect my obligation to pay interest at the rate provided in the Note.

A Mortgage Insurance policy pays Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance policy.

Mortgage insurers assess their total risk on all Mortgage Insurance from time to time. Mortgage insurers may enter into agreements with other parties to share or change their risk, or to reduce losses. These agreements are based on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include Mortgage Insurance premiums).

As a result of these agreements, Lender, any owner of the Note, another insurer, any reinsurer, or any other entity may receive (directly or indirectly) amounts that come from a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or changing the mortgage insurer's risk, or reducing losses. If these agreements provide that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." It also should be understood that: (a) any of these agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. These agreements will not increase the amount Borrower will owe for Mortgage Insurance, or any other terms of the Loan. These agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund; and (b) any of these agreements will not affect the rights Borrower has - if any - regarding the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right (a) to receive certain disclosures, (b) to request and obtain cancellation of the Mortgage Insurance, (c) to have the Mortgage Insurance terminated automatically, and/or (d) to receive a refund of any Mortgage Insurance premiums that were not earned at the time of such cancellation or termination.

11. Agreements About Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are assigned to and will be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds will be applied to restoration or repair of the Property, if (a) the restoration or repair is economically feasible, and (b) Lender's security given in this Security Instrument is not lessened. During such repair and restoration period, Lender will have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect the Property to verify that the work has been completed to Lender's satisfaction. However, the inspection will be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender will not be required to pay Borrower any interest or earnings on the Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security given in this Security Instrument would be lessened, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me. Such Miscellaneous Proceeds will be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the Sums Secured immediately before the partial taking, destruction, or loss in value, the Sums Secured will be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the Sums Secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to me.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the Sums Secured immediately before the partial taking, destruction, or loss in value, the Miscellaneous Proceeds will be applied to the Sums Secured whether or not the sums are then due.

If I abandon the Property, or if, after Lender sends me notice that the Opposing Party (as defined in the next sentence) offered to make an award to settle a claim for damages, I fail to respond to Lender within 30 days after the date Lender gives notice, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the Sums Secured, whether or not then due. "Opposing Party" means the third party that owes me Miscellaneous Proceeds or the party against whom I have a right of action in regard to Miscellaneous Proceeds.

I will be in default under this Security Instrument if any civil or criminal action or proceeding that Lender determines could result in a court ruling (a) that would require Forfeiture of the Property, or (b) that could damage Lender's interest in the Property or rights under this Security Instrument. "Forfeiture" is a court action to require the Property, or any part of the Property, to be given up. I may correct the default by obtaining a court ruling that dismisses the court action, if Lender determines that this court ruling prevents Forfeiture of the Property and also prevents any damage to Lender's interest in the Property or rights under this Security Instrument. If I correct the default, I will have the right to have enforcement of this Security Instrument discontinued, as provided in Section 19 of this Security Instrument, even if Lender has required Immediate Payment in Full (as defined in Section 22). The proceeds of any award or claim for damages that are attributable to the damage or reduction of Lender's interest in the Property are assigned, and will be paid, to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property will be applied in the order provided for in Section 2.

**12. Continuation of Borrower's Obligations And of Lender's Rights.**

**(a) Borrower's Obligations.**

Lender may allow me, or a Person who takes over my rights and obligations, to delay or to change the amount of the Periodic Payments. Even if Lender does this, however, I will still be fully obligated under the Note and under this Security Instrument unless Lender agrees to release me, in writing, from my obligations.

Lender may allow those delays or changes for me or a Person who takes over my rights and obligations, even if Lender is requested not to do so. Even if Lender is requested to do so, Lender will not be required to (1) bring a lawsuit against me or such a Person for not fulfilling obligations under the Note or under this Security Instrument, or (2) refuse to extend time for payment or otherwise modify amortization of the Sums Secured.

**(b) Lender's Rights.**

Even if Lender does not exercise or enforce any right of Lender under this Security Instrument or under Applicable Law, Lender will still have all of those rights and may exercise and enforce them in the future. Even if: (1) Lender obtains insurance, pays taxes, or pays other claims, charges or Liens against the Property; (2) Lender accepts payments from third Persons; or (3) Lender accepts payments in amounts less than the amount then due, Lender will have the right under Section 22 below to demand that I make Immediate Payment in Full of any amounts remaining due and payable to Lender under the Note and under this Security Instrument.

13. **Obligations of Borrower And of Persons Taking Over Borrower's Rights or Obligations.** If more than one Person signs this Security Instrument as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Security Instrument. Lender may enforce Lender's rights under this Security Instrument against each of us individually or against all of us together. This means that any one of us may be required to pay all of the Sums Secured. However, if one of us does not sign the Note: (a) that Person is signing this Security Instrument only to give that Person's rights in the Property to Lender under the terms of this Security Instrument; (b) that Person is not personally obligated to pay the Sums Secured; and (c) that Person agrees that Lender may agree with the other Borrowers to delay enforcing any of Lender's rights, to modify, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Person's consent.

Subject to the provisions of Section 18 of this Security Instrument, any Person who takes over my rights or obligations under this Security Instrument in writing, and is approved by Lender in writing, will have all of my rights and will be obligated to keep all of my promises and agreements made in this Security Instrument. Borrower will not be released from Borrower's obligations and liabilities under this Security Instrument unless Lender agrees to such release in writing. Any Person who takes over Lender's rights or obligations under this Security Instrument will have all of Lender's rights and will be obligated to keep all of Lender's promises and agreements made in this Security Instrument except as provided under Section 20.

