

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

-----X Index No.:  
122 EAST 58TH FUNDING LLC,

Plaintiff,

Date Purchased:

SUMMONS

-against-

Basis for Venue:

MOSDOT SHUVA ISRAEL, JOSEPH BEN MOHA, ILAN BRACHA, HAIM BINSTOCK, YOSSI ZAGA, BENZION SUKY, HAIM REVAH, THE NEW YORK STATE WORKERS' COMPENSATION BOARD, EMCOR SERVICES NEW YORK/NEW JERSEY, INC., THE CITY OF NEW YORK, THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, THE UNITED STATES OF AMERICA, and "JOHN DOE #1" through "JOHN DOE #50," the last fifty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Location of mortgaged premises

Subject Premises: 122 East 58th Street, New York, New York, a/k/a Block 1312, Lot 63

Defendants.

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TO THE ABOVE NAMED DEFENDANT(S):

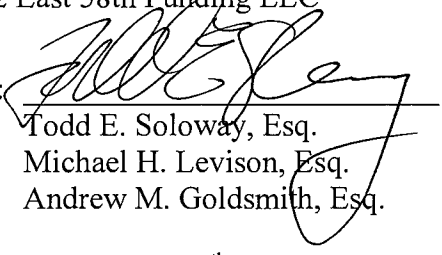
You are hereby summoned to answer the complaint in this Action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or 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.

Dated: New York, New York  
March 26, 2014

PRYOR CASHMAN LLP  
Attorneys for Plaintiff  
122 East 58th Funding LLC

By:



Todd E. Soloway, Esq.  
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[mlevison@pryorcashman.com](mailto:mlevison@pryorcashman.com)  
[agoldsmith@pryorcashman.com](mailto:agoldsmith@pryorcashman.com)

To: **MOSDOT SHUVA ISRAEL**  
328 East 61st Street  
New York, New York 10065

**JOSEPH BEN MOHA**  
8 South Woodland Street  
Englewood, New Jersey 07631

**ILAN BRACHA**  
240 Riverside Boulevard  
Penthouse 1A  
New York, New York 10069

**HAIM BINSTOCK**  
120 Riverside Boulevard  
Penthouse 3F  
New York, New York 10069

**YOSSI ZAGA**  
5359 Genesta Avenue  
Encino, California 91316

**BENZION SUKY**  
450 East 83rd Street  
Apartment 8C  
New York, New York 10028

**HAIM REVAH**  
705 North Alta Drive  
Beverly Hills, California 90210

**THE NEW YORK STATE WORKERS' COMPENSATION BOARD**  
20 Park Street  
Albany, New York 12207

**EMCOR SERVICES NEW YORK/NEW JERSEY, INC.**  
24-37 46<sup>th</sup> Street  
Long Island City, New York 11103

**THE CITY OF NEW YORK**  
66 John Street, 10th Floor  
New York, New York 10038

**THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE**  
Building 9, W.A. Harriman Campus  
Albany, New York 10038

**THE UNITED STATES OF AMERICA**  
c/o United States Attorney's Office  
86 Chambers Street / 3rd Floor  
New York, New York 10007

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

-----X Index No.:  
122 EAST 58TH FUNDING LLC,

Plaintiff,

Date Purchased:

VERIFIED COMPLAINT

-against-

MOSDOT SHUVA ISRAEL, JOSEPH BEN MOHA,  
ILAN BRACHA, HAIM BINSTOCK, YOSSI ZAGA,  
BENZION SUKY, HAIM REVAH, THE NEW YORK  
STATE WORKERS' COMPENSATION BOARD,  
EMCOR SERVICES NEW YORK/NEW JERSEY, INC.,  
THE CITY OF NEW YORK, THE NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE, THE  
UNITED STATES OF AMERICA and "JOHN DOE #1"  
through "JOHN DOE #50," the last fifty names being  
fictitious and unknown to plaintiff, the persons or parties  
intended being the tenants, occupants, persons or  
corporations, if any, having or claiming an interest in or lien  
upon the premises described in the complaint,

Defendants.

