

JUDICIAL FORECLOSURE

Submitted by

Thomas J. Hall, Esq.
The Law Firm of Hall & Hall
Staten Island, New York

B. Judicial Foreclosure

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	Date Filed:
	:	
- against -	:	FORECLOSURE SUMMONS
	:	FOR RESIDENTIAL PROPERTY
BORROWER, GUARANTOR, SUBORDINATE	:	CONTAINING NOT
MORTGAGEE CORP., MECHANIC'S LIEN	:	<u>MORE THAN THREE UNITS</u>
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	Basis of Venue (see CPLR 305 and §507)
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a Notice of Appearance, on plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure

proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

**YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER
ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND
FILING THE ANSWER WITH THE COURT.**

Dated: New York, New York
_____, 2012

LAW FIRM NAME

By: _____

Attorneys for Plaintiff

TO: [DEFENDANTS]

SOURCES: RPAPL § 1320, CPLR 305 and 508

FOR FORECLOSURES INVOLVING OWNER-OCCUPIED ONE TO FOUR FAMILY DWELLINGS, THIS NOTICE MUST ACCOMPANY SUMMONS AND BE PRINTED ON COLORED PAPER THAT IS OTHER THAN THE COLOR OF THE SUMMONS IN **BOLD** 14 POINT TYPE; TITLE MUST BE 20 POINT TYPE. *SEE* RPAPL § 1303(3) (DECEMBER 2009).

HELP FOR HOMEOWNERS IN FORECLOSURE

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

Summons and Complaint

YOU ARE IN DANGER OF LOSING YOUR HOME. IF YOU FAIL TO RESPOND TO THE SUMMONS AND COMPLAINT IN THIS FORECLOSURE ACTION, YOU MAY LOSE YOUR HOME. PLEASE READ THE SUMMONS AND COMPLAINT CAREFULLY. YOU SHOULD IMMEDIATELY CONTACT AN ATTORNEY OR YOUR LOCAL LEGAL AID OFFICE TO OBTAIN ADVICE ON HOW TO PROTECT YOURSELF.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

**NYSBA CLE
MORTGAGE FORECLOSURE OCTOBER 2012**

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at www.banking.state.ny.us.

Foreclosure Rescue Scams

BE CAREFUL OF PEOPLE WHO APPROACH YOU WITH OFFERS TO "SAVE" YOUR HOME. THERE ARE INDIVIDUALS WHO WATCH FOR NOTICES OF FORECLOSURE ACTIONS IN ORDER TO UNFAIRLY PROFIT FROM A HOMEOWNER'S DISTRESS. YOU SHOULD BE EXTREMELY CAREFUL ABOUT ANY SUCH PROMISES AND ANY SUGGESTIONS THAT YOU PAY THEM A FEE OR SIGN OVER YOUR DEED. STATE LAW REQUIRES ANYONE OFFERING SUCH SERVICES FOR PROFIT TO ENTER INTO A CONTRACT WHICH FULLY DESCRIBES THE SERVICES THEY WILL PERFORM AND FEES THEY WILL CHARGE, AND WHICH PROHIBITS THEM FROM TAKING ANY MONEY FROM YOU UNTIL THEY HAVE COMPLETED ALL SUCH PROMISED SERVICES.

NOTICE TO TENANTS

RPAPL § 1303(1)(b) requires that the foreclosing party give notice to any tenant in a dwelling unit. The form of the notice is provided in RPAPL § 1303(5).

The rules with respect to the notice are set forth in RPAPL § 1303(4) and specify that the notice is to be “delivered within ten days of service of the summons and complaint.” It shall be printed on colored paper that is other than the color of the summons and complaint. The title shall be in bold, twenty point type. The foreclosing party **MUST** provide its name, address and telephone number on the notice.

Serve the notice as provided in RPAPL § 1303(4): by certified mail, return receipt requested for buildings with fewer than five dwelling units and by first class mail (send to occupant if identity is unknown). For building with five or more units, the notice must be posted on the outside of each entrance and exit of the building.

The form of the notice is set forth on the following page because the statute requires that “The Notice shall be on its own page.”

Notice to Tenants of Buildings in Foreclosure

New York State Law requires that we provide you this notice about the foreclosure process. Please read it carefully.

We, [NAME OF FORECLOSING PARTY], are the foreclosing party and are located at [FORECLOSING PARTY'S ADDRESS]. We can be reached at [FORECLOSING PARTY'S TELEPHONE NUMBER].

The dwelling where your apartment is located is the subject of a foreclosure proceeding. If you have a lease, are not the owner of the residence, and the lease requires payment of rent that at the time it was entered into was not substantially less than the fair market rent for the property, you may be entitled to remain in occupancy for the remainder of your lease term. If you do not have a lease, you will be entitled to remain in your home until ninety days after any person or entity who acquires title to the property provides you with a notice as required by section 1305 of the Real Property Actions and Proceedings Law. The notice shall provide information regarding the name and address of the new owner and your rights to remain in your home. These rights are in addition to any others you may have if you are a subsidized tenant under federal, state or local law or if you are a tenant subject to rent control, rent stabilization or a federal statutory scheme.

ALL RENT-STABILIZED TENANTS AND RENT-CONTROLLED TENANTS ARE PROTECTED UNDER THE RENT REGULATIONS WITH RESPECT TO EVICTION AND LEASE RENEWALS. THESE RIGHTS ARE UNAFFECTED BY A BUILDING ENTERING FORECLOSURE STATUS. THE TENANTS IN RENT-STABILIZED AND RENT-CONTROLLED BUILDINGS CONTINUE TO BE AFFORDED THE SAME LEVEL OF PROTECTION EVEN THOUGH THE BUILDING IS THE SUBJECT OF FORECLOSURE. EVICTIONS CAN ONLY OCCUR IN NEW YORK STATE PURSUANT TO A COURT ORDER AND AFTER A FULL HEARING IN COURT.

If you need further information, please call the New York State Banking Department's toll-free helpline at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at <http://www.banking.state.ny.us>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	<u>VERIFIED COMPLAINT</u>
- against -	:	
	:	
BORROWER, GUARANTOR, SUBORDINATE	:	(Foreclosure re: Home Loan)
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

Plaintiff _____ Bank, by its attorneys,
_____, as and for its complaint, hereby alleges upon information
and belief:

FIRST: On or about _____, 200__, defendant Borrower borrowed the
sum of \$_____ DOLLARS from plaintiff _____, a
licensed mortgage banker, as evidenced by a certain note dated _____, 200__
whereunder said loan was repayable as follows: the sum of \$_____ on
_____, 200__ and a like sum of \$_____ on the ____ day of each and every
month thereafter until _____, 200__.

SECOND: Said note provided, among other things, that in the event of default
by the maker of said note, in the payment of any of the above described payments for fifteen (15)
days, the entire balance hereunder shall be immediately due and payable without notice or
demand.

THIRD: In order to collaterally secure their aforesaid obligation, Borrower on the same day duly executed, acknowledged and delivered to the plaintiff a mortgage (the “Mortgage”) whereby Borrower mortgaged the real property described herein with the appurtenances thereto, described in the Mortgage as follows:

See Schedule A - “Legal Description” annexed hereto and made a part hereof. Said premises being known as and by street number _____, New York.

FOURTH: The Mortgage contains, among other things, the following provisions:

- a. The holder of this mortgage in any action to foreclose it shall be entitled to the appointment of a receiver without notice and without regard to the security.
- b. In case of foreclosure sale said premises or so much thereof as may be affected by this mortgage, may be sold in one parcel.
- c. That the mortgagor will pay all taxes, assessments, sewer rents or water rates and in default thereof, the mortgagee may pay the same.
- d. If the mortgagor fails to pay any installment of principal or interest on any prior mortgage . . . the mortgagee may pay the same and the mortgagor on demand will repay the amount so paid with interest thereon at the contract rate and the same shall be added to the mortgage indebtedness and be secured by this mortgage.
- e. In event the holder of this mortgage be required to retain legal counsel for the purpose of commencing proceedings hereunder the amount of said counsel’s reasonable attorneys’ fees actually incurred shall be added to said indebtedness as fair and reasonable legal fees and deemed secured hereby in addition to costs, allowances and additional allowances as provided by law.
- f. That the whole of said principal sum and interest shall become due at the option of the mortgagee after default in the payment of any installment of principal or of interest for fifteen (15) days; . . .

FIFTH: That the Mortgage was duly recorded in _____ of Mortgages at Page ____ in the Office of the _____ of the County of _____ on the ____ day of _____ and the New York State recording tax was duly paid thereon.

SIXTH: Defendant Borrower is the owner of the equity of redemption herein foreclosed and is joined as a necessary party defendant to foreclose all of the right, title and interest and equity of redemption in the mortgaged premises and is liable for any deficiency judgment as may be directed by this Court. *[Note: Describe interests of any other defendants in separately numbered paragraphs]*

SEVENTH: Plaintiff verily believes that during the pendency of this action, in order to protect the security of the Mortgage, it may be compelled to make advances to prior mortgagees, if any, for installments of principal and interest, taxes, assessments, water rates, and/or fire insurance premiums that are or may become due under said prior mortgage or to the receiver of taxes, or to the fire insurance company, which advances are to be included in the balance due to Plaintiff plus interest, as provided for in the Mortgage foreclosed and deemed further secured thereby.

EIGHTH: Borrower has defaulted under his note for \$_____ owing to Plaintiff and no payment thereof has been made to Plaintiff from Borrower despite demand, by having failed to make monthly payments on _____, 200__ to date. By virtue thereof, Plaintiff has heretofore elected and by these presents hereby elects to accelerate the entire principal balance of \$_____ to be immediately due and payable under the Mortgage herein foreclosed, plus interest at the rate of ____% per annum from _____ together with \$_____ representing late charges accrued prior to this action, and \$_____ representing legal fees pursuant to said Mortgage for a total of

\$_____ due and payable, plus interest, together with any advances made or to be made to protect plaintiff's Mortgage.

NINTH: Plaintiff is the owner and holder of the Mortgage herein foreclosed and of the note (the "Note") secured thereby [**in the event the Note and Mortgage has been sold by the original owner/holder, state that and trace the chain of title from original owner/holder to the plaintiff, including dates and recordation information regarding assignment(s) of Note and Mortgage**].

TENTH: Any defendant captioned as a corporation is a New York corporation.

ELEVENTH: Plaintiff is a New York corporation/partnership [or other].

TWELFTH: That no other action has been commenced for the recovery of said sum secured by said Note and Mortgage. [**See RPAPL § 1301(2)**]

THIRTEENTH: That each and all of the defendants herein have or claim to have some interest in, or lien upon the said mortgaged premises or some part thereof, which interest or lien if any, has accrued subsequently to the lien of the said Mortgage, and is subject and subordinate thereto.

FOURTEENTH: That Plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made by reason of any payments made after the date of commencement of this action.

FIFTEENTH: Pursuant to RPAPL § 1302(1) Plaintiff alleges that it has complied with all of the provisions of Section 595-a and its regulations and Sections 6-l and 6-m of the Banking Law.

SIXTEENTH: For "home loans," Plaintiff has complied with the ninety day notice provision of RPAPL § 1304.

SEVENTEENTH: As of the time this action was commenced, plaintiff was compliant with the provisions of RPAPL §1306 regarding filing with the superintendent of banks within three business days of its mailing the notice to tenants required by RPAPL § 1304 or UCC § 9-611(f). **[Attach copies of the notice and proof of mailing, posting and filing, as applicable].**

EIGHTEENTH: **[In the event the loan is not a home loan, then in lieu of Paragraphs Fifteenth through Seventeenth above, use this paragraph Eighteenth]** This is not a residential home loan subject to the provisions of RPAPL 1303, 1304 or 1320 because Borrower is not a natural person and/or the subject premises is not used as Borrower's primary residence **[see Banking Law 6-1(1)(e) for definitions of covered home mortgage loans].**

WHEREFORE, the plaintiff demands judgment that the defendants here and all persons claiming under them or any or either of them subsequent to the commencement of this action may be forever barred and foreclosed of all right, claim, lien and equity of redemption in the said mortgaged premises; that the said premises may be decreed to be sold according to law in "as is" physical order and condition, subject to any covenants, easements, restrictions and reservations of record; and violations or record; any state of facts an accurate survey may show; assessments and water rates with interest and penalties accrued; rights of tenants or persons in possession of the subject premises; prior mortgage lien(s) of record held by _____ and any advances or arrears thereunder; prior lien(s) of record held by _____ and any other prior liens or record, if any; any equity of redemption of the UNITED STATES OF AMERICA to redeem the premises within 120 days from the date of sale; that this Court forthwith appoint a receiver of the rents and profits of said premises, during the pendency of this action with the usual powers and duties; that monies arising from the sale may be brought into court; that the

plaintiff may be paid the amount due on said Note and Mortgage with interest to the time of such payment, attorneys' fees as set forth in the Mortgage, the costs of this action and the expenses of said sale so far as the amount of such monies properly applicable thereto will pay the same; and that the defendant Borrower may be adjudged to pay the whole residue, or so much thereof as the Court may determine to be just and equitable, of the debt remaining unsatisfied after the sale of the mortgaged premises and the application of the proceeds pursuant to the provisions contained in such judgment, the amount thereof to be determined by the Court as provided in Section 1371 of the Real Property Actions and Proceedings Law.

Dated: New York, New York
_____, 2012

[Name of Plaintiff's Law Firm]
Attorneys for Plaintiff
[Address and Phone Number]

VERIFICATION

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

_____, being duly sworn, deposes and says:

1. I am a _____ of plaintiff _____ Bank
in this action. I have read the foregoing Verified Complaint, know the contents thereof, and state
that the same are true to my knowledge, except as to those matters therein stated to be alleged on
information and belief, and as to those matters, I believe them to be true.

2. The ground of my belief as to all matters in said Verified Complaint not stated
upon my knowledge are information acquired from the books and records of plaintiff.

Name

Sworn to before me this
day of _____, 2012

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	VERIFIED
	:	<u>FORECLOSURE COMPLAINT</u>
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	(Non-Residential Long Form)
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

Plaintiff, _____ (the "Bank"), by its attorneys

_____, complaining of the defendants herein, alleges as follows:

THE PARTIES

1. At all times relevant hereto, plaintiff Bank was and still is a banking corporation duly organized and existing under the laws of the State of New York, having a principal place of business located at _____, _____, New York.
2. Upon information and belief, at all times relevant hereto, defendant Borrower ("Borrower"): (i) was and still is a limited partnership organized and existing under the laws of the State of New York; (ii) has maintained and still maintains a principal place of business located at [street address], [city], New York; and (iii) was and still is the owner of real property located within the State of New York, which property is sought to be foreclosed herein,

and which property is located in the City of _____, County of _____, and is more particularly described as follows (the "Premises"):

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

[Set forth here metes and bounds description of Premises contained in the Mortgage]

3. Upon information and belief, at all times relevant hereto, defendant Guarantor ("Guarantor"): (i) was and still is a resident of the State of New York; (ii) was and still is transacting and/or doing business within the State of New York; and (iii) has submitted to the personal jurisdiction of the courts of the State of New York in connection with this action pursuant to a certain Guaranty of Payment (the "Guaranty") dated _____, 200__ executed and delivered by him to the Bank. Guarantor is named as a defendant herein by virtue of the Guaranty, pursuant to which s/he will be liable for any deficiency judgment which may result after a foreclosure sale in this action.