14. **Loan Charges.** Lender may charge me fees for services performed in connection with my default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. With regard to other fees, the fact that this Security Instrument does not expressly indicate that Lender may charge a certain fee does not mean that Lender cannot charge that fee. Lender may not charge fees that are prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to Applicable Law which sets maximum loan charges, and that Applicable Law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed permitted limits: (a) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (even if a prepayment charge is provided for under the Note). If I accept such a refund that is paid directly to me, I will waive any right to bring a lawsuit against Lender because of the overcharge.

15. **Notices Required under this Security Instrument.** All notices given by me or Lender in connection with this Security Instrument will be in writing. Any notice to me in connection with this Security Instrument is considered given to me when mailed by first class mail or when actually delivered to my notice address if sent by other means. Notice to any one Borrower will be notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address is the address of the Property unless I give notice to Lender of a different address. I will promptly notify Lender of my change of address. If Lender specifies a procedure for reporting my change of address, then I will only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender will be given by delivering it or by mailing it by first class mail to Lender's address stated on the first page of this Security Instrument unless Lender has given me notice of another address. Any notice in connection with this Security Instrument is given to Lender when it is actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Law That Governs this Security Instrument; Word Usage.** This Security Instrument is governed by federal law and the law of New York State. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might allow the parties to agree by contract or it might be silent, but such silence does not mean that Lender and I cannot agree by contract. If any term of this Security Instrument or of the Note conflicts with Applicable Law, the conflict will not affect other provisions of this Security Instrument or the Note which can operate, or be given effect, without the conflicting

provision. This means that the Security Instrument or the Note will remain as if the conflicting provision did not exist.

As used in this Security Instrument: (a) words of the masculine gender mean and include corresponding words of the feminine and neuter genders; (b) words in the singular mean and include the plural, and words in the plural mean and include the singular; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. I will be given one copy of the Note and of this Security Instrument.

18. Agreements about Lender's Rights If the Property Is Sold or Transferred. Lender may require Immediate Payment in Full of all Sums Secured by this Security Instrument if all or any part of the Property, or if any right in the Property, is sold or transferred without Lender's prior written permission. If Borrower is not a natural Person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission, Lender also may require Immediate Payment in Full. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender requires Immediate Payment in Full under this Section 18, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 15 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

19. Borrower's Right to Have Lender's Enforcement of this Security Instrument Discontinued. Even if Lender has required Immediate Payment in Full, I may have the right to have enforcement of this Security Instrument stopped. I will have this right at any time before the earliest of: (a) five days before sale of the Property under any power of sale granted by this Security Instrument; (b) another period as Applicable Law might specify for the termination of my right to have enforcement of the Loan stopped; or (c) a judgment has been entered enforcing this Security Instrument. In order to have this right, I will meet the following conditions:

- (a) I pay to Lender the full amount that then would be due under this Security Instrument and the Note as if Immediate Payment in Full had never been required;
- (b) I correct my failure to keep any of my other promises or agreements made in this Security Instrument;
- (c) I pay all of Lender's reasonable expenses in enforcing this Security Instrument including, for example, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and
- (d) I do whatever Lender reasonably requires to assure that Lender's interest in the Property and rights under this Security Instrument and my obligations under the Note and under this Security Instrument continue unchanged.

Lender may require that I pay the sums and expenses mentioned in (a) through (d) in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer.

If I fulfill all of the conditions in this Section 19, then this Security Instrument will remain in full effect as if Immediate Payment in Full had never been required. However, I will not have the right to have Lender's enforcement of this Security Instrument discontinued if Lender has required Immediate Payment in Full under Section 18 of this Security Instrument.

20. Note Holder's Right to Sell the Note or an Interest in the Note; Borrower's Right to Notice of Change of Loan Servicer; Lender's and Borrower's Right to Notice of Grievance. The Note, or an interest in the Note, together with this Security Instrument, may be sold one or more times. I might not receive any prior notice of these sales.

The entity that collects the Periodic Payments and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law is called the "Loan Servicer." There may be a change of the Loan Servicer as a result of the sale of the Note. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. Applicable Law requires that I be given written notice of any change of the Loan Servicer. The notice will state the name and address of the new Loan Servicer, and also tell me the address to which I should make my payments. The notice also will contain any other information required by RESPA or Applicable



Law. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to me will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither I nor Lender may commence, join or be joined to any court action (as either an individual party or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other has not fulfilled any of its obligations under this Security Instrument, unless the other is notified (in the manner required under Section 15 of this Security Instrument) of the unfulfilled obligation and given a reasonable time period to take corrective action. If Applicable Law provides a time period which will elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to me under Section 22 and the notice of the demand for payment in full given to me under Section 22 will be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20. All rights under this paragraph are subject to Applicable Law.

21. Continuation of Borrower's Obligations to Maintain and Protect the Property. The federal laws and the laws of New York State that relate to health, safety or environmental protection are called "Environmental Law." Environmental Law classifies certain substances as toxic or hazardous. There are other substances that are considered hazardous for purposes of this Section 21. These substances are gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. The substances defined as toxic or hazardous by Environmental Law and the substances considered hazardous for purposes of this Section 21 are called "Hazardous Substances." "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law. An "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not do anything affecting the Property that violates Environmental Law, and I will not allow anyone else to do so. I will not cause or permit Hazardous Substances to be present on the Property. I will not use or store Hazardous Substances on the Property. I also will not dispose of Hazardous Substances on the Property, or release any Hazardous Substance on the Property, and I will not allow anyone else to do so. I also will not do, nor allow anyone else to do, anything affecting the Property that: (a) is in violation of any Environmental Law; (b) creates an Environmental Condition; or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The promises in this paragraph do not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized as appropriate for normal residential use and maintenance of the Property (including, but not limited to, Hazardous Substances in consumer products). I may use or store these small quantities on the Property. In addition, unless Environmental Law requires removal or other action, the buildings, the improvements and the fixtures on the Property are permitted to contain asbestos and asbestos-containing materials if the asbestos and asbestos-containing materials are undisturbed and "non-friable" (that is, not easily crumbled by hand pressure).