-----X

122 East 58th Funding LLC ("Plaintiff"), by its attorneys, PRYOR CASHMAN LLP, and as  
and for its Verified Complaint (the "Complaint") as against the above-named defendants,  
respectfully alleges as follows:

**NATURE OF ACTION**

1. Plaintiff brings this commercial mortgage foreclosure action pursuant to the terms  
of certain Mortgages (as that term is defined below) in order to foreclose upon its interest in  
certain property owned by defendant Mosdot Shuva Israel ("MSI").

## PARTIES

2. Plaintiff is a Delaware limited liability company with an office for the transaction of business located at c/o The Corigin Real Estate Group, 505 Fifth Avenue, New York, New York, and is authorized to conduct business in the State of New York.

3. Upon information and belief, MSI is a New York corporation with its principal place of business at 328 East 61st Street, New York, New York, and is the owner of all the Mortgaged Property (as that term is defined in the Mortgages), including without limitation (a) the Premises (as that term is defined in the Mortgages), which Premises includes that certain fee estate (the "Fee Estate") and that certain reversionary interest (the "Reversionary Interest"), known as and located at 122 East 58th Street, New York, New York, and also known as Block 1312, Lot 63, in the Borough of Manhattan, City of New York, County of New York, and State of New York, all as more specifically described in Exhibit "A" to each of the Mortgages; (b) a leasehold estate in the Premises under and pursuant to that certain ground lease originally entered into by and between New York Genealogical and Biographical Society ("NYGBS"), as landlord, and Madlex Equities Corp., as tenant (as at any time amended, the "Ground Lease"), a memorandum of which is recorded in the Office of the City Register on May 10, 1972 in Reel 239, page 1827, as subsequently assigned to MSI, as landlord (the "Ground Lease Estate"); and (c) a subleasehold estate (the "Subleasehold Estate") in the Premises under and pursuant to the provisions of the sublease described in Exhibit "B" to each of the Mortgages.

4. Upon information and belief, defendant Joseph Ben Moha ("Moha") is an individual residing in the State of New Jersey and having an address of 8 South Woodland Street, Englewood, New Jersey, and is a member of the board of directors of MSI.

5. Upon information and belief, defendant Ilan Bracha (“Bracha”) is an individual residing in the State of New York and having an address of 240 Riverside Boulevard, Penthouse 1A, New York, New York, and is a member of the board of directors of MSI.

6. Upon information and belief, defendant Haim Binstock (“Binstock”) is an individual residing in the State of New York and having an address of 120 Riverside Boulevard, Penthouse 3F, New York, New York, and is a member of the board of directors of MSI.

7. Upon information and belief, defendant Yossi Zaga (“Zaga”) is an individual residing in the State of California and having an address of 5359 Genesta Avenue, Encino, California, and is a member of the board of directors of MSI.

8. Upon information and belief, defendant Benzion Suky (“Suky”) is an individual residing in the State of New York and having an address of 450 East 83rd Street, Apartment 8C, New York, New York, and is a member of the board of directors of MSI.

9. Upon information and belief, defendant Haim Revah (“Revah” and, together with Moha, Bracha, Binstock, Zaga, and Suky, the “Guarantors”) is an individual residing in the State of California and having an address of 705 North Alta Drive, Beverly Hills, California, and is a member of the board of directors of MSI.

10. Upon information and belief, defendant The New York State Workers’ Compensation Board, is a department or agency of the State of New York, maintaining an office for the transaction of business at 20 Park Street, Albany, New York, and is named as a defendant herein by reason of the fact that it may claim to have an interest on some or all of the Mortgaged Property by virtue of certain judgments entered in its favor and as against MSI, which interest, if any, is subordinate to the lien of the Mortgages.