4. Upon information and belief, at all times relevant hereto, defendant Subordinate Mortgagee Corp. ("Subordinate Mortgagee"): (i) was and still is a corporation organized and existing under the State of New York; (ii) was and is transacting and/or doing business in the State of New York; and (iii) has maintained and still maintains a principal place of business at _____, _____, New York. Subordinate Mortgagee is named a defendant herein by virtue of a mortgage it holds affecting the Premises, dated _____, 200__, executed and delivered by Borrower and recorded in the Office of the Clerk [Register's Office in counties of New York City] of _____ County on _____, 200__ in Reel ___, page ___ (the "Subordinate Mortgage"). The lien of the Subordinate Mortgage is subject and subordinate to the lien of the Bank's mortgage sought to be foreclosed herein.

5. Upon information and belief, at all times relevant hereto, defendant Mechanic's Lien Ltd. ("Mechanic's"): (i) was and still is a corporation organized and existing under the laws of the State of New York; (ii) was and still is transacting and/or doing business in the State of New York; and (iii) has maintained and still maintains a principal place of business at _____, _____, New York. Defendant Mechanic's is named a defendant herein by virtue of the fact that on or about _____, 200__ Mechanic's filed a notice of mechanic's lien against the Premises (No. _____) in the office of the Clerk of _____ County in the amount of \$_____, which lien is subject and subordinate to the lien of the Bank's mortgage sought to be foreclosed herein.

6. Defendants The People of the State of New York and The Commissioner of Taxation and Finance of the State of New York are made defendants herein by virtue of unpaid franchise taxes, if any, that may be due from Borrower, which taxes, if any, may be a lien upon the Premises by virtue of the provisions of the Tax Law of the State of New York and which lien, if any, is subordinate to the lien of the Bank's mortgage sought to be foreclosed herein.

7. Defendants The City of _____ and The Department of Finance of the City of _____ are made defendants herein by virtue of unpaid city business taxes, if any, that may be due from Borrower, which taxes, if any, be a lien upon the Premises, and which lien, if any, is subordinate to the lien of the Bank's mortgage sought to be foreclosed herein.

8. Defendants John Doe #1 through John Doe #50 (fictitious names) are named as defendants herein to represent all other parties, including, without limitation, tenants or

other occupants, who may have some interest in or lien upon the Premises subordinate to the lien of the Bank's mortgage sought to be foreclosed herein.

THE NOTE, THE MORTGAGE AND THE GUARANTY

9. On _____, 200__, for the purpose of securing the repayment of a loan by the Bank to Borrower in the amount of \$_____ Borrower executed, acknowledged and delivered to the Bank, a mortgage note (the "Note"), a copy of which is annexed hereto and made part hereof as Exhibit A, whereunder Borrower acknowledged its indebtedness to the Bank in the aforesaid amount.

10. As additional security for the repayment of the indebtedness evidenced by the Note, Borrower, on or about _____, 200__ executed, acknowledged and delivered to the Bank the mortgage (the "Mortgage"), a copy of which is annexed hereto and made a part hereof as Exhibit B, whereunder Borrower mortgaged the Premises to the Bank.

11. Upon information and belief, the Mortgage was duly recorded in the Office of the Clerk [Register's Office in the counties of New York City] of the County of _____ on _____, 200__ in Reel _____, page _____.

12. Upon information and belief, at the time of the recording of the Mortgage, there was paid to the Clerk of the County of _____ the amount of tax imposed on said Mortgage.

13. Plaintiff is the owner and holder of the Mortgage sought to be foreclosed herein and of the note secured thereby [or has been delegated authority to institute a foreclosure lawsuit on behalf of the owner and holder].

14. As further security for the repayment for the indebtedness evidenced by the Note, defendant Guarantor, on or about _____, 20__, executed, acknowledged and

delivered to the Bank the absolute, unconditional, present and continuing Guaranty, a copy of which is annexed hereto and made a part hereof as Exhibit C.

PERTINENT TERMS OF THE LOAN DOCUMENTS

15. The Note provides, inter alia:

[Insert pertinent provisions of Note including those pertaining to payment].

16. The Mortgage contains, among other things, the following provisions:

[Insert pertinent provisions of mortgage, including those pertaining to events of default, rights to accelerate and to foreclose, and entitlement to Receiver and to attorneys' fees]

17. The Guaranty, executed by Guarantor in favor of the Bank, provides in relevant part as follows:

[Insert pertinent provisions of Guaranty, including those pursuant to which guarantor guarantees payment of the mortgage indebtedness]

THE DEFAULTS UNDER THE LOAN DOCUMENTS

18. Borrower has failed to comply with the terms and conditions of the Note and the Mortgage by failing to make payment to the Bank of the interest payments in the amount of \$ _____ each due thereunder on August 1, 200__, September 1, 200__ and October 1, 200__, together with late payment charges as set forth in the Note.

19. By letter dated _____, 200__ (the "Default and Acceleration Notice"), sent by certified mail, return receipt requested, the Bank advised Borrower of its defaults as set forth above and further advised Borrower that by reason of those defaults, the Bank was declaring the entire principal balance of the Note and Mortgage in the amount of \$ _____, together with all accrued interest at the default rate set forth in the Note and Mortgage and late charges (collectively, the "Accelerated Indebtedness") immediately due and

payable. A copy of the Default and Acceleration Notice was also sent by certified mail, return receipt requested, to Guarantor at the same time it was sent to Borrower. A copy of the Default and Acceleration Notice and copies of the return receipts evidencing Borrower's and Guarantor's receipt of same, are collectively annexed hereto and made part hereof as Exhibit D.

20. To date, neither Borrower nor Guarantor have made payment to the Bank of the Accelerated Indebtedness, nor has the Bank received payment of same from any source. Accordingly, there is now due and owing to the Bank the outstanding principal balance under the Note and Mortgage in the sum of \$ _____ with accrued interest at the Involuntary Rate and late charges thereon.

21. In order to protect its security, the Bank may be compelled further during the pendency of this action to pay taxes, assessments, water rates, sewer rents, insurance premiums, and other charges affecting the Premises, or some part thereof, and the Bank requests that any such sum or sums to paid be added to the Note and be deemed secured by the Mortgage and be further deemed a valid lien on the Premises.

22. Each of the above-named defendants has or claims to have some interest in or lien upon said Premises, or some part thereof, which interest or lien, if any, is subject and subordinate to the lien of the Mortgage held by the Bank and sought to be foreclosed in this action.

23. The Bank requests that in the event that this action proceeds to judgment of foreclosure and sale, the Premises be sold subject to covenants and restrictions, easements and agreements of record, to any state of facts an accurate survey might show, and to taxes, assessments, sewer rents and water charges, if any.

24. No other action has been brought to recover the sum of money or any part thereof secured by the Note or the Mortgage. [See RPAPL § 1301(2)]

WHEREFORE, plaintiff demands judgment that:

(i) defendants and all persons claiming under them or any of them subsequent to the commencement of this action and the filing of a notice of pendency thereof, be barred and foreclosed of and from all estate, right, title and interest, claim, lien and equity of redemption of, in and to the Premises more particularly described in this Verified Complaint, including any personal property appurtenant thereto;

(ii) that said Premises be ordered sold according to law; that the monies arising from the sale thereof be brought into Court; that from the net proceeds of such sale plaintiff be paid (a) the amount due on the Note, together with the accrued interest and late charges thereon as set forth above; (b) costs, allowances and disbursements of this action; (c) a sum in respect of reasonable attorneys' fees incurred by plaintiff in connection with the collection of the indebtedness secured by the Mortgage, and the foreclosure thereof; and (d) any amounts advanced and paid pursuant to the terms and provisions of the Mortgage and Note, including, without limitation, taxes, water rates and sewer rents, insurance premiums and all other charges and liens upon the aforesaid Premises, with interest on said amounts from the dates of the respective payments and advances thereof;

(iii) that defendants Borrower and Guarantor be adjudged to pay the whole residue, if any, of the debt of the Note and Mortgage remaining unsatisfied after a foreclosure sale of the Premises and the application of the proceeds pursuant to the directions contained in such judgment;

(iv) that upon plaintiff's application therefor, this Court appoint a receiver of the rents and profits of the Premises during the pendency of this action with the usual powers and duties; and

(v) that plaintiff have such other, further and different relief as may be just and equitable.

Dated: _____, New York
_____, 20__

[Name of Plaintiff's Law Firm]
Attorneys for Plaintiff
[Address and Phone Number]

VERIFICATION

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

_____, being duly sworn, deposes and says:

1. I am a _____ of plaintiff _____ Bank
in this action. I have read the foregoing Verified Complaint, know the contents thereof, and state
that the same are true to my knowledge, except as to those matters therein stated to be alleged on
information and belief, and as to those matters, I believe them to be true.

2. The ground of my belief as to all matters in said Verified Complaint not stated
upon my knowledge are information acquired from the books and records of plaintiff.

Name

Sworn to before me this
day of _____, 20__

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	<u>NOTICE OF PENDENCY OF ACTION</u>
	:	
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Verified Complaint of the above-named plaintiff against the above-named defendants for the foreclosure of a certain mortgage dated _____, 20__ made by defendant Borrower to plaintiff _____ Bank to secure payment of the principal sum of \$_____ dollars with interest, which mortgage was recorded in the Office of the Clerk [Register's Office in counties of New York City] of the County of _____ in Reel ___, Page ___ on _____, 200__.

The premises affected by said mortgage at the time of the commencement of this action are situated in the City/Town of _____, County of _____, State of New York, and are more particularly described in Schedule A annexed hereto.

Dated: _____, New York
_____, 20__

[Name of Plaintiff's Law Firm]
Attorneys for Plaintiff
[Address and Phone Number]

TO THE CLERK OF _____ COUNTY:

You are hereby directed to index the within Notice against the following section,
block, and lot numbers of the County of _____ affected thereby:

Section __; Block __; Lots __ and __.

[Note: in Westchester County the Notice of Pendency is indexed by Defendants' names.]

Dated: _____, New York
_____, 20__

[Name of Plaintiff's Law Firm]
Attorneys for Plaintiff
[Address and Phone Number]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- x

BANK, :
 :
Plaintiff, :
 :
- against - :
 :
BORROWER, GUARANTOR, SUBORDINATE :
MORTGAGEE CORP., MECHANIC'S LIEN LTD., :
THE PEOPLE OF THE STATE OF NEW YORK, THE :
COMMISSIONER OF TAXATION AND FINANCE :
OF THE STATE OF NEW YORK, :
THE CITY OF TROUBLE, THE DEPARTMENT OF :
FINANCE OF THE CITY OF TROUBLE, :
 :
Defendants. :
----- x

**EX PARTE APPLICATION
FOR APPOINTMENT OF
REFEREE TO COMPUTE
AND RELATED RELIEF**

Index No.

APPLICATION BY: Plaintiff _____

SUPPORTING PAPERS: Affidavit of _____ Esq. dated _____, 20__ with
Exhibits, including Verified Complaint, Affidavits of Service and
Notices of Appearance and Waiver

RELIEF DEMANDED: (1) Pursuant to New York Real Property Actions Proceedings
Law ("RPAPL") § 1321, referring this action to some
suitable person as a referee (the "Referee"), to (a) ascertain
and compute the amount due Plaintiff for principal and
interest under the mortgage set forth in Plaintiff's Verified
Complaint, and for any other amounts due and owing
Plaintiff, including reasonable attorneys' fees and any sums
advanced by Plaintiff under the terms of the mortgage, and
(b) examine and report whether the mortgaged premises
should be sold in one parcel or in multiple parcels, and
directing that upon presentation and coming in of the
Referee's report, Plaintiff have the usual judgment of
foreclosure and sale; and

- (2) for such other, further and different relief as this Court may deem just and proper.

Dated: ____, __ 20__

BRYAN CAVE LLP

BY: _____

Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- x

BANK,
Plaintiff,
- against -
BORROWER, GUARANTOR, SUBORDINATE
MORTGAGEE CORP., MECHANIC'S LIEN
LTD., THE PEOPLE OF THE STATE OF NEW
YORK, THE COMMISSIONER OF TAXATION
AND FINANCE OF THE STATE OF NEW YORK,
THE CITY OF TROUBLE, THE DEPARTMENT
OF FINANCE OF THE CITY OF TROUBLE,
Defendants.
----- x

Index No.

**AFFIDAVIT IN SUPPORT
OF MOTION FOR ORDER
OF REFERENCE TO COMPUTE**

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

_____, an attorney duly admitted to practice in the Courts of
the State of New York, affirms as follows:

1. I am counsel with _____, attorneys of record for the
plaintiff _____ Bank (the "Plaintiff") in the above-entitled action.
2. I submit this Affidavit in Support of Plaintiff's Application for an Order of
Reference to Compute the amount due Plaintiff in this foreclosure action.
3. This action was commenced by filing a Summons and Verified Complaint
with the _____ County Clerk's Office on _____, 20____, a copy of which is
annexed hereto as Exhibit 1.

4. As more fully set forth in the Verified Complaint, this action is brought to foreclose a first mortgage lien in the original principal sum of \$ _____, wherein one of the defendants, defendant Borrower (all defendants are collectively referred to as "Defendants" or individually as the "Defendant") mortgaged to Plaintiff its interest in a parcel of real property more particularly described therein (the "Mortgage"). Said Mortgage was dated _____, 200__ and recorded on _____, 20__ in the _____ County Clerk's office in Liber _____ of Mortgages at Page _____. A copy of the Mortgage is annexed as Exhibit B to the Verified Complaint.

5. On _____, 20__, a Notice of Pendency in this action in the form prescribed by statute and containing correctly, as this deponent believes, all the particulars required by law to be stated in such notice was filed in the _____ County Clerk's Office under Index Number _____. A copy of the Notice of Pendency is attached hereto as Exhibit 2.

6. Since filing the Summons and Verified Complaint, neither have been amended or supplemented by making new parties to the action, or as to affect other properties now described in the original Verified Complaint, or so as to extend Plaintiff's claim against the mortgaged premises, or in any way whatsoever.

7. Upon information and belief, all Defendants are of full age and of sound mind. No defendants are absentees.

8. All Defendants have been properly served as appears from the Affidavits of Service; copies of which are attached hereto as Exhibit 3.

9. Defendants [individuals] were served with additional notice of this foreclosure action pursuant to CPLR § 3215(g)(3). An additional copy of the Summons and

Verified Complaint were mailed to said defendants at each individual's respective place of residence on _____, 20__ by first class mail. Copies of the Affidavits of Mailing Pursuant to CPLR § 3215 are attached hereto as Exhibit 4. The requisite twenty days has now passed and judgment may be entered against these individual Defendants.

10. Upon information and belief and after due diligence having been done, neither [individual] defendant is presently in the military service of the United States Government as demonstrated by the Affidavits of Non-Military Service; copies of which are attached hereto as Exhibit 5.

11. More than thirty (30) days have elapsed since the service of the Summons and Verified Complaint upon Borrower. See Exhibit 3 hereto. Said Defendant has not answered the Verified Complaint, has not appeared in this action and has not requested an extension of its time to appear or answer.

12. Defendants Subordinate Mortgagee Corp. and Mechanic's Lien Ltd. have filed a Notice of Appearance and Waiver, a copy of which is attached hereto as Exhibit 6.