I will promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge; (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If I learn, or any governmental or regulatory authority, or any private party, notifies me that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I will promptly take all necessary remedial actions in accordance with Environmental Law.

Nothing in this Security Instrument creates an obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS**

I also promise and agree with Lender as follows:

22. Lender's Rights If Borrower Fails to Keep Promises and Agreements. Except as provided in Section 18 of this Security Instrument, if all of the conditions stated in



subsections (a), (b) and (c) of this Section 22 are met, Lender may require that I pay immediately the entire amount then remaining unpaid under the Note and under this Security Instrument. Lender may do this without making any further demand for payment. This requirement is called "Immediate Payment in Full."

If Lender requires Immediate Payment in Full, Lender may bring a lawsuit to take away all of my remaining rights in the Property and have the Property sold. At this sale Lender or another Person may acquire the Property. This is known as "Foreclosure and Sale." In any lawsuit for Foreclosure and Sale, Lender will have the right to collect all costs and disbursements and additional allowances allowed by Applicable Law and will have the right to add all reasonable attorneys' fees to the amount I owe Lender, which fees shall become part of the Sums Secured.

Lender may require Immediate Payment in Full under this Section 22 only if all of the following conditions are met:

(a) I fail to keep any promise or agreement made in this Security Instrument or the Note, including, but not limited to, the promises to pay the Sums Secured when due, or if another default occurs under this Security Instrument;

(b) Lender sends to me, in the manner described in section 15 of this Security Instrument, a notice that states:

(1) The promise or agreement that I failed to keep or the default that has occurred;

(2) The action that I must take to correct that default;

(3) A date by which I must correct the default. That date will be at least 30 days from the date on which the notice is given;

(4) That if I do not correct the default by the date stated in the notice, Lender may require Immediate Payment in Full, and Lender or another Person may acquire the Property by means of Foreclosure and Sale;

(5) That if I meet the conditions stated in Section 19 of this Security Instrument, I will have the right to have Lender's enforcement of this Security Instrument stopped and to have the Note and this Security Instrument remain fully effective as if Immediate Payment in Full had never been required; and

(6) That I have the right in any lawsuit for Foreclosure and Sale to argue that I did keep my promises and agreements under the Note and under this Security Instrument, and to present any other defenses that I may have; and

(c) I do not correct the default stated in the notice from Lender by the date stated in that notice.

23. Lender's Obligation to Discharge this Security Instrument. When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied. I will pay all costs of recording the discharge in the proper official records. I agree to pay a fee for the discharge of this Security Instrument, if Lender so requires. Lender may require that I pay such a fee, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted by Applicable Law.

24. Agreements about New York Lien Law. I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (a) hold all amounts which I receive and which I have a right to receive from Lender under the Note as a trust fund; and (b) use those amounts to pay for "Cost of Improvement" (as defined in Section 13 of the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a trust fund means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section 24.

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25. Borrower's Statement Regarding the Property (check box as applicable).

- This Security Instrument covers real property improved, or to be improved, by a one or two family dwelling only.
- This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six residential dwelling units with each dwelling unit having its own separate cooking facilities.
- This Security Instrument does not cover real property improved as described above.

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in pages 1 through 17 of this Security Instrument and in any Rider signed by me and recorded with it.

Witnesses:

*Sherry E Kim, by Song ok Cho*

*her attorney in fact* (Seal)  
-Borrower

SHERRY E. KIM

*Thomas D Kim, by Song ok Cho*

*his attorney in fact* (Seal)  
-Borrower

Thomas D. Kim

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

STATE OF NEW YORK, NEW YORK

County ss:

On the 30 day of March 2007 before me, the undersigned, a notary public in and for said state, personally appeared SHERRY E. KIM  
Thomas D. Kim

*By Soungok Cho  
Affy in fact*

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

*[Handwritten Signature]*

Notary Public

Tax Map Information:

**SEAL**  
KETH BIALER  
NOTARY PUBLIC - STATE OF NEW YORK  
LIC. #02B16075150  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JUNE 3, 2010

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4-031

**ADJUSTABLE RATE RIDER**  
**(12-MTA Index - Payment and Rate Caps)**

2244

THIS ADJUSTABLE RATE RIDER is made this 30TH day of MARCH, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to WASHINGTON MUTUAL BANK, FA (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

20 WEST STREET, UNIT 11H #11H, NEW YORK, NY 10004  
(PROPERTY ADDRESS)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 1.10% OF THE ORIGINAL AMOUNT (OR \$ 404,800.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE AND RIDER. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. Up until the first day of the calendar month that immediately precedes the first payment due date set forth in Section 3 of the Note, I will pay interest at a yearly rate of 8.711%. Thereafter until the first Change Date (as defined in Section 4 of the Note) I will pay interest at a yearly rate of 1.875%. The interest rate I will pay will thereafter change in accordance with Section 4 of the Note.