11. Upon information and belief, defendant Emcor Services New York/New Jersey Inc., is a foreign corporation, maintaining an office at 24-37 46<sup>th</sup> Street, Long Island City, New York, and is named as a defendant herein by reason of the fact that it may claim to have an interest in the on some or all of the Mortgaged Property by virtue of certain judgments entered in its favor and as against MSI, which interest, if any, is subordinate to the liens of the Mortgages.

12. Upon information and belief, defendant City of New York, a municipal corporation, maintaining an office for the transaction of business at 66 John Street, 10th Floor, New York, New York, and is named as a defendant herein by reason of the fact that it may claim to have an interest in some or all of the Mortgaged Property by virtue of certain Environmental Control Board liens filed against the subject premises or by virtue of certain unpaid parking violations and/or City of New York business corporation taxes, which liens, if any, are subordinate to the liens of the Mortgages.

13. Upon information and belief, defendant New York State Department of Taxation and Finance is a department of the State of New York, maintaining an office for the transaction of business at Building 9, W.A. Harriman Campus, Albany, New York, and is named as a defendant herein by reason of the fact that it may claim to have an interest in some or all of the Mortgaged Property by virtue of unpaid franchise and/or business taxes, which liens, if any, are subordinate to the liens of the Mortgages.

14. Upon information and belief, defendant The United States of America and is named as a defendant herein by reason of the fact that it may claim to have an interest in some or all of the Mortgaged Property by virtue of that certain unpaid taxes, including those certain taxes set forth in that certain Notice of Federal Tax Lien dated July 1, 2013 (bearing filing number 201307160403529) (the "Notice"), which lien, if any, is subordinate to the liens of the



Mortgages. Upon information and belief, MSI's tax liability created the aforementioned lien and the Notice was filed on July 16, 2013 in the Office of the New York Secretary of State, New York Department of State, UCC Division, by the Internal Revenue Service, Small Business/Self Employed Area #1.

15. Upon information and belief, defendants "John Does #1 - #50" constitute those persons who, and/or entities which, may be in possession of, or may have a leasehold, contract, possessory, lien, or other interest in some or all of the Mortgaged Property, which interest is subordinate to the liens of the Mortgages.

16. All of the defendants herein have or claim to have some interest in or lien upon said Mortgaged Property, or some part thereof, which interest or lien, if any, has accrued subsequent to the lien of the Mortgages or was by express terms or by law made subject thereto, or has been duly subordinated thereto.

#### **VENUE**

17. Because the Mortgaged Property is located in New York County, venue is proper in New York County.

#### **STATUTES**

18. The mortgage loans which are the subject of this foreclosure action were made to MSI, and not to a natural person. In addition, the debt which was incurred by MSI pursuant to the terms of the Loan Documents (as that term is defined below) was not incurred primarily for personal, family or household purposes.

19. None of the loans which serve as the basis for this action involve a "high-cost home loan" or "subprime home loan", as such terms are defined in Section 6-l and 6-m of the New York State Banking Law and, as such, this foreclosure action is not subject to the

requirements of R.P.A.P.L. 1302 or Section 595-a of the New York State Banking Law or any rules or regulations promulgated thereunder or Section 6-l and 6-m of the New York State Banking Law or R.P.A.P.L. 1304.

20. None of the loans which serve as the basis for this action involve a “Home loan” as defined in R.P.A.P.L. 1304(5) and, as such, this foreclosure action is not subject to the requirements of R.P.A.P.L. 1304 or C.P.L.R. R. 3408.

### **FACTS**

#### **A. The Loan Documents**

21. On or about March 17, 2009, Plaintiff’s predecessor-in-interest with respect to the subject mortgage loans and the Loan Documents, Signature Bank (“Signature”), loaned the aggregate principal amount of \$20,000,000.00 to MSI (collectively, the “Loans”).