13. Defendant People of the State of New York, Commissioner of Taxation and Finance of the State of New York, has filed a Notice of Appearance and Waiver, a copy of which is attached hereto as Exhibit 7.

14. Defendant Guarantor, a natural person, was served pursuant to CPLR § 308(2). See Exhibit 3 hereto. Proof of service on Defendant Guarantor was duly filed on _____, 200__, within the required twenty (20) days. Service was complete ten (10) days after the filing of proof of service of the Summons and Verified Complaint upon Defendant Spitzer in accordance with CPLR § 308(2). More than thirty (30) days have elapsed since

service was completed upon said Defendant and said Defendant has not answered the Verified Complaint and has not appeared in this action.

15. "John Doe" Defendants # 1-50 were not served with the Summons and Verified Complaint and their names should be deleted from the caption of this case.

16. No previous application has been made for the relief requested herein.

WHEREFORE, affiant respectfully requests an Order appointing a Referee to compute the amounts due to Plaintiff and to examine and report whether the mortgaged premises should be sold in one parcel or more than one parcel, and for such other and further relief as this Court may deem just and proper.

NAME

Sworn to before me this
____ day of _____, 20__

NOTARY PUBLIC

At an IAS Part ____ of the Supreme Court
of the State of _____ held in
and for the County of _____
at the Courthouse, located at _____
Street, _____, New York, on the
____ day of _____, 2010

P R E S E N T :

HON. _____,
Justice.

----- X

BANK,
Plaintiff,

- against -

BORROWER, GUARANTOR, SUBORDINATE
MORTGAGEE CORP., MECHANIC'S LIEN
LTD., THE PEOPLE OF THE STATE OF NEW
YORK, THE COMMISSIONER OF TAXATION
AND FINANCE OF THE STATE OF NEW YORK,
THE CITY OF TROUBLE, THE DEPARTMENT
OF FINANCE OF THE CITY OF TROUBLE,

Defendants.

----- X

Index No.

**ORDER OF REFERENCE
TO COMPUTE THE
AMOUNT DUE PLAINTIFF**

The plaintiff _____ (the "Plaintiff") having duly
moved this Court for an order pursuant to New York Real Property Actions Proceedings Law
§ 1321 referring this action to some suitable person as a referee (the "Referee") to (a) ascertain
and compute the amount due Plaintiff for principal and interest under the mortgage set forth in
Plaintiff's Verified Complaint, and for any other amounts due and owing Plaintiff, including
reasonable attorneys' fees and any sums advanced by Plaintiff under the terms of the mortgage,
and (b) examine and report whether the mortgaged premises should be sold in one parcel or in

multiple parcels, and for such other, further and different relief as this Court may deem just and proper;

NOW, upon reading and filing the Summons, Verified Complaint, and Notice of Pendency of Action filed herein in the County of _____ on _____, 2010; the Affidavit of Service evidencing service of said Summons and Verified Complaint upon all of the defendants herein; the Notices of Appearance and Waiver served on behalf of the defendants People of the State of New York, The Commissioner of Taxation and Finance of the State of New York, City of _____, from all of which it appears that this action was brought to foreclosure upon a first fee mortgage affecting real property located in the City of _____, _____ County, State of New York; that the whole outstanding amount secured by said mortgage is due; and it appearing that none of the defendants herein are infants or absentees, and that the Notice of Pendency of Action was herein filed more than 20 days ago and that since the filing of said Notice of Pendency, the Summons and Verified Complaint herein have not been amended (i) by adding new parties to the action, (ii) so as to affect premises not described in said Notice of Pendency, or (iii) so as to extend the claim of Plaintiff against the mortgaged premises; and upon the Affidavit of _____, Esq., attorney for Plaintiff, dated _____, showing what proceedings have heretofore been had herein, and setting forth the various facts which entitle the Plaintiff to the order prayed for, and upon all the proceedings heretofore had herein, and all the papers on file in this action;

ON MOTION of _____, attorneys for Plaintiff it is hereby ORDERED, that the portion of Plaintiff's motion requesting appointment of a Referee to compute the amount due Plaintiff be and hereby is granted; and it is further

ORDERED, that this action be referred to

as Referee to compute the amount due to Plaintiff as sought in Plaintiff's Verified Complaint herein, including without limitation any and all sums for principal, interest, water and sewer rents, taxes, insurance premiums, and for any other charges and liens upon the subject premises, including without limitation any such charges or liens arising by virtue of any payment or advance made by Plaintiff pursuant to the terms of the subject mortgage or pursuant to the order of any Court, with interest on said sums from the dates of the respective payments and advances thereof, and a sum in respect of reasonable attorneys' fees and expenses incurred by Plaintiff in connection with the collection of the indebtedness due upon the subject mortgage and the foreclosure of said mortgage; and to examine and to report whether the mortgaged premises should be sold in one parcel or in multiple parcels; and that the said Referee make him or her report to the Court with all convenient speed; and it is further

ORDERED, that by accepting this appointment, the Referee certifies that the Referee is in compliance with 22 NYCRR Part 36, including but not limited to, § 36.2(c)("Disqualifications from appointment") and §36.2(d)("Limitations on appointments based upon compensation").

ENTER :

J.S.C.

KINGS COUNTY FORM - ORDER OF REFERENCE FEBRUARY 2010

3/14/06

At Part of the
Supreme Court of the State of New
York, held in and for the County of
Kings, at the Courthouse, at Civic
Center, Brooklyn, New York, on the
day of , 2006.

P R E S E N T:

HON.,
Justice

-----X

Plaintiff,

Index No.

ORDER OF REFERENCE

- against -

Foreclosure of:
(Property Address)
(Block and Lot)

Defendants.

-----X

UPON review of the Notice of Motion dated _____, the
Summons, Verified Complaint and Notice of Pendency filed in this action on
_____, annexed thereto, and upon the
Affirmation of _____ of (name of firm)
_____, counsel for plaintiff, dated _____, from
which it appears that this action was brought to foreclose a certain mortgage on
real property situated in the County of Kings, State of New York,
at _____(address)_____

(Section ____ Block ____ Lot ____) by reason of certain defaults as alleged in the Complaint, and upon the Affidavit of _____, who is (nature of authority) _____ sworn to _____, and it further appearing that all of the Defendants have been duly served with a copy of the Summons and Complaint or have appeared herein, copies of such affidavits of service being annexed to the motion as Exhibit _____ [except the Defendants "JOHN DOE #1 through JOHN DOE #10" who were not served copies of the Summons and Complaint and are not necessary parties to this action,] and no answer has been interposed by the Defendants though the time so to do has expired; and it appearing that none of the Defendant [s] is an infant, incompetent or absentee, or in the military, and that since the filing of the Notice of Pendency of this action on _____, the complaint has not been amended in any manner whatsoever; on the pleadings and papers heretofore filed herein and no one appearing in opposition hereto,

NOW, on the motion of _____, attorneys of record for the Plaintiff, it is

ORDERED, that the motion is granted; and it is further

ORDERED, that this action be, and the same is hereby referred to _____, having an office at _____, telephone number _____, as Referee to ascertain and compute the amount due to the Plaintiff herein for principal, interest, and other disbursements advanced as provided for by statute and in the Note and Mortgage upon which this action was brought, to examine and report whether or not the mortgaged premises should be sold in parcels, and that the Referee make his/her report no later than 60 days of the date of this order and

that, except for good cause shown, the Plaintiff shall move for judgment no later than 60 days of the date of the Referee's report and it is further

ORDERED, that upon submission of the Referee's Report, Plaintiff shall pay \$250 to the Referee as compensation for his/her services, which sum may be recouped as a cost of litigation.

ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and, if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCCR Part 36), including but not limited to, section 36.2(e) ("Disqualifications from appointment"), and section 36.2(d) ("Limitations on appointments based upon compensation"), and it is further

ORDERED, that a default judgment in favor of the Plaintiff be granted as to the claim described in the Plaintiff's Complaint herein, and it is further

[ORDERED], that the caption of this action be amended by striking therefrom the remaining Defendants sued herein as "John Doe #1" to "John Doe #10, all without prejudice to the proceedings heretofore had herein, and it is further

ORDERED, that the caption of this action as amended, shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Plaintiff,

Index No. _____

-against-

Defendant(s).

]

and it is further

ORDERED, that a copy of this Order with Notice of Entry shall be served

upon the designated Referee, the **owner of the equity of redemption**, any **tenants** named in this action and any other party entitled to notice within 20 days of entry and no less than 30 days prior to any hearing before the Referee. The Referee shall not proceed to take evidence as provided herein without proof of such service, which proof must accompany any application for Final Judgment of Foreclosure and Sale.

ENTER,

Hon. **J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	NOTICE OF MOTION FOR
	:	SUMMARY JUDGMENT
	:	<u>AND RELATED RELIEF</u>
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

Motion By:

Plaintiff, _____ Bank (the "Bank")

Date, Time and Place of Hearing:

_____, 20__ at 9:30 a.m. at an IAS Part __ of the Supreme Court,
_____ County at the Courthouse, _____, New York.

Papers Submitted:

- (1) Affidavit of Regularity of [Plaintiff's Attorney].
- (2) Affidavit of _____, Vice President of the Bank.
- (3) Exhibits referred to in the aforesaid affidavits.
- (4) Memorandum of Law.
- (5) All other papers heretofore filed herein.

Relief Requested:

An order and/or judgment:

1. Pursuant to New York Civil Practice Law and Rules ("CPLR") § 3212, granting summary judgment in favor of the Bank and against the defendant Borrower, Guarantor, Subordinate Mortgagee Corp. and Mechanic's Lien Ltd. (collectively, the "Answering Defendants") on the grounds that there are no triable issues of fact in this proceeding, that each

of the Answering Defendants' affirmative defenses asserted in their respective Answers lack merit and fail to state a valid defense to foreclosure, and that accordingly, the Bank is entitled to all of the relief requested in its Verified Complaint, including judgment of foreclosure and sale, as a matter of law;

2. Pursuant to CPLR § 3211(a)(7), dismissing each of the counterclaims asserted in the Answers of the Answering Defendants, on the ground that each of said counterclaims fails to state a cause of action; or, alternatively, pursuant to CPLR § 3212, granting summary judgment in favor of the Bank and against each of said defendants with respect to each such counterclaim on the grounds that each such counterclaim raises no material triable issues of fact;
3. Pursuant to New York Real Property Actions and Proceedings Law ("RPAPL") § 1321, granting the Bank judgment against defendants (a) The People of the State of New York; (b) The Commissioner of Taxation and Finance of the State of New York; (c) The City of Trouble; and (d) The Department of Finance of the City of Trouble for all of the relief requested in its Verified Complaint, including judgment of foreclosure and sale, as a matter of law, on the ground that each of these defendants has appeared in this action but has not served an Answer to the Verified Complaint;
4. Referring this action to some suitable person as a referee (the "Referee") to (i) ascertain and compute the amount due the Bank for principal and interest under the mortgage as set forth in the Bank's Verified Complaint, and for any other amounts due and owing the Bank, including reasonable attorneys' fees and any sums advanced by the Bank under the terms of the mortgage, and (ii) examine and report whether the mortgaged premises should be sold in one parcel or in multiple parcels, and directing that upon presentation and coming in of the Referee's Report, the Bank have the usual judgment of foreclosure and sale;
5. Amending the caption of this proceeding by directing that the names of the "John Doe" defendants be deleted from the caption; and
6. For such other, further and different relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 2214(b),
answering papers, if any, must be served at least seven (7) days before the return date of this
motion.

Dated: _____, New York
_____, 20__

[Name of Plaintiff's Law Firm]
Attorneys for Plaintiff
[Address and Phone Number]

To: [Service List]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	X	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	AFFIDAVIT OF REGULARITY
	:	AND IN SUPPORT OF PLAINTIFF'S
	:	MOTION FOR SUMMARY
BORROWER, GUARANTOR, SUBORDINATE	:	<u>JUDGMENT AND RELATED RELIEF</u>
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	X	

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

[Plaintiff's counsel], being duly sworn, deposes and says:

1. I am a member of the firm of _____
_____, attorneys for _____ Bank (the "Bank"), the
plaintiff in the instant mortgage foreclosure action. I am fully familiar with the facts and
circumstances stated herein, and I submit this affidavit in support of the Bank's motion for an
order and/or judgment:

- (1) Pursuant to New York Civil Practice Law and Rules ("CPLR")
§ 3212, granting summary judgment in favor of the Bank and
against the defendant Borrower, Guarantor, Subordinate
Mortgagee Corp. and Mechanic's Lien Ltd. (collectively, the
"Answering Defendants") on the grounds that there are no triable
issues of fact in this proceeding, that each of the Answering

Defendants' affirmative defenses asserted in their respective Answers lack merit and fail to state a valid defense to foreclosure, and that accordingly, the Bank is entitled to all of the relief requested in its Complaint, including judgment of foreclosure and sale, as a matter of law;

- (2) Pursuant to CPLR § 3211(a)(7), dismissing each of the counterclaims asserted in the Answers of the Answering Defendants on the ground that each of said counterclaims fails to state a cause of action or, alternatively, pursuant to CPLR § 3212, granting summary judgment in favor of the Bank and against each of said defendants with respect to each such counterclaim on the grounds that each such counterclaim raises no material triable issues of fact;
- (3) Pursuant to New York Real Property Actions and Proceedings Law ("RPAPL") § 1321, granting the Bank judgment against defendants (a) The People of the State of New York; (b) The Commissioner of Taxation and Finance of the State of New York; (c) The City of Trouble; and (d) The Department of Finance of the City of Trouble for all of the relief requested in its Complaint, including judgment of foreclosure and sale, as a matter of law, on the ground that each of these defendants has appeared in this action but has not served an Answer to the Complaint;
- (4) Referring this action to some suitable person as a referee (the "Referee") to (i) ascertain and compute the amount due the Bank for principal and interest under the mortgage as set forth in the Bank's Complaint, and for any other amounts due and owing the Bank, including reasonable attorneys' fees and any sums advanced by the Bank under the terms of the mortgage, and (ii) examine and report whether the mortgaged premises should be sold in one parcel or in multiple parcels, and directing that upon presentation and coming in of the Referee's Report, the Bank have the usual judgment of foreclosure and sale;
- (5) Amending the caption of this proceeding by directing that the names of the "John Doe" defendants be deleted from the caption; and
- (6) For such other, further and different relief as this Court may deem just and proper.

2. In view of the fact that part of the relief requested by the Bank is for an order appointing a Referee to compute, this affidavit should also be deemed the Bank's Affidavit of Regularity upon a motion for an order appointing such a Referee.

THE FORECLOSURE PROCEEDING TO DATE

3. This is an action to foreclose upon a first fee mortgage dated _____, 20__, in the amount of \$_____, made by defendant Borrower ("Borrower"), as mortgagor, in favor of the Bank, as mortgagee (the "Mortgage"). The Mortgage was duly recorded in the Office of the Clerk [or Register] of _____ County on _____, 20__ in Reel ____, Page _____. A copy of the Mortgage is annexed hereto as Exhibit _____. The Mortgage secures a mortgage note (the "Note") in the amount of \$_____ dated _____, 20__ made and delivered by Borrower to the Bank. A copy of the Note is annexed hereto as Exhibit _____.