2244

Section 4 of the Note provides for changes in the interest rate and monthly payment as follows:

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The interest rate I will pay may change on the 1ST day of MAY, 2007, and on that day every month thereafter. Each such day is called a "Change Date".

**(B) The Index**

On each Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new Index which is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Interest Rate Change**

Before each Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 70/100 percentage points 3.700 % ("Margin") to Current Index. The Note Holder will then round the result of this addition to the nearest one thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). The difference will be rounded to the next higher 1/8 of 1%.

**(D) Interest Rate Limit**

My interest rate will never be greater than 10.625 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

**(E) Payment Change Dates**

Effective every year commencing MAY 01, 2008, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the

amount of the monthly payment that would be sufficient to repay the projected Principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate in effect 45 days prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.

**(F) Monthly Payment Limitations**

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 1/2% more or less than the amount I have been paying. This payment cap applies only to the Principal Payment and does not apply to any escrow payments Lender may require under the Security Instrument.

**(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization**

Since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the maturity date in substantially equal payments. For each month that the monthly payment is less than the interest portion, the Note Holder will subtract the monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the excess towards a Principal reduction of the Note.

**(H) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed a maximum amount equal to 110% of the principal amount original borrowed. In the event my unpaid Principal would otherwise exceed that 110% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 1/2% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid principal in full on the maturity date at my interest rate in effect the month prior to the payment due date in substantially equal payments.

**(I) Required Full Monthly Payment**

On the FIFTH anniversary of the due date of the first monthly payment, and on that same day every FIFTH year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

**(J) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

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**(K) Failure to Make Adjustments**

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid "Principal."

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Section 18 of the Security Instrument is amended to read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Agreement or other obligations related to the Note or other loan document is acceptable to Lender; (c) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (d) payment of Assumption Fee if requested by Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption, and Lender may increase the maximum interest rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written assumption agreement with transferee and formally releases Borrower.



2244

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2244

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider. Borrower agrees to execute any document necessary to reform this Agreement to accurately reflect the terms of the Agreement between Borrower and Beneficiary or if the original Note, Trust Deed or other document is lost, mutilated or destroyed.

*Sherry E. Kim, by Soyoun Kim*  
*her attorney in fact*  
\_\_\_\_\_  
SHERRY E. KIM

*Thomas D. Kim, by Soyoun Kim*  
*his attorney in fact*  
\_\_\_\_\_  
Thomas D. Kim

\_\_\_\_\_  
\_\_\_\_\_



**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

(Seal) \_\_\_\_\_ (Seal)  
-Borrower *Sherry E. Kim by Signac Cln* -Borrower  
*has atting in fact*

SHERRY E. KIM

(Seal) \_\_\_\_\_ (Seal)  
-Borrower *Thomas D Kim by Signac Cln* -Borrower  
*has atting in fact*

Thomas D. Kim

(Seal) \_\_\_\_\_ (Seal)  
-Borrower \_\_\_\_\_ -Borrower

(Seal) \_\_\_\_\_ (Seal)  
-Borrower \_\_\_\_\_ -Borrower

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2007040401783005003S081D

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

Document ID: 2007040401783005  
Document Type: MORTGAGE

Document Date: 03-30-2007

Preparation Date: 04-11-2007

**SUPPORTING DOCUMENTS SUBMITTED:**

339EE MORTGAGE TAX EXEMPT AFFIDAVIT

Page Count  
4

**AFFIDAVIT FOR CREDIT AGAINST MORTGAGE TAX  
UNDER SECTION 339-EE(2) OF THE  
NEW YORK REAL PROPERTY LAW**

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

Moin Moinian, being duly sworn, deposes and says:

1. I am a member of JDM2 Member LLC, Managing Member of New 19 West LLC ("Sponsor"), the Sponsor of the offering plan for the sale of units in the premises known as The Downtown Club Condominium located at 20 West Street, New York, New York 10004.

2. A Declaration of Condominium subjecting the property known as 20 West Street, New York, New York 10004 ("Property") to the provisions of Article 9-B of the New York Real Property Law and establishing The Downtown Club Condominium ("Condominium") was recorded in the Office of the Register of the City of New York, County of New York on April 19, 2006 under CRFN # 2006000215683.

3. The mortgage offered herewith for recording in the principal sum of \$404,800 executed by Sherry E. Kim ("Mortgagor") to \_\_\_\_\_ ("Mortgagee") is a mortgage on the first sale by the Sponsor of Unit No. 11H ("Unit") in the Condominium. Pursuant to the Declaration, the Unit has an appurtenant combined interest in the Common Elements of the Condominium of 0.2859%.

4. Schedule A attached hereto and made a part hereof is a schedule of the construction and blanket mortgages covering the Property comprising the Condominium upon which mortgage recording taxes in the aggregate sum of \$1,656,672.76 have been paid. Such sum represents: (i) NYS Basic Tax amount of \$300,940.50; (ii) NYC Tax in the amount of \$1,053,291.76; (iii) Additional Tax in the amount of \$151,970.25; and (iv) Special Additional Tax in the amount of \$150,470.25.