22. On or about March 17, 2009, MSI and Signature entered into that certain Mortgage and Note Splitter Agreement dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Splitter Agreement”) pursuant to which Signature agreed to split, sever and divide a preexisting indebtedness in the principal and outstanding amount of \$17,000,000.00 and associated mortgage and lien thereof, into two separate mortgage and note obligations in the principal sums of \$15,000,000.00 and \$2,000,000.00, respectively. (A true and correct copy of the Splitter Agreement is annexed hereto as **Exhibit “A”** and its terms and conditions are incorporated herein by reference.)

23. On or about March 23, 2009, the Splitter Agreement was recorded in the Office of the City Register of the City of New York (the “Register’s Office”) as CFRN 2009000084006.

24. On or about March 17, 2009, in accordance with the terms of the Splitter Agreement, Signature and MSI entered into that certain Amended and Restated Note dated as of

March 17, 2009 made by MSI in favor of Signature (and its successors and assigns) in the original principal amount of \$15,000,000.00 plus interest at the rate set forth therein (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “\$15 Million Note”). (A true and correct copy of the \$15 Million Note is annexed hereto as **Exhibit “B”** and its terms and conditions are incorporated herein by reference.)

25. On or about March 17, 2009, as collateral and security for the payment of the indebtedness due to Signature (and its successors and assigns) under the terms of the \$15 Million Note, MSI executed, acknowledged and delivered to Signature that certain Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 17, 2009, in the original principal amount of \$15,000,000.00 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, “\$15 Million Mortgage”), whereby MSI irrevocably mortgaged, *inter alia*, its interests in and to the Mortgaged Property to Signature (and its successors and assigns). (A true and correct copy of the \$15 Million Mortgage is annexed here to as **Exhibit “C”** and its terms and conditions are incorporated herein by reference.)

26. On or about March 23, 2009, the \$15 Million Mortgage was recorded in the Register’s Office as CFRN: 2009000084007.

27. On or about March 17, 2009, and as additional collateral and security for the payment of a portion of the indebtedness due to Signature (and its successors and assigns) under the terms of the \$15 Million Note, MSI executed, acknowledged and delivered to Signature that certain Assignment of Leases and Rents dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, “\$15 Million ALR”), whereby MSI irrevocably assigned to Signature (and its successors and assigns) all of MSI’s

right, title, and interest in and to the Leases (as that term is described in the \$15 Million ALR) and the Rents (as that term is described in the \$15 Million ALR). (A true and correct copy of the \$15 Million ALR is annexed here to as **Exhibit “D”** and its terms and conditions are incorporated herein by reference.)

28. On or about March 23, 2009, the \$15 Million ALR was recorded in the Register’s Office as CFRN: 2009000084010.

29. On or about March 17, 2009, Signature and MSI entered into that certain Consolidated, Amended and Restated Note dated as of March 17, 2009, made by MSI in favor of Signature (and its successors and assigns) in the original principal amount of \$5,000,000.00 plus interest at the rate set forth therein (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “\$5 Million Note” and together with the \$15 Million Note, collectively, the “Notes”). The \$5 Million Note consolidated, amended, and restated the following: (i) the \$2,000,000.00 mortgage and note obligation that was created by the Splitter Agreement; and (ii) a preexisting mortgage and note obligation in the original principal sum of \$3,000,000.00. (A true and correct copy of the \$5 Million Note is annexed hereto as **Exhibit “E”** and its terms and conditions are incorporated herein by reference.)

30. On or about March 17, 2009, as collateral and security for the payment of the indebtedness due to Signature (and its successors and assigns) under the terms of the \$5 Million Note, MSI executed, acknowledged and delivered to Signature that certain Agreement of Consolidation and Modification of Mortgage and Note dated as of March 17, 2009 in the original principal amount of \$5,000,000.00 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, “\$5 Million Mortgage” and together with the \$15 Million Mortgage, collectively, the “Mortgages”), whereby MSI once again irrevocably

mortgaged, *inter alia*, its interests in and to the Mortgaged Property to Signature (and its successors and assigns). (A true and correct copy of the \$5 Million Mortgage is annexed hereto as **Exhibit “F”** and its terms and conditions are incorporated herein by reference.)