4. The Mortgage constitutes a first mortgage lien upon the fee estate in and to the premises located in the City of _____, County of _____ and State of New York commonly known by the address _____, _____, New York (the "Premises"). The Premises are more particularly described in Exhibit ____ hereto. As stated in the Complaint, and as set forth in further detail below and in the accompanying Affidavit of _____, Officer of the Bank, by reason of monetary defaults under the Mortgage, there is now due and owing thereunder the accelerated principal sum of \$_____, together with all interest accrued thereon at the Default Rate (as defined in the Note), no part of which has been paid.

5. The Summons and Complaint commencing this action (Exhibit __) were filed in the office of the Clerk of _____ County (the "County Clerk") on _____, 20 __. At approximately the same time or immediately thereafter, and more than twenty (20) days ago, a Notice of Pendency of this Action (Exhibit __) was filed in the _____ County Clerk's Office containing the date of the Mortgage, the time and place of recording of same, the parties thereto, the names of the parties to this action, the object of this action, and a description of all of the property in _____ County affected thereby.

6. The defendants are of full age and competence and are not absentees. Each of the defendants (other than the "John Doe" defendants, who are sought to be deleted from this action) has been properly served with the Summons and Complaint as evidenced by the Affidavits of Service, copies of which are collectively annexed hereto as Exhibit __.

7. The statutory time periods prescribed under CPLR § 3012 and any extended time period thereto granted by the Bank have elapsed since completion of service of the Summons and Complaint upon each of the defendants and none of the defendants has appeared and answered or moved with respect to the Complaint within said time periods or any extended time periods thereto granted by the Bank except the following:

(a) defendant Borrower, on or about _____, 20 __, served an Answer to the Complaint (Exhibit __);

(b) defendant Guarantor ("Guarantor"), on or about _____, 200 __, served an Answer to the Complaint (Exhibit __);

(c) defendant Subordinate Mortgagee Corp., on or about _____, 20 __, served an Answer to the Complaint (Exhibit __);

(d) defendant Mechanic's Lien Ltd., on or about _____, 20____, served an Answer to the Complaint;

(e) defendants The People of the State of New York and The Commissioner of Taxation and Finance of the State of New York appeared herein on or about _____, 20____, by serving a Notice of Appearance and Waiver in Foreclosure in response to the Complaint (Exhibit ____);

(f) defendants The City of Trouble and The Department of Finance of The City of Trouble, on or about _____, 20____, appeared herein by serving a Notice of Appearance and Waiver in Foreclosure in response to the Complaint (Exhibit ____).

8. [Recite compliance with RPAPL 1302, 1303, 1306 and 1320, as applicable]

**THE BANK IS ENTITLED TO
SUMMARY JUDGMENT AS A MATTER OF LAW**

9. The Bank respectfully submits that this Court should grant summary judgment in favor of the Bank and against each of the Answering Defendants with respect to all of the relief requested in the Complaint on the grounds that there are no material issues of fact in this proceeding and accordingly, the Bank is entitled to judgment as a matter of law pursuant to CPLR § 3212(b).

10. As clearly shown in the Bank's Complaint (Exhibit ____), and in the **[Bank Officer's]** Affidavit accompanying this motion, the indebtedness under the Mortgage was properly accelerated by reason of the Borrower's monetary defaults under the Note and Mortgage, and to date, payment has not been made of the accelerated principal balance due

under the Note and Mortgage in the aggregate amount of \$_____, or of the interest accrued thereon, or of any additional charges and expenses payable pursuant to the Mortgage, Note, and other pertinent loan documents.

11. Specifically, the Borrower defaulted under the Note and Mortgage by failing to make payment of the monthly interest installments of \$_____ each that were due on _____ and _____, together with late payment charges due thereunder.

12. Accordingly, the Bank sent to Borrower and Guarantor, by certified mail, return receipt requested, a written notice (the "Notice of Default and Acceleration," Exhibit __) dated _____, 20__ apprising Borrower and Guarantor of Borrower's defaults and advising Borrower and Guarantor that by reason of those defaults, the Bank had elected to declare the entire principal balance of the Note and Mortgage in the amount of \$_____, together with all accrued interest and charges, immediately due and payable.

13. To date, Borrower has not made payment of all or any portion of the accelerated principal balance of \$_____, together with accrued interest and additional charges and expenses. Nor has defendant Guarantor made payment of any of said sums as required under the Guaranty of Payment (the "Guaranty") (Exhibit __) executed by Guarantor on _____, 20__.

14. None of the Answering Defendants can in good faith dispute the foregoing facts comprising the defaults by Borrower and Guarantor under the pertinent loan documents, which defaults clearly entitle the Bank to foreclose upon the Mortgage.

15. Accordingly, the Bank is entitled, as a matter of law, to judgment for all of the relief requested in the Complaint.

**NONE OF THE AFFIRMATIVE DEFENSES AND COUNTER-
CLAIMS ALLEGED BY THE ANSWERING DEFENDANTS
CONSTITUTE A VALID DEFENSE TO FORECLOSURE**

16. The Answering Defendants have asserted several frivolous “affirmative defenses” and “counterclaims,” none of which, as is demonstrated below, in the [Bank Officer’s] Affidavit, and in the Memorandum of Law accompanying this motion, constitute a valid defense to the Bank’s clearly established entitlement to judgment.

[Set forth in this Section a brief discussion of each affirmative defense and counterclaim and why each should be dismissed — a more detailed discussion of the foregoing should be contained in the Bank Officer’s Affidavit and the Memorandum of Law which would both accompany this Affidavit in support of the Bank’s motion.]

**THE ADDITIONAL ITEMS OF
REQUEST RELIEF SHOULD BE GRANTED**

**Judgment Should be Granted Against
Those Who Have Appeared But Not Answered**

17. As set forth above, defendants The People of the State of New York, The Commissioner of Taxation and Finance of the State of New York, The City of Trouble and The Department of Finance of the City of Trouble have appeared but not served an Answer. By virtue of said defendants’ failure to assert any defense to the Complaint, the Bank respectfully submits that it is entitled to judgment against said defendants.

Appointment of Referee to Compute

18. In view of all of the foregoing, including, without limitation, the Bank's clearly established right and entitlement to judgment, the Bank respectfully submits that it is also entitled to an order of this Court referring this action to some suitable person as Referee to (i) ascertain and compute the amounts due the Bank for principal and interest on the Mortgage as set forth in the Complaint, and for any other amounts due and owing the Bank, including reasonable attorneys' fees incurred by the Bank in connection with this foreclosure action and any sums advanced by the Bank under the terms of the Mortgage, and (ii) examine and report whether the Premises should be sold in one parcel or in multiple parcels, and directing that upon presentation and coming in of the Referee's Report, the Bank have the usual judgment of foreclosure and sale.

Amendment of Caption of This Proceeding

19. The Bank also respectfully requests that this Court direct the deletion from the caption of "John Doe #1 through John Doe #50, said John Doe defendants being fictitious, it being intended to name all other parties who may have some interest in or lien upon any of the premises sought to be foreclosed herein" (the "John Doe Defendants"). Since the commencement of this action, the Bank has ascertained that, upon information and belief, no parties other than the defendants previously served in this action have an interest in or lien upon the Premises. Accordingly, this Court should direct that the names of the John Doe defendants be deleted from the title of this proceeding.

CONCLUSION

20. No previous application has been made for any of the relief requested herein.

WHEREFORE, for all of the foregoing reasons, the motion of plaintiff Bank
should be granted in all respects.

Sworn to before me
_____, 20__

Notary Public

At an IAS Part ____ of the Supreme Court of
the State of New York held in and for the
County of _____ at the Courthouse,
_____, New York on the ____
day of _____, 20__.

P R E S E N T :

HON. _____,
JUSTICE.

-----	X	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	ORDER GRANTING SUMMARY
	:	<u>JUDGMENT AND RELATED RELIEF</u>
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE, ,	:	
	:	
Defendants.	:	
-----	X	

Plaintiff _____ Bank ("Plaintiff") having duly moved this Court
for an order and/or judgment:

- (1) Pursuant to New York Civil Practice Law and Rules ("CPLR") § 3212, granting summary judgment in favor of Plaintiff and against the defendants Borrower, Guarantor, Subordinate Mortgagee Corp. and Mechanic's Lien Ltd. (collectively, the "Answering Defendants") on the grounds that there are no triable issues of fact in this proceeding, that each of the Answering Defendants' affirmative defenses asserted in their respective Answers lack merit and fail to state a valid defense to foreclosure, and that accordingly, Plaintiff is entitled to all of the relief requested in its Verified Complaint, including judgment of foreclosure and sale, as a matter of law;

- (2) Pursuant to CPLR § 3211(a)(7), dismissing each of the counterclaims asserted in the Answers of the Answering Defendants, on the ground that each of said counterclaims fails to state a cause of action; or, alternatively, pursuant to CPLR § 3212, granting summary judgment in favor of Plaintiff and against each of said defendants with respect to each such counterclaim on the grounds that each such counterclaim raises no material triable issues of fact;
- (3) Pursuant to New York Real Property Actions Proceedings Law ("RPAPL") § 1321, granting Plaintiff judgment against defendants (a) The People of the State of New York; (b) The Commissioner of Taxation and Finance of the State of New York; (c) The City of Trouble; and (d) The Department of Finance of the City of Trouble for all of the relief requested in its Verified Complaint, including judgment of foreclosure and sale, as a matter of law, on the ground that each of these defendants has appeared in this action but has not served an Answer to the Verified Complaint;
- (4) Referring this action to some suitable person as a referee (the "Referee"), to (i) ascertain and compute the amount due Plaintiff for principal and interest under the mortgage set forth in Plaintiff's Verified Complaint, and for any other amounts due and owing Plaintiff, including reasonable attorneys' fees and any sums advanced by Plaintiff under the terms of the mortgage, and (ii) examine and report whether the mortgaged premises should be sold in one parcel or in multiple parcels, and directing that upon presentation and coming in of the Referee's report, Plaintiff have the usual judgment of foreclosure and sale;
- (5) Amending the caption of this proceeding by directing that the names of the "John Doe" defendants be deleted from the caption; and
- (6) For such other, further and different relief as this Court may deem just and proper;

NOW, upon reading and filing the Summons, Verified Complaint, and Notice of Pendency of Action filed herein on _____, 20____; the Affidavits and Admissions of Service evidencing service of said Summons and Verified Complaint upon all of the defendants herein; the Answers of the defendants Borrower ("Borrower"), Guarantor ("Guarantor"), Subordinate Mortgagee Corp. ("Subordinate") and Mechanic's Lien Ltd. ("Mechanic's") (collectively, the "Answering Defendants"); the Notices of Appearance and Waiver, served on behalf of defendants The People of the State of New York, The Commissioner of Taxation and

Finance of the State of New York, The City of Trouble and The Department of Finance of the City of Trouble; Plaintiff's Notice of Motion for Summary Judgment and Related Relief dated _____, 200____; the Affidavit of Regularity of [Plaintiff's Counsel], Esq., sworn to _____, 200____, and of [Bank's Officer], sworn to _____, 20____, together with the exhibits accompanying those Affidavits, submitted on behalf of Plaintiff in support of said motion, together with proof of service thereof; the Affidavit of _____, sworn to _____, 20____, submitted on behalf of Borrower in opposition to Plaintiff's motion [**recite any other opposing affidavits**]; the Reply Affidavit of _____, sworn to _____, 20____ in further support of Plaintiff's motion; from all of which it appears that this action was brought to foreclose upon a first fee mortgage affecting real property located in the City of _____, County of _____, State of New York; that the whole outstanding amount secured by said mortgage is due; and it appearing that none of the defendants herein are infants or absentees, and that the Notice of Pendency of Action was herein filed more than 20 days ago, and that since the filing of said Notice of Pendency of Action, the Summons and Verified Complaint herein have not been amended (i) by adding new parties to the action (ii) so as to affect premises not described in said Notice of Pendency of Action, or (iii) so as to extend the claim of Plaintiff against the mortgaged premises; and upon all of the pleadings and papers heretofore filed herein, and the proceedings heretofore had herein; and the Plaintiff having appeared herein in support of its motion by its attorneys, _____, and defendants Borrower, Guarantor, Subordinate and Mechanic's having appeared in opposition to Plaintiff's motion by _____ and _____,

respectively; and this Court having rendered a Memorandum Decision dated _____,
200 ____, granting Plaintiff's motion;

NOW, upon the motion of _____, attorneys for Plaintiff, it
is hereby

ORDERED, that the portion of Plaintiff's motion requesting summary judgment
against each of the Answering Defendants, namely Borrower, Guarantor, Subordinate and
Mechanic's, for all of the relief requested in Plaintiff's Verified Complaint, be and hereby is
granted; and it is further

ORDERED, that summary judgment be and hereby is entered in favor of Plaintiff
and against each of the Answering Defendants, namely Borrower, Guarantor, Subordinate and
Mechanic's, for all of the relief requested in Plaintiff's Verified Complaint; and it is further

ORDERED, that the portion of Plaintiff's motion requesting dismissal of the
counterclaims of the Answering Defendants be and hereby is granted; and it is further

ORDERED, that the Answering Defendants' counterclaims asserted in their
Answers be and they hereby are dismissed; and it is further

ORDERED, that the portion of Plaintiff's motion requesting judgment against
defendants (a) The People of the State of New York; (b) The Commissioner of Taxation and
Finance of the State of New York; (c) The City of Trouble; and (d) The Department of Finance
of the City of Trouble, for all of the relief requested in its Verified Complaint, be and hereby is
granted; and it further

ORDERED, that judgment be and hereby is entered in favor of Plaintiff and
against defendants (a) The People of the State of New York; (b) The Commissioner of Taxation
and Finance of the State of New York; (c) The City of Trouble; and (d) The Department of

Finance of the City of Trouble; for all of the relief requested in Plaintiff's Verified Complaint; and it is further

ORDERED, that the portion of Plaintiff's motion requesting appointment of a Referee to Compute the amount due Plaintiff be and hereby is granted; and it is further

ORDERED, that this action be referred to

_____, as Referee to compute the amount due Plaintiff as sought in Plaintiff's Verified Complaint herein, including without limitation any and all sums for principal, interest, water and sewer rents, taxes, insurance premiums, and for any other charges and liens upon the subject premises, including, without limitation, any such charges or liens arising by virtue of any payment or advance made by Plaintiff pursuant to the terms of the subject mortgage or pursuant to the order of any Court, with interest on said sums from the dates of the respective payments and advances thereof, and a sum in respect of reasonable attorneys' fees and expenses incurred by Plaintiff in connection with the collection of the indebtedness due upon the subject mortgage and the foreclosure of said mortgage; and to examine and to report whether the mortgaged premises should be sold in one parcel or in multiple parcels; and that the said Referee make his or her report to the Court with all convenient speed; and it is further

ORDERED, that upon presentation and coming in of the Referee's report, the Plaintiff shall have the usual judgment of foreclosure and sale **[insert following only if United States of America is a party defendant: "which judgment, in accordance with 28 U.S.C. § 2410(c) and applicable common law, shall provide for a period of 120 days from the date of sale in which defendant The United States of America may redeem those of the subject**

premises in which it claims an interest or lien"], together with costs, disbursements, and allowances of this action; and it is further

ORDERED, that the portion of Plaintiff's motion requesting that the caption of this proceeding be amended by deleting the "John Doe" defendants from the caption, be and hereby is granted; and it is further

ORDERED, that the title of this action be and hereby is amended by deleting the "John Doe" defendants from the caption, so that the caption shall henceforth read as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

-----X	
_____ BANK,	:
	:
Plaintiff,	:
	:
- against -	:
	:
BORROWER, GUARANTOR,	:
SUBORDINATE MORTGAGEE CORP.,	:
MECHANIC'S LIEN LTD., THE PEOPLE	:
OF THE STATE OF NEW YORK, THE	:
COMMISSIONER OF TAXATION AND	:
FINANCE OF THE STATE OF NEW	:
YORK, THE CITY OF TROUBLE, THE	:
DEPARTMENT OF FINANCE OF THE	:
CITY OF TROUBLE,	:
	:
Defendants.	:
	:
-----X	

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	NOTICE OF HEARING BEFORE
- against -	:	<u>REFEREE TO COMPUTE</u>
	:	
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

PLEASE TAKE NOTICE that the matters herein referred to

_____, Referee to Compute, by Order of the Honorable
_____, dated _____, 200__, will be brought on for hearing at the
offices of _____, _____, New York
on _____, 200__, at 10:00 a.m., at which time you shall present your proof and
witnesses, if any.