5. Pursuant to Section 339-ee(2) of the Real Property Law, the parties to the mortgage offered simultaneously herewith for recording are entitled to a mortgage tax credit computed as follows:


A.	i.	BASIC NYS TAX of \$.005 on new mortgage of \$404,800	\$2024. —	
	ii.	Credit allowed of 0.2859% of \$300,940.50	(\$860.39)	
	iii.	Basic NYS Tax Due (Line i less ii)		\$1163.61
B.	iv.	NYC TAX OF \$.01125 if loan over \$500,000; \$.01 if loan under \$500,000 on new mortgage of \$404,800	\$4048. —	
	v.	Credit allowed of 0.2859% of \$1,053,291.76	(\$3011.36)	
	vi.	NYC Tax Due (Line iv less v)		\$1036.64
C.	vii.	ADDITIONAL TAX \$.0030 on new mortgage of \$404,800	\$1214.40	
	viii.	Less residential exemption for first \$10,000	(\$30.00)	
	ix.	Additional tax (line vii minus line viii)	\$1184.40	
	x.	Credit allowed of 0.2859% of \$151,970.25	(\$434.48)	
	xi.	Additional Tax Due (line ix less x)		\$749.92
	xii.	MORTGAGOR'S PORTION OF TAX DUE (line iii plus vi plus xi)		\$2950.17
	xiii.	Mortgagee's portion of tax due (New Mortgage \$404,800 x .0025)		\$1012. —
	xiv.	TOTAL TAX DUE AND TENDERED HEREWITH (xii plus xiii)		\$3962.17



6. Such credit being in the amount of \$ 4305.83 (add (a) the lesser of Line i and line ii, (b) the lesser of line iv and line v, and (c) the lesser of line ix and line x), is based on the product of the appurtenant percentage of the common interest (covered by the mortgage offered simultaneously herewith for recording) in the Common Elements of the Condominium.

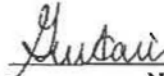
WHEREFORE, it is hereby requested that pursuant to Section 339-ee(2) of the Real Property Law and Section 252 of the New York State Tax Law, that the mortgage offered simultaneously herewith for recording be declared exempt from taxation to the extent indicated above and that said mortgage be accepted for recording upon payment of \$ 3962.17 (line xiv) which is tendered herewith.

The foregoing is true to the best of my knowledge based upon information furnished to me by Mortgagor and New 19 West LLC, Sponsor of the Condominium.

  
Moin Moinian

Sworn to before me on

MAR 30 2007




  
\_\_\_\_\_  
Notary Public

GERRI HARRIS, NOTARY PUBLIC  
State of New York, No. 02HAG072079  
Qualified in New York County  
Commission Expires March 25, 2010

**SCHEDULE A**

**SCHEDULE OF MORTGAGES**

1. Mortgage securing the principal sum of \$1,000,000.00 made by New 19 West LLC to KeyBank National Association, dated 5/11/04 and recorded 9/24/04 as CRFN 2004000600204. Mortgage tax paid: \$27,500.00
2. Building Loan Mortgage securing the principal sum of \$5,000,000.00 made by New 19 West LLC to KeyBank National Association, dated 5/11/04 and recorded 10/1/04 as CRFN 2004000015992. Mortgage tax paid: \$137,500.00
3. Building Loan Mortgage securing the principal sum of \$2,375,593.00 made by New 19 West LLC to KeyBank National Association, dated 5/11/04 and recorded 2/23/05 as CRFN 2005000108949. Mortgage tax paid: \$65,329.00
4. Building Loan Mortgage securing the principal sum of \$32,772,028.00 made by New 19 West LLC to KeyBank National Association, dated 2/28/05 and recorded 4/19/08 as CRFN 2005000225987. Mortgage tax paid: \$901,230.00
5. Mortgage securing the principal sum of \$3,500,000.00 made by New 19 West LLC to KeyBank National Association, dated 5/11/04 and recorded 9/24/04 as CRFN 2004000600206. Mortgage tax paid: \$96,250.00
6. Mortgage securing the principal sum of \$1,500,000.00 made by New 19 West LLC to KeyBank National Association, dated 5/11/04 and recorded 10/1/04 as CRFN 2004000615993. Mortgage tax paid: \$41,250.00
7. Mortgage securing the principal sum of \$571,307.00 made by New 19 West LLC to KeyBank National Association, dated 5/11/04 and recorded 2/23/05 as CRFN 2005000108950. Mortgage tax paid: \$15,710.76
8. Project Loan Mortgage securing the principal sum of \$10,469,245.00 made by New 19 West LLC to KeyBank National Association, dated 2/28/05 and recorded 4/19/05 as CRFN 2005000225985. Mortgage tax paid: \$287,903.00
9. Project Loan Mortgage, Assignment of Rents & Security Agreement made by New 19 West LLC and KeyBank National Association dated 12/19/05 in the sum of \$3,000,000.00 recorded 02/02/2006 in CRFN 2006000064439. Mortgage Tax Paid: \$84,000.00