31. On or about March 23, 2009, the \$5 Million Mortgage was recorded in the Register’s Office as CFRN: 2009000084009.

32. On or about March 17, 2009, and as additional collateral and security for the payment of a portion of the indebtedness due to Signature (and its successors and assigns) under the terms of the \$5 Million Note, MSI executed, acknowledged and delivered to Signature that certain Assignment of Leases and Rents dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, “\$5 Million ALR” and together with the \$15 Million ALR, collectively, the “ALRs”), whereby MSI irrevocably assigned to Signature (and its successors and assigns) all of MSI’s right, title, and interest in and to the Leases (as that term is described in the \$5 Million ALR) and the Rents (as that term is described in the \$5 Million ALR). (A true and correct copy of the \$5 Million ALR is annexed here to as **Exhibit “G”** and its terms and conditions are incorporated herein by reference.)

33. On or about March 23, 2009, the \$5 Million ALR was recorded in the Register’s Office as CFRN: 2009000084011.

34. On or about March 17, 2009, in order to induce Signature to lend money to MSI and to enter into the \$5 Million Note, and for other good and valuable consideration, Moha executed that certain Guaranty of Payment dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Moha Guaranty”), pursuant to which Moha, *inter alia*, unconditionally guaranteed to Signature (and its successors and assigns) the prompt and complete payment of (a) a portion of the principal balance of the

\$5 Million Note equal to \$1,500,000.00, (b) the interest and other amounts due in connection with the \$5 Million Note, and (c) those certain Enforcement Costs (as that term is defined in the Moha Guaranty). (A true and correct copy of the Moha Guaranty is annexed hereto as **Exhibit “H”** and its terms and conditions are incorporated herein by reference.)

35. On or about March 17, 2009, in order to induce Signature to lend money to MSI and to enter into the \$5 Million Note, and for other good and valuable consideration, Bracha executed that certain Guaranty of Payment dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Bracha Guaranty”), pursuant to which Bracha, *inter alia*, unconditionally guaranteed to Signature (and its successors and assigns) the prompt and complete payment of (a) a portion of the principal balance of the \$5 Million Note equal to \$1,250,000.00, (b) the interest and other amounts due in connection with the \$5 Million Note, and (c) those certain Enforcement Costs (as that term is defined in the Bracha Guaranty). (A true and correct copy of the Bracha Guaranty is annexed hereto as **Exhibit “I”** and its terms and conditions are incorporated herein by reference.)

36. On or about March 17, 2009, in order to induce Signature to lend money to MSI and to enter into the \$5 Million Note, and for other good and valuable consideration, Binstock executed that certain Guaranty of Payment dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Binstock Guaranty”), pursuant to which Binstock, *inter alia*, unconditionally guaranteed to Signature (and its successors and assigns) the prompt and complete payment of (a) a portion of the principal balance of the \$5 Million Note equal to \$1,250,000.00, (b) the interest and other amounts due in connection with the \$5 Million Note, and (c) those certain Enforcement Costs (as that term is

defined in the Binstock Guaranty). (A true and correct copy of the Binstock Guaranty is annexed hereto as **Exhibit “J”** and its terms and conditions are incorporated herein by reference.)

37. On or about March 17, 2009, in order to induce Signature to lend money to MSI and to enter into the \$5 Million Note, and for other good and valuable consideration, Zaga executed that certain Guaranty of Payment dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Zaga Guaranty”), pursuant to which Zaga, *inter alia*, unconditionally guaranteed to Signature (and its successors and assigns) the prompt and complete payment of (a) a portion of the principal balance of the \$5 Million Note equal to \$1,250,000.00, (b) the interest and other amounts due in connection with the \$5 Million Note, and (c) those certain Enforcement Costs (as that term is defined in the Zaga Guaranty). (A true and correct copy of the Zaga Guaranty is annexed hereto as **Exhibit “K”** and its terms and conditions are incorporated herein by reference.)