PLEASE TAKE FURTHER NOTICE that in the event you plan to attend the
hearing in person, you must so notify the undersigned Referee and Plaintiff's counsel set forth on

the service list below in writing, so that such notice is received not later than **[select a date 2-3 business days prior to hearing date]**.

Dated: _____, New York
_____, 200__

Referee
[Address and Phone Number]

TO: [SERVICE LIST]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	<u>OATH OF REFEREE TO COMPUTE</u>
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

I, _____, ESQ., the Referee appointed by an Order of this Court, made and entered in the above action on _____, 20__, to ascertain and compute the amount due to the Plaintiff for principal and interest and otherwise under the Note and Mortgage which this action was brought to foreclose, and to examine and report whether the mortgaged premises should be sold in one or more parcels, do solemnly swear that I will faithfully and fairly determine the questions so referred to me and make a just and true report thereon according to the best of my understanding and as said order requires.

_____, ESQ.
Referee

Sworn to before me on
_____, 20__

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	AFFIDAVIT OF PLAINTIFF IN
	:	CONNECTION WITH REFEREE'S
	:	<u>COMPUTATION HEARING</u>
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

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

I, _____, being duly sworn, depose and say that:

I am the _____ of _____ BANK, the Plaintiff

and holder of the Mortgage, dated _____, 20__, which this action was brought to
foreclose. I am fully familiar with all of the facts herein.

The defendant Borrower has defaulted in the following payments:

Monthly payments due from
to _____ for a total of _____ months

Principal balance now is: \$

Interest due at the rate of _____ percent

from _____ to _____ is: \$

Per diem rate for each day after

said is: \$

Escrow deficit: \$

Late charges at \$ per month

for months (to) \$

Accordingly, as of there is due and owing the sum of \$, plus
per diem interest of \$ for each day thereafter.

I request that the mortgaged premises should be sold as a single parcel because

_____.

[Name of Plaintiff's Officer
Signing Affidavit]

Sworn to before me on
_____, 20__

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	REPORT OF REFEREE
BORROWER, GUARANTOR, SUBORDINATE	:	<u>TO COMPUTE</u> _____
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

TO THE SUPREME COURT, _____ COUNTY:

Pursuant to an Order of this Court, made and entered in this action on _____, 20__, whereby it was referred to the undersigned _____ ESQ. as Referee, to ascertain and compute the amount due to the Plaintiff for principal and interest and otherwise under the Note and Mortgage which this action was brought to foreclose, and to examine and report whether in his/her opinion the mortgaged premises should be sold in one or more parcels, I do report that:

1. Before proceeding to hear the testimony I first was duly sworn faithfully and fairly to determine the questions referred to me, and to make a just and true report thereof, according to the best of my understanding.
2. I have computed and ascertained the amount due to the Plaintiff under said Note and Mortgage, and I find, and accordingly report, that there is due to the Plaintiff for

principal and interest on said Note and Mortgage, as of the date of this report, the sum of
\$ _____.

3. Annexed hereto is the Affidavit of [name of Plaintiff's officer who
signed Affidavit] introduced before me, showing the amounts due for principal and interest
respectively, the period of the computation of the interest and its rate and other amounts.

4. Schedule A annexed hereto contains a schedule of documentary evidence
introduced before me.

5. Schedule B annexed hereto contains the sums due to Plaintiff on the said
Note and Mortgage sought to be foreclosed herein to the date hereof.

6. I have made inquiry as to the advisability of selling the mortgaged
premises in one or more parcels. As the premises comprises a single tax lot and is improved by a
single building, I find that the mortgaged premises should be sold in one parcel.

This report is respectfully submitted.

Dated: _____, 20__

Referee ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	AFFIDAVIT OF REGULARITY IN
	:	SUPPORT OF MOTION TO CONFIRM
	:	REFEREE'S COMPUTATION REPORT
BORROWER, GUARANTOR, SUBORDINATE	:	AND FOR JUDGMENT OF
MORTGAGEE CORP., MECHANIC'S LIEN	:	<u>FORECLOSURE AND SALE</u>
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

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

[Plaintiff's counsel], being duly sworn, deposes and says:

1. I am a member of the firm of _____, attorneys for the plaintiff in this action and am familiar with all of the proceedings had herein.
2. This is an action to foreclose a first mortgage on real property situated in the City of _____, County of _____, and State of New York.
3. On _____, 20____, the Honorable _____ of this Court made and entered an Order which, inter alia, appointed _____ as Referee to Compute.
4. As is more fully set forth in my affidavit sworn to _____, 20__ submitted in support of the relief granted in Justice _____'s Order, each of the

defendants has been served with the Summons and Verified Complaint in this action. None of the defendants has answered or otherwise moved with respect to the Verified Complaint, nor has their time to do so been extended, except that: (i) defendant Borrower ("Borrower"), on or about _____, 20__, served a Verified Answer to the Verified Complaint; (ii) defendant Guarantor ("Guarantor"), on or about _____, 20__, served a Verified Answer to the Verified Complaint; (iii) defendant Subordinate Mortgagee Corp. ("Subordinate Mortgagee"), on or about _____, 20__, served a Verified Answer to the Verified Complaint; and (iv) defendant Mechanic's Lien Ltd. ("Mechanic's"), on or about _____, 20__, served a Verified Answer to the Verified Complaint.

5. In connection with the plaintiff's motion for summary judgment and related relief in this action, served on _____, 20__, Justice _____ made and entered her aforesaid Order dated _____, 20__ in which she: (i) entered judgment in favor of the plaintiff for all of the relief requested in plaintiff's Verified Complaint; (ii) dismissed each of the counterclaims asserted by defendants Borrower, Guarantor, Subordinate Mortgagee and Mechanic's; (iii) referred this action to _____ as Referee to compute the amount due to plaintiff as sought in plaintiff's Verified Complaint, and to examine and report whether the mortgaged premises should be sold in one parcel or in multiple parcels; (iv) amended the caption of this action to excise therefrom the names of the "John Doe" defendants; and (v) ordered that upon presentation and coming in of the Referee's Report, and on motion for confirmation thereof, the plaintiff have the usual judgment of foreclosure and sale, together with the costs, disbursements, and allowances of this action.

6. No defendant has demanded notice of this application, except for defendants Borrower, Guarantor, Subordinate Mortgagee, and Mechanic's, each of whom is being given notice hereof.

7. This action stands in the same position as set forth in my aforesaid affidavit sworn to _____, 20__ [Note: the affidavit being referred to is the previous one submitted in support of plaintiff's motion for summary judgment and related relief or for the appointment of a referee to compute the amount due — see ¶5 above] except that Justice _____ has entered her aforementioned Order dated _____, 20__, and that pursuant to that Order, _____, Referee, has computed the amount due the plaintiff to be in the sum of \$ _____, which includes interest as more particularly set forth in the Referee's Report, and has found that the mortgaged premises should be sold in one parcel. The Referee's Report, a true copy of which is annexed hereto as Exhibit A, has previously been filed with this Court.

WHEREFORE, the plaintiff respectfully requests that the Referee's Report be ratified and confirmed in all respects, and that the annexed Judgment of Foreclosure and Sale, with costs and allowances, be granted and entered herein.

Sworn to before me this
_____ day of _____, 20__

Notary Public

C. Judgment of Foreclosure and Sale

At an IAS Part ____ of the Supreme Court of
the State of New York, County of
_____, located at _____,
_____, New York on the _____ day of
_____, 20__.

P R E S E N T :

HON. _____,
JUSTICE.

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	JUDGMENT OF FORECLOSURE
- against -	:	<u>AND SALE</u>
	:	
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

Upon the Summons, Verified Complaint, and Notice of Pendency of Action filed
herein on _____, 20__; upon the Affidavits of Service upon the defendants previously filed
herein; upon the Notice of Motion to Confirm Referee's Computation Report and for Judgment
of Foreclosure and Sale (the "Confirmation and Judgment Motion") dated _____;
and upon the Affidavit of Regularity of [Plaintiff's counsel], Esq., sworn to _____
20__, in support of the Confirmation and Judgment Motion; upon the Order of the Honorable
_____ dated _____, 20__, which *inter alia*, appointed
_____ as Referee to ascertain and compute the amount due to the
plaintiff for principal, interest, and otherwise on the note and mortgage referred to in the Verified

Complaint, and to examine and report whether the mortgaged premises should be sold in one parcel or multiple parcels; and upon all other proceedings previously had herein, from all of which it appears that this action was brought to foreclose upon a first mortgage on real property situated in the City of _____, County of _____ and State of New York, and that the entire balance of the principal sum secured by the mortgage, to wit, the sum of \$ _____, together with interest thereon and various late charges and other charges expended by the plaintiff is now due and payable; that all of the defendants herein have been duly served with the Summons and Verified Complaint in this action; that the time to answer or move with respect to the Verified Complaint has expired as to each of the defendants and that no answer or motion directed to the Verified Complaint or otherwise has been interposed by or on behalf of any defendant and that the time to do so has not been extended by consent or by order of this Court, except that: (i) defendant Borrower ("Borrower"), on or about _____, 200__, served a Verified Answer to the Verified Complaint; (ii) defendant Guarantor ("Guarantor"), on or about _____, 20__, served a Verified Answer to the Verified Complaint; (iii) defendant Subordinate Mortgagee Corp. ("Subordinate Mortgagee"), on or about _____, 20__, served a Verified Answer to the Verified Complaint; and (iii) defendant Mechanic's Lien Ltd. ("Mechanic's"), on or about _____, 20__, served a Verified Answer to the Verified Complaint; and upon the aforesaid Order of the Honorable _____ dated _____, 20__, in which this Court (i) entered judgment in favor of the plaintiff for all of the relief requested in plaintiff's Verified Complaint; (ii) dismissed each of the counterclaims asserted by defendants Borrower, Guarantor, Subordinate Mortgagee and Mechanic's; (iii) referred this action to _____ as Referee to compute the amount due to plaintiff as sought in plaintiff's Verified Complaint, and to examine and report whether

the mortgaged premises can be sold in parcels; (iv) amended the caption of this action to delete therefrom the names of the "John Doe" defendants; and (v) ordered that upon presentation and coming in of the Referee's Report, and on motion for confirmation thereof, the plaintiff have the usual judgment of foreclosure and sale, together with the costs, disbursements, and allowances of this action; and it appearing that none of the defendants herein is an infant, incompetent, or absentee, and that the Notice of Pendency filed in this action on _____, 20__ contains truly and correctly all of the particulars required by law to be stated in such notice; and upon the report of the Referee, _____, on file with this Court, a copy of which is annexed hereto, from which it appears that the sum of \$ _____ was due to the plaintiff on _____, 20__, the date of the Report, and that the mortgaged premises should be sold in one parcel.

NOW, on motion of _____, attorneys for the plaintiff herein, it is

ORDERED, that the motion be and the same hereby is granted; and it is further

ORDERED AND ADJUDGED, that the report of the Referee be and the same hereby is in all respects ratified and confirmed; and it is further

ORDERED AND ADJUDGED, that the plaintiff is entitled to have judgment herein for the sum of \$ _____ together with interest thereon from the date of the Report, _____, 200__, besides the sum of \$ _____ as taxed by the Clerk of the Court and hereby adjudged to the plaintiff for costs and disbursements in this action, with interest thereon from the date hereof, together with an additional allowance pursuant to CPLR § 8302 of \$ _____ hereby awarded to the plaintiff in addition to costs and disbursements, with interest thereon from the date hereof; and it is further

ORDERED AND ADJUDGED, that the mortgaged premises described in the Verified Complaint and as hereinafter described, be sold in one parcel subject to existing encumbrances, covenants, and restrictions of record, if any, subject to leases of tenants not made parties to this action, if any, and subject to any projections and state of facts, if any, as an accurate survey may show, at public auction at **[Court to insert precise location, i.e., name of building, place at such building and address of such building at which foreclosure sale is to be conducted]** under the direction of **[Court to insert name of Referee to conduct sale]**, who is hereby appointed Referee for that purpose; that the Referee give public notice of the time and place of the sale according to law and the practice of this Court, namely, in the **[Court to insert name of newspaper in which foreclosure sale is to be advertised]**; plaintiff or its nominee or any other parties to this action may become the purchaser or purchasers at such sale; that in case the plaintiff or its nominee shall become the purchaser at the same it shall not be required to make any deposit thereon; that the Referee execute to the purchaser or purchasers on such sale a deed of the premises sold; that the Referee on receiving the proceeds of such sale forthwith pay therefrom the taxes, assessments or water rates which are or may become liens on the premises at the time of sale with such interest or penalties which may be lawfully accrued thereon to the date of payment; that the Referee then deposit the balance of the proceeds of sale in his/her own name as Referee in **[Court to insert name of bank]**; and shall thereafter make the following payments, and his/her checks drawn for that purpose shall be paid by the depository:

1. A sum not exceeding \$_____ to the Referee for his/her fees herein.
2. The expenses of the sale and advertising expenses as shown in the bills presented and certified by the Referee to be correct, and duplicate copies of which shall be left with the depository.

3. The sum of \$_____ to the plaintiff adjudged to the plaintiff for its costs and disbursements in this action (as taxed by the Clerk of the Court), together with an additional allowance of \$_____ hereby awarded to the plaintiff in addition to costs; and also the sum of \$_____, the amount so reported due as aforesaid, together with legal interest thereon from _____, 20__, the date of the Report, or so much thereof as the purchase money of the mortgaged premises will pay of the same.

In case plaintiff or its nominee is the purchaser of the mortgaged premises at the sale, or in the event that the rights of the purchaser at the same and the terms of sale under this judgment shall be assigned to and be acquired by the plaintiff or its nominee, and a valid assignment thereof filed with the Referee, the Referee shall not require plaintiff or its nominee to pay in cash the entire amount bid at such sale, but shall execute and deliver to the plaintiff or its nominee a deed or deeds of the premises sold upon the payment to said Referee of the amounts specified above in items marked "1" and "2" and the amount of the aforesaid taxes, assessments and water rates and interest or penalties thereon, or in lieu of the payment of the last mentioned amount, upon filing with the Referee receipts of the proper municipal authorities, showing the payment thereof; that the balance of the amount bid after deducting therefrom the aforesaid amount paid by the plaintiff for Referee's fees, advertising expenses and taxes, assessments and water rates, shall be allowed to the plaintiff or its nominee and applied by the Referee upon the amounts due to the plaintiff as specified above in item marked "3"; that if after so applying the balance of the amount bid there shall be a surplus over and above the amounts due to the plaintiff, the plaintiff or its nominee shall pay to the Referee upon delivery to him/her of the Referee's deed the amount of such surplus; that the Referee on receiving the several amounts from the plaintiff shall forthwith pay therefrom the taxes, assessments, water rates and interest or

penalties thereon, unless the same shall have already been paid, and shall pay the surplus money into court.