<b>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</b>		 <b>2009111900563001001E4CF6</b>	
This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.		<b>RECORDING AND ENDORSEMENT COVER PAGE</b>	
<b>Document ID: 2009111900563001</b>		<b>Document Date: 10-07-2009</b>	<b>Preparation Date: 11-19-2009</b>
<b>Document Type: ASSIGNMENT, MORTGAGE</b>			
<b>Document Page Count: 3</b>			
<b>PRESENTER:</b> THRESHOLD LAND, INC., PICK UP BY MICHAEL FINN 584 MAIN STREET ISLIP, NY 11751 631-224-1345 kwalker@thresholdland.com		<b>RETURN TO:</b> THRESHOLD LAND, INC., PICK UP BY MICHAEL FINN 584 MAIN STREET ISLIP, NY 11751 631-224-1345 kwalker@thresholdland.com	
<b>PROPERTY DATA</b>			
<b>Borough</b>	<b>Block Lot</b>	<b>Unit</b>	<b>Address</b>
MANHATTAN	15 1131	Entire Lot 11H	20 WEST STREET
<b>Property Type: 1- 2 FAM WITH ATTCH GAR &amp;/OR VACANT LAND</b>			
<b>CROSS REFERENCE DATA</b>			
CRFN: 2007000194901			
<b>PARTIES</b>			
<b>ASSIGNOR/OLD LENDER:</b> WASHINGTON MUTUAL BANK, FA 7255 BAYMEADOWS WAY JACKSONVILLE, FL 32256		<b>ASSIGNEE/NEW LENDER:</b> BANK OF AMERICA, NATIONAL ASSOCIATION 7255 BAYMEADOWS WAY JACKSONVILLE, FL 32256	
<b>FEEES AND TAXES</b>			
<b>Mortgage</b>		<b>Filing Fee:</b>	
Mortgage Amount:	\$ 0.00	\$	0.00
Taxable Mortgage Amount:	\$ 0.00	NYC Real Property Transfer Tax:	
Exemption:		\$	0.00
TAXES: County (Basic):	\$ 0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$ 0.00	\$	0.00
Spec (Additional):	\$ 0.00		
TASF:	\$ 0.00		
MTA:	\$ 0.00		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
<b>TOTAL:</b>	<b>\$ 0.00</b>		
Recording Fee:	\$ 52.00		
Affidavit Fee:	\$ 0.00		
			
		<b>RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK</b> Recorded/Filed 11-30-2009 11:31 City Register File No.(CRFN): 2009000390649  City Register Official Signature	

ORIGINAL

RR&A # 09-112160  
COUNTY: New York  
BLOCK: 15  
LOT: 1131

Form 8021\*-Assignment of Mortgage without Covenant-  
Individual or Corporation (Single Sheet)

**CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT-  
THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.**

KNOW THAT

WASHINGTON MUTUAL BANK, FA a corporation organized and existing under the laws of the United States of America whose principal place of business is 7255 BAYMEADOWS WAY JACKSONVILLE, FL 32256 assignor,

in consideration of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, paid by

BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NA AS TRUSTEE FOR WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WAMU SERIES 2007-OA4TRUST a corporation whose principal place of business is 7255 BAYMEADOWS WAY, JACKSONVILLE, FL 32256, assignee,

hereby assigns unto the assignee, a certain Mortgage dated March 30, 2007, made by SHERRY KIM to WASHINGTON MUTUAL BANK, FA in the principal sum of \$368,000.00 and recorded on April 16, 2007 in CONTROL NO. 2007000194901 in the Office of the Clerk of the County of New York covering premises known as 20 W STREET, NEW YORK, NY 10004.

This assignment is effective as of 3-30-07.

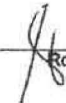
This assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

TOGETHER with the bond or note or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest; TO HAVE AND TO HOLD the same unto the assignee and to the successors, legal representatives and assigns of the assignee forever.

The word "assignor" or "assignee" shall be construed as if it read "assignors" or "assignees" whenever the sense of this instrument so requires.

DATED: OCT 07 2008

JPMorgan Chase Bank, National  
Association, successor in interest to  
Washington Mutual Bank f/k/a Washington  
Mutual Bank FA

By:  \_\_\_\_\_  
Rodger Berry

(General Acknowledgment for documents executed and notarized in New York State Only)

ACKNOWLEDGMENT

State of New York )  
County of \_\_\_\_\_) ss.

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity(ies), that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Signature

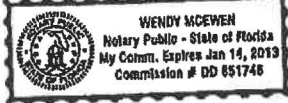
(General Acknowledgment for documents executed and notarized outside of New York State, except California)

ACKNOWLEDGMENT

State of Florida )  
County of Duval ) ss.

On the 7<sup>th</sup> day of Oct. in the year 2009 before me, the undersigned, personally appeared Rodger Berry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity(ies), that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Jacksonville, State of Florida.

\_\_\_\_\_  
Notary Signature



(General Acknowledgment for documents executed and notarized in California)

ACKNOWLEDGMENT

State of California )  
County of \_\_\_\_\_) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Signature

Assignment of Mortgage  
Without Covenant

BLOCK: 15

TITLE NO.

LOT: 1131

=====

WASHINGTON MUTUAL BANK, FA

COUNTY OR TOWN: New York  
PROPERTY ADDRESS: 20 W STREET,  
NEW YORK, NY 10004

TO

RECORD AND RETURN TO:

BANK OF AMERICA, NATIONAL  
ASSOCIATION AS SUCCESSOR BY  
MERGER TO LASALLE BANK NA AS  
TRUSTEE FOR WASHINGTON MUTUAL  
MORTGAGE PASS-THROUGH  
CERTIFICATES WAMU SBRIES 2007-  
0A4TRUST

=====

Washington Mutual c/o Rosicki, Rosicki and  
Associates  
51 E. Bethpage Road  
Plainview, NY 11803



JS 44C/SDNY  
REV.  
10/01/2020

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initialing the civil docket sheet.