The Referee is directed to take the receipt of the plaintiff or its attorneys for the amounts paid as hereinbefore directed, in item marked "3" and file it with his/her report of sale; to pay into Court the surplus moneys, if any, within five days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on the order of the Court signed by a Justice of this Court; and to make a report of such sale and file it with the Clerk of _____ County, with all convenient speed; and it is further

ORDERED AND ADJUDGED that if the proceeds of such sale be insufficient to pay the amount reported due to the plaintiff with interest and costs as aforesaid, the plaintiff shall recover from the defendants Borrower and Guarantor, jointly and severally, the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgage debt remaining unsatisfied after the sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceedings Law within the time limited therein, and the amount thereof is determined and awarded by an order of this Court as provided for in said statutory provision; and it is further

ORDERED AND ADJUDGED that the purchaser or purchasers at said sale be let into possession on production of the Referee's deed or deeds; and it is further

ORDERED AND ADJUDGED that each and all of the defendants in this action and all persons claiming under them or any or either of them after the filing of the Notice of the Pendency of this action, be and they hereby are forever barred and foreclosed of all right, claim,

lien, title, interest and equity of redemption in said mortgaged premises and each and every part thereof.

The following is a description of the mortgaged premises hereinbefore mentioned:

[Insert legal metes and bounds description contained in Mortgage]

ENTER :

J.S.C.

in the Office of the Clerk of the County of Kings on the _____ day of _____, 200__, and has not been amended to add new parties or to embrace real property not described in the original complaint, and a Referee having been duly appointed to compute the amount due to the plaintiff upon the bond/note and mortgage set forth in the Complaint and to examine and report whether the mortgaged premises can be sold in parcels,

AND, on reading the report of _____, Esq., the Referee named in said Order of Reference, by which Report, dated the _____ day of _____, 200__, attached hereto, it appears that the sum of \$ _____ was due as of _____, and that the mortgaged premises should be sold in one parcel,

NOW, upon proof of due notice of this application upon all parties who had not waived the same, and upon proof of service of the Order of Reference as provided therein,

ON MOTION of _____, attorney for the plaintiff, it is

ORDERED, that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED, that the said Report of _____, Esq., dated _____ be, and the same is hereby, to the extent provided herein, ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the above-described mortgaged premises or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold, in one parcel, at public

auction in Room 274 of Kings County Supreme Court, 360 Adams Street, Brooklyn, New York 11201, on a Thursday afternoon at 3:00 P.M., by and under the direction of _____, Esq. who is hereby appointed Referee for that purpose, that the said Referee shall set the date of sale and give public notice of the time and place of sale in accordance with RPAPL 231 in _____ and it is further

ORDERED, ADJUDGED AND DECREED that said Referee shall accept at such sale the highest bid offered by a bidder, who shall be identified upon the court record, and shall require that such successful bidder immediately pay to the Referee in cash or certified or bank check payable to such Referee, ten percent of the sum bid and shall execute Terms of Sale for the purchase of the premises, unless such successful bidder is the plaintiff herein, in which case, no deposit against the purchase price shall be required, and it is further

ORDERED, ADJUDGED AND DECREED that in the event that the first successful bidder fails to immediately pay the ten percent deposit as provided herein or fails to execute the Terms of Sale immediately following the bidding upon the subject property, the property shall thereafter immediately, on the same day, be reoffered at auction, and it is further

ORDERED, ADJUDGED AND DECREED that the closing of title shall take place at the office of the Referee or at such other location as the Referee shall determine within forty-five days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at the auction. Any delay or adjournment of the closing date beyond forty-five days may be stipulated among the parties, with the Referee's consent, up to ninety days

from the date of sale, but any adjournment beyond ninety days may be set only with the approval of this Court, and, it is further

ORDERED, ADJUDGED AND DECREED that the Referee deposit all funds received pursuant to this Order in his/her own name as Referee in Referee's I.O.L.A. account maintained for legal clients at a bank within the City of New York or in an FDIC-insured bank of the Referee's choice within the City of New York [or in _____ Bank], and it is further

ORDERED, ADJUDGED AND DECREED that said Referee on receiving the proceeds of such sale shall forthwith pay therefrom:

FIRST: The statutory fees and commissions of said Referee pursuant to CPLR § 8003 (b) which shall not exceed \$500 unless the sale price (the amount of the accepted bid) exceeds \$50,000. In the event the sale price exceeds fifty thousand dollars and additional compensation (including commissions) in excess of \$500 is sought pursuant to CPLR § 8003(b), and if no surplus monies are produced by the sale, the parties may present a stipulation, signed by the Referee and all parties appearing, agreeing to a stated sum, to be so-ordered by the Court. Where surplus monies will be available following distribution of sums as provided herein, or where the parties are unable to agree to the Referee's proper compensation under CPLR § 8003 (b), application shall be made to this Court on notice to all parties known to be entitled to claim against any surplus monies, including the defaulting owner of the equity of redemption. Such application shall be promptly submitted to the Court within five days of the transfer of the deed and prior to filing the Report of Sale. The five day period for payment of surplus money into Court as set forth in RPAPL § 1354(4), and the thirty day period set

forth in RPAPL § 1355 for the filing of the Report of Sale shall be deemed extended pending the decision of the Court regarding such application.

In the event a scheduled sale is cancelled or postponed, pursuant to CPLR § 8003(a), plaintiff shall compensate the Referee in the sum of \$250.00 for each adjournment or cancellation unless the Referee has requested the delay. Such compensation may be recouped from the proceeds of sale as a cost to plaintiff. This Order shall constitute the necessary prior authorization for compensation as set forth herein.

No compensation in excess of \$750, including compensation authorized pursuant to CPLR § 8003 (a) for computation of the sum due to plaintiff, may be accepted by the Referee without Court approval and compliance with the filing provisions of Section 36.4 of the Rules of the Chief Judge.

SECOND: The expenses of the sale, including the cost of advertising as shown on the bills presented and certified by said Referee to be correct, copies of which shall be annexed to the Report of Sale.

THIRD: Pursuant to Real Property Actions and Proceedings Law § 1354, in accordance with their priority according to law, taxes, assessments, sewer rents, water rates and any charges placed upon the property by a city agency which have priority over the foreclosed mortgage, which are liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.

FOURTH: Said Referee shall then pay to the plaintiff or its attorney the sum of \$ _____ for costs and disbursements in this action to be taxed by the Clerk and inserted herein, with interest from the date hereof, [together with

an additional allowance of \$ _____ hereby awarded to the plaintiff in addition to costs with interest thereon from the date hereof,] and also the sum of \$ _____ the said amount so reported due as aforesaid, together with interest thereon pursuant to the terms of the Note from _____, the date the interest was calculated to in said Report, to the date of entry of this Order, and thereafter at the statutory post-judgment rate to the date of transfer of title, or so much thereof as the purchase money of the mortgaged premises will pay of the same, together with \$ _____ hereby awarded to the plaintiff as reasonable legal fees, together with any advances as provided for in the note and mortgage which plaintiff may have made for taxes, insurance, principal and interest and any other charges due to prior mortgages or to maintain the premises pending consummation of this foreclosure sale, not previously included in the computation, upon presentation to the Referee of receipts for said expenditures, all together with interest thereon pursuant to the note and mortgage as above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale. Plaintiff shall timely move to confirm the Referee's Report of Sale pursuant to RPAPL § 1355. It is further

ORDERED, ADJUDGED AND DECREED that in case the plaintiff be the purchaser of said mortgaged premises at said sale, said Referee shall not require the plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver only to the plaintiff a deed of the premises sold upon the payment to said Referee of the sum awarded to him or her under the above provisions marked "FIRST", "SECOND", and "THIRD" if such expenses were paid by the Referee, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing payment thereof. The balance of the amount bid, after deducting therefrom the

aforementioned payments to the Referee for compensation and expenses, taxes, assessments, sewer rents, water rates, and priority liens of a city agency, shall be allowed to the plaintiff and applied by said Referee upon the amounts due to the plaintiff as specified in item marked "FOURTH". If upon so applying the balance of the amount bid, there shall be a surplus over and above the said amounts due to the plaintiff, the plaintiff shall pay to the said Referee, upon delivery to plaintiff of said Referee's deed, the amount of such surplus [which shall be applied by the Referee, upon motion made pursuant to RPAPL § 1351(3) and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded against the property, pursuant to RPAPL § 1354 (3), which payment shall be reported in the Referee's Report of Sale.] Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with RPAPL § 1354 (4) and the Referee shall immediately give notice of such surplus to the owner of the mortgaged premises as identified by plaintiff at the time of the sale, and it is further

ORDERED, ADJUDGED AND DECREED that said Referee take the receipt of the plaintiff or plaintiff's attorney for the amounts paid as hereinbefore directed in item marked "FOURTH", and file it with his/her Report of Sale, that he/she deposit the surplus monies, if any, with the Kings County Clerk within five days after the same shall be received unless such period be deemed extended by the filing of an application for additional compensation as set forth herein, to the credit of this action, to be withdrawn only upon order of the Court, signed by a Justice of the Court; that said Referee make his/her Report of such Sale under oath showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payment was made, and file it with the Kings County Clerk, with a copy to the Chambers of the Appointing Justice, within thirty days

after completing the sale and executing the proper conveyance to the purchaser or within thirty days of the decision of the court with respect to any application for additional compensation; and it is further

ORDERED, ADJUDGED AND DECREED, that if the proceeds of such sale be insufficient to pay the amount reported due to the plaintiff with interest and costs as aforesaid, the plaintiff may recover of the defendant(s) (name) _____ the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgaged debt remaining unsatisfied after the sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within 90 days of the delivery of the deed by the Referee, and the amount thereof is determined and awarded by an order of this Court as provided for in said action; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession on production of the Referee's deed or deeds; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action, and all persons claiming under any of them after the filing of such Notice of Pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said mortgaged premises and each and every part thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that said premises is to be sold in one parcel in "as is" physical order and condition on the day of sale, subject to any state of facts that an inspection of the premises would disclose, any state of facts that an accurate survey of the premises would show, any covenants, restrictions, declarations, reservations, easements, right of way and public utility agreements of record, any building and zoning ordinances of the municipality in which the mortgaged premises is located and possible violations of same, any rights of tenants or persons in possession of the subject premises, prior liens of record, if any, except those liens addressed in section 1354 of the Real Property Actions and Proceedings law, and any equity of redemption of the United States of America to redeem the premises within 120 days from the date of sale. Risk of loss shall not pass to purchaser until closing of title.

ORDERED, that in Absence of the Referee, the Court may designate a Substitute Referee forthwith; and it is further

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that a copy of this Judgment with Notice of Entry shall be served upon the designated Referee, the owner of the equity of redemption as of the date of this Order, any tenants named in this action and any other party entitled to notice within twenty days of entry and no less than thirty days prior to sale; and it is further

ORDERED, that the Plaintiff shall serve a copy of the Notice of Sale upon the Foreclosure Department at least ten (10) days prior to the scheduled sale.

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	<u>NOTICE OF SALE</u>
- against -	:	
	:	
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

In pursuance of a judgment of foreclosure and sale entered in the above entitled action and bearing date of _____, 20__, I, _____, Esq., the undersigned, the Referee in said judgment named, will sell in one parcel **[or in multiple parcels as directed in Judgment of Foreclosure and Sale]**, at public auction, at the _____ County Courthouse, _____, New York, on _____ [date] at 9:30 a.m. on that date, the premises described by said judgment to be sold and therein described as follows:

[Insert legal metes and bounds description]

Also known on the Official Tax Map of the Town, City of _____, County of _____, as Section _____; Block _____; Lot _____, commonly known as **[street address]**, New York and shall be offered as a whole and sold off to the highest bidder who will offer the highest price under the following terms:

Subject to existing encumbrances, covenants and restrictions of record, if any; subject to leases of tenants not made parties to this action, if any; and subject to any projections

and state of facts, if any, as an accurate survey may disclose [*N.B.: The items set forth in this paragraph to which the premises are sold subject should be identical to those set forth in the Judgment of Foreclosure and Sale -- no more, no less*].

Subject also to each and every other term of said judgment of foreclosure and sale.

The approximate amount of the lien due to the plaintiff pursuant to the judgment, with costs and allowances, excluding the expenses of the sale, is \$_____.

Dated: New York, New York
_____, 20__

_____, Esq.
Referee of Sale

TO: [Service List]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ , BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	TERMS AND MEMORANDUM
	:	<u>OF SALE</u>
BORROWER, GUARANTOR, SUBORDINATE	:	
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

The premises described in the annexed advertisement of sale will be sold under the direction of _____, Esq., Referee, upon the following terms:

1. Ten percent (10%) of the purchase price in cash or certified check will be required to be paid to the Referee at the time and place of sale and for which the Referee's receipt will be given, unless plaintiff or its nominee is the successful bidder, in which case the deposit requirement is waived.

2. At or before the time of making a bid, the bidder, other than plaintiff or its nominee, shall exhibit to the Referee cash or a certified check(s) for at least ten per cent (10%) of the amount of the bid.

3. The residue of the purchase money will be required to be paid to the Referee at his [her] office, _____, _____, New York, on or before **[generally 30th**

day after date of foreclosure sale] at 10:00 a.m. when and where the Referee's Deed will be ready for delivery.

4. The Referee is not required to send any notice to the purchaser and if the purchaser neglects to call at the time and place above specified to receive his deed, the purchaser will be charged with interest thereafter on the whole amount of its purchase unless the Referee shall deem it proper to extend the time for the completion of the purchase.

5. All taxes, assessments and water rents, which, at the time of sale, are liens or encumbrances upon the premises, will be allowed by the Referee out of the purchase money, provided the purchaser shall, previous to the delivery of the deed, produce to the referee proofs of such liens or encumbrances, and duplicate receipts for the payment thereof.

6. The purchaser of the premises, or any portion thereof, will at the time and place of the sale, sign a memorandum of its purchase.

7. The bidding will be kept open after the property is struck down; and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to it will be again put up for sale under the direction of the Referee under the same terms of sale, without application to the court, unless the plaintiff's attorney shall elect to make such application and such purchaser will be held liable for any deficiency there may be between the sum for which the premises shall be struck down upon the sale, and that for which they may be purchased on the resale, and also for any costs or expenses occurring on such resale.

8. The premises will be sold in one parcel subject to existing restrictions, encumbrances and covenants of record, if any, subject to leases of tenants not made parties to

this action, if any, and subject to any projections and state of facts, if any, as an accurate survey may show.

9. All expenses of recording the Referee's Deed, including real property transfer tax and transfer stamps, shall be borne by the purchaser.

Dated: _____, New York
 , 20____

Referee

MEMORANDUM OF SALE

I have this ____ day of _____, 20__, purchased the premises described in the annexed printed advertisement of sale for the sum of \$_____ and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above-mentioned and set forth.

Dated: Trouble, New York
_____, 20__

Purchaser

RECEIPT

_____, 20__ received from
the sum of \$ _____ being 10% of the amount
bid by _____ for the property sold to
under the Judgment of Foreclosure and Sale in this action.

Referee

- or -

[in case of plaintiff being successful bidder]

The deposit of 10% is hereby waived.

Referee

Dated: _____, New York
 , 20__

400

**TO BE COMPLETED FOR EVERY SALE BY COURT APPOINTED REFEREE
AND FILED WITH COUNTY CLERK AND CHAMBERS WITHIN 30 DAYS OF SALE**

FORECLOSURE ACTION SURPLUS MONIES FORM

SUPREME COURT OF THE STATE OF NEW YORK

☐ COUNTY

Part _____

Plaintiff(s)

Hon. _____

-against-

Index No. _____

Defendant(s)

Property Address: _____ Sale Date _____

A. Were there surplus funds? ☐ Yes ☐ No

B. To be completed by the Referee

Amount of final judgment of foreclosure \$ _____
Sale price of property \$ _____
Upset price \$ _____
Surplus amount \$ _____

C. To be completed by Referee conducting the sale (please print)

Name: _____ Telephone: _____
Address: _____
E-mail Address: _____
Signature and Date: _____

D. To be completed by Plaintiff's
Representative

E. To be completed by Purchaser

Name (please print) _____
Address: _____
E-mail Address: _____
Telephone: _____

Name (please print) _____
Address: _____
E-mail Address: _____
Telephone: _____

Signature and Date: _____

Signature and Date: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	REFEREE'S REPORT
BORROWER, GUARANTOR, SUBORDINATE	:	<u>OF SALE</u>
MORTGAGEE CORP., MECHANIC'S LIEN	:	
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE, ,	:	
	:	
Defendants.	:	
-----	x	

TO THE SUPREME COURT, COUNTY OF _____

I, _____, the Referee duly appointed by the judgment of foreclosure and sale made and entered in this action and dated the ___th day of _____, 20__, to make the sale of the mortgaged lands and premises therein particularly described, do respectfully report as follows:

1. That I caused due notice of the sale of the said lands and premises on _____ 20__, at ___ a.m. at the [insert location at which sale was conducted], New York to be given and published according to law, and the rules and practice of this Court, as appears by the affidavit of publication annexed hereto as Exhibit A.

2. That at the time and place for which the same sale was noticed, as aforesaid, I attended in person and, pursuant to said notice, offered said mortgaged lands and premises for sale to the highest bidder, _____, and whose high bid was _____ (_____) DOLLARS, [insert following if successful bidder was plaintiff: "and I waived

the ten (10%) percent downpayment because the sale was to the foreclosing mortgagee”]. I
therefore duly sold the same to _____ for the sum of _____
(\$ _____) DOLLARS, that being the highest sum bid therefor.

3. That the closing of the foreclosure sale of the premises was held before me on
_____, 20__ at my office located at _____, _____, New York.

4. That at said closing, I made, executed and delivered to the aforesaid purchaser a
good and sufficient deed of conveyance for the said premises so sold as aforesaid.

5. That at said closing of the foreclosure sale, plaintiff made the payments as set
forth in the statement annexed hereto pursuant to the Judgment of Foreclosure and Sale, and I
have allowed said sums to plaintiff out of the purchase price, for which copies of receipts are
annexed hereto as Exhibit B and made a part of this report.

6. That in addition, pursuant to the aforesaid Judgment of Foreclosure and Sale, I
have been paid a fee of \$ _____, for my services as Referee to sell said premises, as
evidenced by the receipt, annexed hereto as Exhibit C. Pursuant to said judgment, said fee has
also been allowed to plaintiff out of the purchase price.

7. That after the disposition of the purchase price, as above reported, the amount of
the residue of the mortgage debt remaining unsatisfied upon the sale is the sum of
\$ _____.

8. That annexed hereto and made a part of this my report is a statement showing the several items aforesaid, all of which is respectfully submitted.

Dated: _____, New York
_____, 20__

_____, ESQ.
Referee of Sale

STATEMENT

Amount Due on Note and Mortgage

as per Judgment \$ _____

Post-Judgment Interest \$ _____

Total of Judgment Amount Plus Interest \$ _____

Expenses Paid by Plaintiff

Referee's Fee \$ _____

Advertising Expenses \$ _____

Total\$ _____ \$

Total of (i) Judgment Amount plus Interest,

and (ii) Expenses Paid by Plaintiff \$ _____

Less Amount of Successful Bid \$(_____)

Deficiency\$ _____

Dated: _____, New York
 _____, 20__

_____, ESQ.
Referee of Sale

**D. Motion to Confirm Referee's
Report of Sale and for a Deficiency
Judgment**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	NOTICE OF MOTION TO
	:	CONFIRM REFEREE'S REPORT
BORROWER, GUARANTOR, SUBORDINATE	:	OF SALE AND FOR DEFICIENCY
MORTGAGEE CORP., MECHANIC'S LIEN	:	<u>JUDGMENT</u>
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

PLEASE TAKE NOTICE that on the Referee's Report of Sale of _____, ESQ.,
Referee, dated _____, 20__ and filed in this action on _____, 20__, the
Affirmation of _____, Esq. dated _____, 20__ and upon all prior
pleadings and proceedings had herein, the Plaintiff will move this Court on the ____ day of ____ at
IAS Part __, Room ____ at the ____ County Courthouse located at _____,
New York at 9:30 a.m., or as soon thereafter as counsel can be heard, for an Order:

1. Confirming the Referee's Report of Sale in the above-entitled action;
2. Determining the fair and reasonable market value of the mortgaged property as of
the date the property was bid in at auction to be in the amount of \$_____.
3. Granting a deficiency judgment in favor of the Plaintiff and against the defendants
_____, Borrower, and _____, Guarantor, jointly and severally in

the amount of \$ _____, which is the amount as determined by the judgment, plus the amount owing on all prior liens and encumbrances with interest, plus costs and disbursements of the action, including the Referee's fees and disbursements, less the market value of the property which Plaintiff requests be fixed by the Court; and

4. Granting the Plaintiff such other and further relief as to the Court may seem just and proper.

The nature of this action is to foreclose a mortgage.

Dated: _____, New York
_____, 20__

Attorneys for Plaintiff
[Address and Phone Number]

TO: [Service List]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	AFFIRMATION IN SUPPORT OF
	:	MOTION TO CONFIRM REFEREE'S
BORROWER, GUARANTOR, SUBORDINATE	:	REPORT OF SALE AND FOR
MORTGAGEE CORP., MECHANIC'S LIEN	:	<u>DEFICIENCY JUDGMENT</u>
LTD., THE PEOPLE OF THE STATE OF NEW	:	
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

[Plaintiff's counsel], ESQ., an attorney duly admitted to practice law before the
Courts of this State, affirms the following statements to be true under the penalty of perjury:

1. I am a member of the firm of _____, attorneys for
_____ Bank ("Plaintiff"), the Plaintiff in the instant mortgage
foreclosure action, and am familiar with the facts and circumstances set forth in this Affirmation.
I make this Affirmation in support of Plaintiff's motion to confirm the Referee's Report of Sale
and for a deficiency judgment.

2. This action was brought to foreclose a mortgage in the principal amount of
\$_____, which mortgage was entered into on _____, 200__ and covered
property known as _____, in the County of _____, City of
_____, State of New York. As set forth in the Affidavits of Service in this action on

file, copies of which are collectively annexed hereto as Exhibit A, each of the defendants was served with the Summons and Verified Complaint.

3. On _____, 200__, a Judgment of Foreclosure and Sale was duly entered in the office of the Clerk of the County of _____ granting judgment to the Plaintiff for the sum of \$_____ with legal interest thereon from _____, 200__, the date of the report of the Referee computing the amount due, plus \$_____ in costs and disbursements, with legal interest thereon from _____, 200__, the date of the judgment, plus the sums of \$_____ for reasonable attorney's fees, and \$_____ as additional costs to the Plaintiff. The Judgment directed the sale of the mortgaged property securing the debt due to the Plaintiff and further adjudged that the defendants Borrower and Guarantor would be jointly and severally liable for any deficiency resulting from the sale. A copy of the Judgment of Foreclosure and Sale is annexed hereto as Exhibit B.

4. Pursuant to the Judgment, _____, Esq., the Referee appointed herein to sell the mortgaged property, sold the property pursuant to the Judgment to _____ for the sum of _____ (\$_____), the highest sum bid at the sale.

5. After the sale, on _____, 200__, the Referee rendered the Referee's Report of Sale and accompanying documents showing a deficiency resulting from the sale of \$_____. As evidenced by the copy of the postcard annexed hereto as Exhibit C, the Referee's Report of Sale was filed with the County Clerk on _____, 200__. A

copy of the Referee's Report of Sale, including statement of deficiency, is annexed hereto as Exhibit D.

6. The Referee's Deed was dated _____, 200__ and was delivered to the purchaser of the mortgaged property on or about that date. Ninety days have not elapsed since the Referee delivered the Referee's Deed of conveyance to the purchaser of the mortgaged property. A copy of the Referee's Deed is annexed hereto as Exhibit E.

7. Submitted herewith are the Affidavit and accompanying Appraisal dated _____, 200__ of _____ who is a professional real estate appraiser and who shows by his Affidavit and Appraisal that in his opinion, the mortgaged property had a market value as of the date of the foreclosure sale of \$_____.

8. As set forth in the accompanying Appraisal, a copy of which is annexed as Exhibit F, the assessed valuation of the premises for the year _____ was \$_____.

9. It is respectfully submitted that based upon the Appraiser's Affidavit and Appraisal, there was a market value for the mortgaged property on _____, 200__, the date of the sale at foreclosure herein, and the reasonable market value thereof on that date was \$_____.

10. Based upon the foregoing, it is respectfully requested that a deficiency judgment be entered jointly and severally against defendants Borrower and Guarantor in the sum of \$_____, which is the difference between the amount due Plaintiff under the Judgment of Foreclosure and Sale in the amount of \$_____ and the fair market value of the

premises on the date of the foreclosure sale, as set forth in the Appraiser's Affidavit and Appraisal, in the amount of \$ _____ [or, in the event the foreclosure sale price was greater than the fair market value, then use the foreclosure sale price in accordance with RPAPL § 1371(2)].

WHEREFORE, it is respectfully submitted that this Court enter an order and judgment (i) confirming the Referee's Report of Sale, and (ii) granting Plaintiff a deficiency judgment jointly and severally against defendants _____ Borrower and _____ Guarantor in the amount of \$ _____.

Dated: _____, New York
_____, 20__

[Plaintiff's Counsel]

E. Temporary Receivership

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

STATE BAR SAVINGS BANK,

Plaintiff,

-against-

DELINQUENT BORROWER ASSOCIATES,
UNLEARNED X. GUARANTOR, SUBORDINATE
MORTGAGEE CORP., MECHANIC'S LIEN LTD., THE
PEOPLE OF THE STATE OF NEW YORK, THE
COMMISSIONER OF TAXATION AND FINANCE OF
THE STATE OF NEW YORK, THE CITY OF
TROUBLE, THE DEPARTMENT OF FINANCE OF
THE CITY OF TROUBLE, THE ENVIRONMENTAL
CONTROL BOARD OF THE CITY OF TROUBLE, and
JOHN DOE #1 through JOHN DOE #50, said John Doe
defendants being fictitious, it being intended to name all
other parties who may have some interest in or lien upon
the premises sought to be foreclosed,

Defendants.

Index No.

**AFFIDAVIT IN SUPPORT
OF PLAINTIFF'S MOTION
FOR APPOINTMENT OF A
RECEIVER IN A MORTGAGE
FORECLOSURE ACTION**

STATE OF NEW YORK)
 :
COUNTY OF _____)

ss:

_____, being duly sworn, deposes and says:

1. I am a Vice President of State Bar Savings Bank (the "Bank"), the plaintiff in the above-entitled action, and am familiar with the facts and circumstances stated herein. I submit this affidavit in support of the Bank's motion for an order of this Court appointing ex parte a Receiver of the rents and profits of the premises located at _____ Trouble, New York, commonly known as _____ (the "Premises"), which are the subject of this mortgage foreclosure action.

Background

2. This is an action to foreclose upon a mortgage (the "Mortgage") affecting the Premises, which Mortgage is more particularly described in the Verified Complaint dated _____, 2012 filed herein and annexed hereto as Exhibit 1.

3. The Mortgage and an accompanying mortgage note (the "Note"), both dated _____, 2012, were made by defendant, Delinquent Borrower Associates ("Borrower"), to the Bank to secure repayment of a loan in the principal amount \$2,000,000.00. The Mortgage, a copy of which is annexed hereto as Exhibit 2, was recorded in the Office of the Clerk of _____ County, in _____ on _____, 2012.

4. As appears from the Verified Complaint, there is now due and unpaid to the Bank under the Note and Mortgage, the principal sum of \$2,000,000.00 with accrued interest thereon at the Default Rate (as defined in the Note) and such other charges and expenses due or to become due thereunder as a result of the failure of Borrower to make payment to the Bank of monthly interest due on May 1, 2012, June 1, 2012, and July 1, 2012, together with late payment charges as set forth in the Note.

5. The Summons, Verified Complaint and Notice of Pendency of Action were filed in the Office of the Clerk of _____ County on _____, 2012. As evidenced by the Affidavits of Service, copies of which are annexed hereto as Exhibit 3, service of the Summons and Verified Complaint has been effected upon the following defendants: _____, _____, _____, and _____.

This Court Should Appoint a Receiver for the Premises

6. The Mortgage provides [what follows is an example of a mortgage clause authorizing the ex parte appointment of a Receiver]:

Section _____. After the happening of any Event of Default, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid hereof or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any party and without regard to the adequacy or inadequacy of any security for the Mortgage indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of Receiver of the Mortgaged Property or any part thereof or any business or businesses conducted thereon and of all the earnings, revenues, rents, issues, profits and income thereof. [emphasis added].

7. Thus, the Bank is entitled to the ex parte appointment of a Receiver upon the commencement of this foreclosure action, without regard to the value of the Property that serves as security for the subject indebtedness and without prior notice to Borrower.

The Premises

8. The Premises are improved by a _____ story building, consisting of [give details re number of commercial and/or residential units and/or other pertinent facts re nature and composition of property].

9. Upon information and belief, the Premises are occupied by approximately ____ tenants paying an aggregate monthly rental income of approximately \$_____ as set forth on the Schedule annexed hereto as Exhibit 4.

10. The Bank believes that absent the appointment of a Receiver, the Premises may be materially injured or destroyed or will deteriorate to such an extent that on a sale at public

auction the Premises will not realize a sum sufficient to satisfy the indebtedness due to the Bank with interest, costs and arrears of taxes.

11. The Bank respectfully submits that the security is insufficient to protect the Bank's Mortgage with interest, water charges, sewer rent, taxes, and foreclosure expenses unless the Premises are judicially managed pending adjudication of this suit. It is therefore necessary that a Receiver be appointed to collect the rents and profits of the Premises so that the same may not be dissipated.

[Optional:] The Bank Recommends That [Name of Recommended Individual] Be Appointed as Receiver

12. The Bank respectfully requests that [name] , [address] , be appointed by this Court as the Receiver of the Premises.

13. Upon information and belief, **[name of recommended individual]** is on the list of qualified Receivers maintained by the Office of Court Administration. Moreover, **[name of recommended individual]** has advised the Bank that he/she is not disqualified from being appointed as Receiver in this action by reason of the compensation limitations, or any other provisions, contained in Part 36 of the Rules of the Chief Judge.