PLAINTIFFS  
GOKHVAT HOLDINGS LLC

DEFENDANTS  
U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE,  
BANK OF AMERICA, NATIONAL ASSOCIATION

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
ROSENBERG FORTUNA & LAITMAN LLP  
666 OLD COUNTRY RD, GARDEN CITY, NY 11530  
(516) 228-8666

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

RPAPL 1501; Quiet title free of Mortgage

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No  Yes  Judge Previously Assigned

If yes, was this case Vol.  Invol.  Dismissed, No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

IS THIS AN INTERNATIONAL ARBITRATION CASE? No  Yes

(PLACE AN [x] IN ONE BOX ONLY)

**NATURE OF SUIT**

TORTS		ACTIONS UNDER STATUTES			
<b>CONTRACT</b>	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 367 HEALTHCARE/	<input type="checkbox"/> 625 DRUG RELATED	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 375 FALSE CLAIMS
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT	<input type="checkbox"/> 368 PHARMACEUTICAL PERSONAL	<input type="checkbox"/> SEIZURE OF PROPERTY	28 USC 158	<input type="checkbox"/> 378 QUI TAM
<input type="checkbox"/> 130 MILLER ACT	LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY	21 USC 881	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 690 OTHER	28 USC 157	REAPPORTIONMENT
<input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> 880 DEFEND TRADE SECRETS ACT	<input type="checkbox"/> 410 ANTI TRUST
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 340 MARINE	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 830 PATENT		<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 345 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 835 PATENT-ABBREVIATED NEW DRUG APPLICATION		<input type="checkbox"/> 450 COMMERCE
<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS' BENEFITS	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 840 TRADEMARK		<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 160 STOCKHOLDERS SUITS	<input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY	<input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
<input type="checkbox"/> 180 OTHER CONTRACT	<input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT	<input type="checkbox"/> 851 HIA (1395ff)	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> 185 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> 382 PERSONAL INJURY - MED MALPRACTICE	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 720 LABOR/MGMT RELATIONS	<input type="checkbox"/> 852 BLACK LUNG (923)	<input type="checkbox"/> 485 TELEPHONE CONSUMER PROTECTION ACT
<input type="checkbox"/> 188 FRANCHISE	<b>ACTIONS UNDER STATUTES</b>	<input type="checkbox"/> 463 ALIEN DETAINEE	<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 853 DMV/DIWW (405(g))	<input type="checkbox"/> 490 CABLE/SATELLITE TV
	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE	<input type="checkbox"/> 751 FAMILY MEDICAL LEAVE ACT (FMLA)	<input type="checkbox"/> 854 SSD TITLE XVI	<input type="checkbox"/> 650 SECURITIES/ COMMODITIES/ EXCHANGE
	<input type="checkbox"/> 440 OTHER CIVIL RIGHTS (Non-Prisoner)	<input type="checkbox"/> 530 HABEAS CORPUS	<input type="checkbox"/> 770 OTHER LABOR LITIGATION	<input type="checkbox"/> 855 RSI (405(g))	<input type="checkbox"/> 890 OTHER STATUTORY ACTIONS
<b>REAL PROPERTY</b>	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 535 DEATH PENALTY	<input type="checkbox"/> 791 EMPL RET INC SECURITY ACT (ERISA)	<input type="checkbox"/> 870 TAXES (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 891 AGRICULTURAL ACTS
<input type="checkbox"/> 210 LAND CONDEMNATION	<input type="checkbox"/> 442 EMPLOYMENT	<input type="checkbox"/> 540 MANDAMUS & OTHER	<b>IMMIGRATION</b>	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 893 ENVIRONMENTAL MATTERS
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 443 HOUSING/ ACCOMMODATIONS	<b>PRISONER CIVIL RIGHTS</b>	<input type="checkbox"/> 462 NATURALIZATION APPLICATION	26 USC 7609	<input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT
<input type="checkbox"/> 230 RENT LEASE & EJECTMENT	<input type="checkbox"/> 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	<input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 465 OTHER IMMIGRATION ACTIONS		<input type="checkbox"/> 896 ARBITRATION
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER	<input type="checkbox"/> 555 PRISON CONDITION			<input type="checkbox"/> 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
<input type="checkbox"/> 245 TORT PRODUCT LIABILITY	<input type="checkbox"/> 448 EDUCATION	<input type="checkbox"/> 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT			<input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES
<input checked="" type="checkbox"/> 200 ALL OTHER REAL PROPERTY					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND:  YES  NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

**ORIGIN**

- 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from (Specify District)  
  6 Multidistrict Litigation (Transferred)  
  7 Appeal to District Judge from Magistrate Judge  
 a. all parties represented  
  b. At least one party is pro se.  
  8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

**BASIS OF JURISDICTION**

**IF DIVERSITY, INDICATE CITIZENSHIP BELOW.**

- 1 U.S. PLAINTIFF  
  2 U.S. DEFENDANT  
  3 FEDERAL QUESTION (U.S. NOT A PARTY)  
  4 DIVERSITY

**CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)**

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> 5 <input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4 <input type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**

GOKHVAT HOLDINGS LLC  
 100 West 57th Street  
 New York, New York 10019  
 New York County

**DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)**

U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE  
 425 Walnut Street  
 Cincinnati, Ohio 45202 - SEE RIDER

**DEFENDANT(S) ADDRESS UNKNOWN**

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

**COURTHOUSE ASSIGNMENT**

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS    MANHATTAN

DATE 03/24/2021

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

NO  
 YES (DATE ADMITTED Mo. April \_\_\_ Yr 2009 \_\_\_)  
 Attorney Bar Code # AF4563

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Clear Form

Save

Print



**RIDER TO CIVIL COVER SHEET**

**BANK OF AMERICA, NATIONAL ASSOCIATION**  
100 North Tryon Street  
Charlotte, N.C. 25855

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GOKHVAT HOLDINGS LLC,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, NATIONAL ASSOCIATION AS  
SUCCESSOR BY MERGER TO LASALLE  
BANK NA AS TRUSTEE FOR WASHINGTON  
MUTUAL MORTGAGE PASS-THROUGH  
CERTIFICATES WAMU SERIES 2007-OA4  
TRUST,

Defendant.