14. **[Set forth particular credentials of recommended individual meriting his/her appointment -- e.g., previous experience as Receiver of other properties and/or familiarity, through experience as real estate manager, owner or otherwise, with properties similar to subject Premises].** A copy of his/her resume is annexed hereto as Exhibit 5.

Conclusion

15. No previous motion or other application has been made for any of the relief requested herein.

WHEREFORE, for all of the foregoing reasons, this Court should grant the Bank's motion in all respects and should enter an Order Appointing Receiver in the proposed form annexed hereto.

[Name of Bank Officer]

Sworn to before me this
day of _____, 2012

Notary Public

At IAS Part ____, of the Supreme Court of the State of New York, held in and for the County of _____, at the Courthouse, located at _____, New York, on the ____ day of _____, 2012.

PRESENT: HON. _____, JUSTICE

-----X
STATE BAR SAVINGS BANK,

Plaintiff,

-against-

Index No. ____/12

DELINQUENT BORROWER ASSOCIATES,
UNLEARNED X. GUARANTOR, SUBORDINATE
MORTGAGEE CORP., MECHANIC'S LIEN LTD.,
THE PEOPLE OF THE STATE OF NEW YORK, THE
COMMISSIONER OF TAXATION AND FINANCE
OF THE STATE OF NEW YORK, THE CITY OF
TROUBLE, THE DEPARTMENT OF FINANCE OF
THE CITY OF TROUBLE, THE ENVIRONMENTAL
CONTROL BOARD OF THE CITY OF TROUBLE,
and JOHN DOE #1 through JOHN DOE #50, said John
Doe defendants being fictitious, it being intended to
name all other parties who may have some interest in or
lien upon the premises sought to be foreclosed,

Defendants.

-----X

**ORDER APPOINTING
RECEIVER**

Upon the Summons, Verified Complaint and Notice of Pendency of Action filed in the office of the Clerk of _____ County on _____, 2012; upon the annexed Affidavit of _____ **[Name of Plaintiff's Officer]**, sworn to on _____, 2012, and upon the exhibits annexed thereto, in support of the Plaintiff's motion (the "Motion"), for the appointment of a Receiver of the subject premises of this mortgage foreclosure action, which premises are commonly known as _____, New York (the

“Mortgaged Premises,” the legal description of which is annexed hereto as Schedule A); and upon all other papers and proceedings already had herein, it is hereby

ORDERED, that _____ is hereby appointed with the usual powers and duties as Receiver for the benefit of the plaintiff herein, to collect all the rents, income and profits now due and to become due during the pendency of this action and issuing out of the Mortgaged Premises; and it is further

ORDERED, that the Receiver is authorized to forthwith take charge and enter into possession of the Mortgaged Premises; and it further

ORDERED, that before entering upon his/her duties, said Receiver shall be sworn faithfully and fairly to discharge the trust committed to him/her, and said Receiver execute to THE PEOPLE OF THE STATE OF NEW YORK and file with the Clerk of the Court a bond with a sufficient surety or sureties in the sum of \$_____, conditioned for the faithful performance of his/her duties as such Receiver; and it is further

ORDERED, that the Receiver file an oath with the _____ County Clerk; and it is further

ORDERED, that the said Receiver be and he/she hereby is directed to demand, collect and receive from the occupants, tenants, and licensees in possession of said Mortgaged Premises or others liable therefor, inclusive of the mortgagor, defendant Delinquent Borrower Associates (“Defendant”), and all such occupants, tenants, licensees in possession, and others liable therefor, inclusive of Defendant, are directed to pay over to the Receiver, all the rents, license fees and other income thereof to become fixed and due now due and unpaid, and hereafter to become due, and that said Receiver be and he/she hereby is authorized to institute and carry on all legal proceedings necessary for the protection of said Mortgaged Premises or to recover possession of

the whole, or any part thereof, and/or apply to the Court to fix reasonable rental value and/or license fee values to compel the tenants, occupant(s), licensees and others liable therefor, to attorn to the Receiver; and it is further

ORDERED, that the Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due or fixed, and summary proceedings for the removal of any defaulting and/or unlawful tenants, occupants or licensees or other persons therefrom; and it is further

ORDERED, that pursuant to the provisions of the General Obligations Law section 7-105, anyone, including, without limitation, Defendant, holding any deposits or advances of rent or license fees as security under any lease, occupancy agreement or license agreement affecting space in the Mortgaged Premises affected by this action shall turn over same to said Receiver within five (5) days after said Receiver shall have qualified; and thereupon the said Receiver shall hold such security subject to such disposition thereof as shall be provided in any future Order of this Court to be made and entered in this action; and it is further

ORDERED, that anyone, including, without limitation, Defendant and any of its agents, officers, employees and contractors in possession of same, shall turn over to said Receiver all rent lists, orders, unexpired and expired leases, license agreements, service agreements and any other agreements, correspondence, notices and registration statements relating to rental spaces and/or facilities and/or any other portions in and/or of the Mortgaged Premises; and it is further

ORDERED, that notwithstanding anything to the contrary contained in this order, the Receiver shall not, without the written consent of plaintiff, or further order of this Court, make improvements or substantial repairs to the Mortgaged Premises at a cost in excess of \$_____; and it is further

ORDERED, that said Receiver forthwith deposit all monies received by him/her at the time he/she receives the same in his/her own name as Receiver in **[insert name of Bank]** and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Receiver; the Receiver shall furnish the plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership, together with a photocopy of the monthly statements received from said depository; and it is further

ORDERED, that said Receiver is prohibited from incurring obligations in excess of the monies in his/her hands without further order of the Court or express written consent of plaintiff; and it is further

ORDERED, that the Receiver: shall procure liability insurance and from time to time, rent or lease all or any part of the Mortgaged Premises for terms of one (1) year or such longer terms as may be required by the City of _____ and/or State of New York pursuant to applicable rent rules; shall keep said Mortgaged Premises insured against loss or damage by fire and other hazards; shall keep said Mortgaged Premises in repair and pay for same out of the rents, income and profits collected by the Receiver from the Mortgaged Premises, except that, in accordance with Section 1325(3)(a) of the New York Real Property Actions and Proceedings Law ("RPAPL"), priority shall be given to the correction of immediately hazardous and hazardous violations of housing maintenance laws within the time set by orders of any municipal department, or, if not practicable, seek a postponement of the time for compliance; shall pay the taxes, assessments, water and sewer rents, vault charges, salaries of employees, supplies and other charges pertaining to the Mortgaged Premises out of the rents, income and profits collected by the Receiver from the Mortgaged Premises; shall comply with all the lawful requirements of any municipal department or other authority of the municipality in which the Mortgaged

Premises are situated, including, without limitation, registering with any municipal department as provided by applicable law; and shall procure such fire, plate glass, liability and other insurance as may be reasonably necessary thereon; all in compliance with Section 5228(a) of the Civil Practice Law and Rules (“CPLR”) ; and it is further

ORDERED, that the tenants, subtenants or other persons in possession of said Mortgaged Premises or any portion thereof attorn to said Receiver and pay over to said Receiver all rents, license fees and other charges or other monies of said Mortgaged Premises now due and unpaid or that may hereafter become due; and that the defendants to this action, and said defendants’ agents, officers, employees and attorneys, are enjoined and restrained from: (i) collecting the rents, license fees, income and other charges of and/or from said Mortgaged Premises; (ii) interfering in any manner with the Mortgaged Premises or its possession, or with the Receiver’s management thereof; and that all the tenants, licensees and other occupants of the Mortgaged Premises and other persons liable for the rents, fees and/or other charges, be and they hereby are, enjoined and restrained from paying any rents, fees and/or other charges for said Mortgaged Premises to any of the defendants or to defendants’ agents, servants or attorneys; and it is further

ORDERED, that all persons now or hereafter in possession of the Mortgaged Premises or any part thereof, and not holding such possession under valid and existing leases, license agreements or other occupancy agreements, do forthwith surrender such possession to the Receiver at the option of the Receiver, subject to Emergency Rent laws, if any; and it is further

ORDERED, that the Receiver, after paying the expenses of the management and care of said Mortgaged Premises, retain the balance of the money which may come into his/her hands

until the sale of the Mortgaged Premises under the judgment to be entered in this action and/or until further order of the Court; and it is further

ORDERED, that Defendant and its agents, officers, employees and attorneys turn over to the Receiver all rents collected from and after the date of this Order; and it is further

ORDERED, that the Receiver comply with all lawful requirements of any municipal department or other authority of the municipality in which the Mortgaged Premises are situated; and it is further

ORDERED, that the said Receiver or any party hereto may at any time, on proper notice to all parties who may have appeared in this action, apply to this Court for an order or for instructions or powers necessary to enable such Receiver to properly and faithfully perform his/her duties, and it is further

ORDERED, that the Receiver appointed herein shall continue in his/her duties as such until the Receivership is terminated by court order or applicable law; and it is further

ORDERED, that the Receiver shall not make any secondary appointments, including, without limitation, the appointment of a managing agent, an attorney, an appraiser, or an accountant, without the prior written approval of the Court and in accordance with Part 36 of the Rules of the Chief Judge of the State of New York, and it is further

ORDERED, that the Receiver shall comply with CPLR Sections 6401-6404, RPAPL Section 1325 of the RPAPL, Section 35a of the Judiciary Law, and Part 36 of the Rules of the Chief Judge of the State of New York.

E N T E R

JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----	x	
_____ BANK,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	RECEIVER'S AFFIDAVIT
	:	FOR APPROVAL OF HIS
BORROWER, GUARANTOR, SUBORDINATE	:	ACCOUNTING, FOR FIXING
MORTGAGEE CORP., MECHANIC'S LIEN	:	OF HIS COMMISSIONS AND
LTD., THE PEOPLE OF THE STATE OF NEW	:	<u>FOR DISCHARGE</u>
YORK, THE COMMISSIONER OF TAXATION	:	
AND FINANCE OF THE STATE OF NEW YORK,	:	
THE CITY OF TROUBLE, THE DEPARTMENT	:	
OF FINANCE OF THE CITY OF TROUBLE,	:	
	:	
Defendants.	:	
-----	x	

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

_____, being duly sworn, deposes and says:

1. I am the Court-appointed Receiver in this foreclosure action, having been appointed by an Order of this Court dated _____, 20__ and filed in the County Clerk's office on _____, 20__.

2. Pursuant to said Order, I obtained a bond in the sum of \$_____, which was duly filed with the Clerk of this Court. Immediately after filing the bond and thereby qualifying as Receiver, I entered the subject premises, took possession thereof, gave notice of the order to all tenants and occupants and directed them to pay to me all rents due.

3. I am advised that a foreclosure sale of the subject premises was held on _____, 20__, and that a deed to the Premises was delivered to the successful

purchaser by the Referee on _____, 20__. Upon that date, I delivered possession of the premises to said purchaser.

4. Set forth herein is a statement of my account as Receiver. The monies stated in my said account as received by me are all the monies received by me. All of the monies set forth in said account as having been paid out or expended by me were actually so paid out and expended by me for the purpose of the execution of my duties as Receiver and are all of the monies so expended by me for such purpose. I know of no error in the account to the prejudice of any party interested in said fund or trust.

5. Schedule "A" of my account sets forth a statement of all monthly receipts during the period from _____, 20__ through _____, 20__, totalling the amount of \$_____.

6. Schedule "B" on my account sets forth a statement of all disbursements made during the period aforesaid in the gross amount of \$_____.

7. Schedule "C" sets forth a statement that there are no unpaid claims, debts and obligations of the Receivership except that there is due and owing to the Receiver the sum of \$_____, representing my total commissions in this matter, which I request be paid to me, and which have not heretofore been paid to me.

8. There are no unpaid expenses that I am aware of or have any knowledge of for which I am liable.

9. I respectfully request that the commissions due the Receiver be approved as stated and that said sum be paid out of the funds remaining on hand.

10. I further request that I be given leave to pay the balance remaining on hand after the payment of these claims to plaintiff _____ Bank to be applied

towards the deficiency remaining unpaid under the Judgement of Foreclosure and Sale after application of the proceeds from the foreclosure sale.

WHEREFORE, the Receiver requests that his motion for an Order approving his accounting, fixing his commissions in the amount of \$_____, discharging the Receiver and the surety on his bond, and cancelling the bond, be granted in all respects.

[Receiver's Name]

Sworn to before me this
___ day of _____, 2010

NOTARY PUBLIC

SCHEDULE "A"

MONEY RECEIVED DURING THE
PERIOD OF THIS RECEIVERSHIP

SCHEDULE "B"

STATEMENT OF MONTHLY DISBURSEMENTS
MADE DURING RECEIVERSHIP

SCHEDULE "C"

UNPAID CLAIMS, DEBTS AND
OBLIGATIONS OF THE RECEIVERSHIP

None

\$0.00

HOWEVER, RECEIVER SEEKS PAYMENT OF HIS COMMISSIONS, TOTALLING
\$_____.

(Receiver)

Sworn to before me this
___ day of _____, 2008

NOTARY PUBLIC

At an IAS Part ____ of the Supreme Court of
the State of New York, County of
_____, held at the County
Courthouse, _____,
New York on the ____ day of
_____, 20__

P R E S E N T :

HON. _____,
Justice.

----- X

BANK,
Plaintiff,
- against -
BORROWER, GUARANTOR, SUBORDINATE
MORTGAGEE CORP., MECHANIC'S LIEN
LTD., THE PEOPLE OF THE STATE OF NEW
YORK, THE COMMISSIONER OF TAXATION
AND FINANCE OF THE STATE OF NEW YORK,
THE CITY OF TROUBLE, THE DEPARTMENT
OF FINANCE OF THE CITY OF TROUBLE,
Defendants.
----- X

Index No.

ORDER DISCHARGING RECEIVER

The Receiver _____, having moved this Court for an
order, *inter alia*, approving the Receiver's account, fixing the commissions of the Receiver,
discharging the Receiver and the surety upon his bond, and for related relief in connection with
all of the foregoing.

NOW, upon reading and filing the annexed Affidavit of [the Receiver] sworn to
_____, 20__, the Receiver's Account annexed hereto, and upon the Judgment of
Foreclosure and Sale dated _____, 20__ previously entered in this action,

and all other prior pleadings and proceedings heretofore had herein, and due deliberation having been had thereon,

NOW, upon the motion of the Receiver _____, it is

ORDERED, that the Receiver's motion be and it hereby is granted; and it is further

ORDERED, that the Receiver's Account is hereby approved and confirmed in all respects; and it is further

ORDERED, that the commissions of the Receiver be and they hereby are fixed in the sum of \$ _____, said sum to be paid to the Receiver out of his account; and it is further

ORDERED, that the Receiver is hereby authorized and directed to distribute the amount remaining in the Receiver's account, after the deductions of the aforesaid sum of \$ _____ for commissions, by check to plaintiff _____ Bank; and it is further

ORDERED, that, upon compliance with all of the foregoing terms of this Order, the Receiver _____ and the surety on his undertaking, _____ be deemed discharged, and that the undertaking filed by the surety _____ on behalf of the Receiver be deemed discharged and cancelled.

ENTER :

J.S.C.