Docket No.: \_\_\_\_\_ ( )

**DISCLOSURE STATEMENT**  
**PURSUANT TO FED. R. CIV. P 7.1**

Pursuant to Fed. R. Civ. P. 7.1, Plaintiff, Gokhvat Holdings LLC hereby certifies that it is a foreign limited liability company and does not have any parent corporation and/or any publicly held corporation owning 10% or more of its stock. Plaintiff also has no publicly held subsidiaries or affiliates.

Dated: Garden City, New York  
March 24, 2021

ROSENBERG FORTUNA & LAITMAN LLP



By: ANTHONY R. FILOSA, ESQ.  
*Attorney for Plaintiff*  
666 Old Country Rd.,  
Garden City, New York 11530  
(516) 228-6666  
AF4563

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GOKHVAT HOLDINGS LLC,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, NATIONAL ASSOCIATION AS  
SUCCESSOR BY MERGER TO LASALLE  
BANK NA AS TRUSTEE FOR WASHINGTON  
MUTUAL MORTGAGE PASS-THROUGH  
CERTIFICATES WAMU SERIES 2007-OA4  
TRUST,

Defendant.

Docket No.: \_\_\_\_\_ ( )

**NOTICE OF PENDENCY**

**Block: 15**

**Lot: 1131**

**Subject Premises:**

**20 West Street, Unit 11H  
New York, NY 10004**

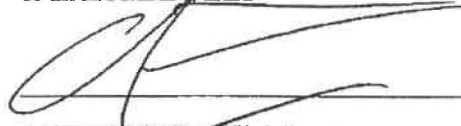
**NOTICE IS HEREBY GIVEN** that an action has been commenced and is pending in this Court upon the Verified Complaint of the above named Plaintiff, GOKHVAT HOLDINGS LLC, against the above named Defendant, to compel a determination of claims to real property located at 20 West Street, Unit 11H, New York, New York 10004, Block No. 15, Lot No. 1131, New York County (the "Premises"); discharge a certain mortgage associated with the Premises; as well as awarding to Plaintiff all other relief more specifically described in the Verified Complaint.

**NOTICE IS FURTHER GIVEN** that pursuant to CPLR § 6511, the Premises affected by this action was, at the time of the commencement of said action, and at the time of the filing of this Notice of Pendency, is described as set forth on **Exhibit A** attached hereto.

Dated: Garden City, New York  
March 24, 2021

**ROSENBERG FORTUNA  
& LAITMAN, LLP**

By:

A handwritten signature in black ink, appearing to read 'A. Filosa', is written over a horizontal line. The signature is stylized and cursive.

**ANTHONY R. FILOSA, Esq.**  
**Attorneys for Plaintiff**  
666 Old Country Road, Suite 810  
Garden City, New York 11530  
(516) 228-6666

**EXHIBIT A**

**Description of the Property**

Property located at: 20 West Street, Unit 11H  
New York, New York 10004

The Condominium Unit (the "Unit") known as Unit No. 35A in the building designated by the street address of 20 West Street ("Building") in The Downtown Club Condominium ("Condominium"), Borough of Manhattan, County of New York, New York, New York 10004, said Unit being designated and described by the above Unit No. in a certain declaration dated April 3, 2006, made by New 19 West LLC pursuant to Article 9-B of the Real Property Law of the State of New York ("Condominium Act") establishing a plan for condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described below), which declaration was recorded in the Office of the Register of the City of New York, County of New York ("Register's Office") on April 19, 2006, under CRFN # 2006000215683 ("Declaration"). The Unit is also designated as Tax Lot 1131 in Block 15 of Section 1 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans of the Building, certified by Avinash K. Malhotra, Registered Architect on April 6, 2006, and filed with the Real Property Assessment Department of The City of New York on April 16, 2006, as Condominium Plan No. 1557 and also filed in the Register's Office on April 19, 2006, as Condominium Map No. CRFN # 2006000215682;

TOGETHER with an undivided 0.3038% interest in the Common Elements (as such term is defined in the Declaration).

**DESCRIPTION OF LAND**

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of West Street, distant 75 feet southerly from the corner formed by the intersection of the easterly side of West Street with the southerly side of Morris Street;

RUNNING THENCE southerly along the easterly side of West Street, 78 feet 7 inches (78 feet 8 inches – Tax Map);

THENCE easterly in a straight line, 179 feet 9 inches (179 feet 10  $\frac{3}{4}$  inches – survey) (179 feet 9  $\frac{3}{4}$  inches – Tax Map) to a point on the westerly side of Washington Street (a/k/a Western Union International Plaza), distant 152 feet southerly from the corner formed by the intersection of the westerly side of Washington Street (a/k/a Western Union International Plaza) with the coutherly side of Morris Street;

THENCE northerly along the westerly side of Washington Street (a/k/a Western Union International Plaza), 77 feet;

THENCE westerly parallel with the southerly side of Morris Street, 179 feet 7 ¼ inches (179 feet 8 ¾ inches – survey) (179 feet 7 ½ inches – Tax Map) to the point or place of BEGINNING.