38. On or about March 17, 2009, in order to induce Signature to lend money to MSI and to enter into the \$5 Million Note, and for other good and valuable consideration, Suky executed that certain Guaranty of Payment dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Suky Guaranty”), pursuant to which Suky, *inter alia*, unconditionally guaranteed to Signature (and its successors and assigns) the prompt and complete payment of (a) a portion of the principal balance of the \$5 Million Note equal to \$500,000.00, (b) the interest and other amounts due in connection with the \$5 Million Note, and (c) those certain Enforcement Costs (as that term is defined in the Suky Guaranty). (A true and correct copy of the Suky Guaranty is annexed hereto as **Exhibit “L”** and its terms and conditions are incorporated herein by reference.)

39. On or about March 17, 2009, in order to induce Signature to lend money to MSI and to enter into the \$5 Million Note, and for other good and valuable consideration, Revah executed that certain Guaranty of Payment dated as of March 17, 2009 (as at any time amended, restated, modified, substituted, extended or renewed from time to time, the “Revah Guaranty” and, collectively with the Bracha Guaranty, the Binstock Guaranty, the Zaga Guaranty, the Suky Guaranty, and the Moha Guaranty, the “Guarantees”), pursuant to which Revah, *inter alia*, unconditionally guaranteed to Signature (and its successors and assigns) the prompt and complete payment of (a) a portion of the principal balance of the \$5 Million Note equal to \$1,000,000.00, (b) the interest and other amounts due in connection with the \$5 Million Note, and (c) those certain Enforcement Costs (as that term is defined in the Revah Guaranty). (A true and correct copy of the Revah Guaranty is annexed hereto as **Exhibit “M”** and its terms and conditions are incorporated herein by reference.)

40. As used herein the term “Loan Documents” shall mean the Splitter Agreement, the Notes, the Mortgages, the ALRs, the Guarantees, and any and all other documents evidencing, securing and/or governing the Loans, whether now existing or hereafter executed and delivered, all as at any time amended, restated, modified, substituted, extended or renewed from time to time, collectively.

41. On or about March 13, 2014, Signature assigned all of its right, title and interest in and to the Loan Documents to Plaintiff.

42. Attached hereto as **Exhibit “N”** and incorporated herein by reference is a true and correct copy of that certain Allonge endorsement to the \$15 Million Note dated March 13, 2014 (“\$15 Million Note Allonge”).



43. Attached hereto as **Exhibit “O”** and incorporated herein by reference is a true and correct copy of that certain Allonge endorsement to the \$5 Million Note dated March 13, 2014 (“\$5 Million Note Allonge”).

44. Pursuant to that certain Assignment of Mortgage dated March 13, 2014 (the “Assignment of \$15 Million Mortgage”), Signature assigned all of its right, title and interest in and to, *inter alia*, the \$15 Million Mortgage to Plaintiff. (A true and correct copy of the Assignment of \$15 Million Mortgage is attached hereto as **Exhibit “P”** and incorporated herein by reference.

45. Pursuant to that certain Assignment of Mortgage dated March 13, 2014 (the “Assignment of \$5 Million Mortgage”), Signature assigned all of its right, title and interest in and to, *inter alia*, the \$5 Million Mortgage to Plaintiff. (A true and correct copy of the Assignment of \$5 Million Mortgage is attached hereto as **Exhibit “Q”** and incorporated herein by reference.

46. Pursuant to that certain Assignment of Assignment of Leases and Rents dated March 13, 2014 (the “Assignment of \$15 Million ALR”), Signature assigned all of its right, title and interest in and to, *inter alia*, the \$15 Million ALR to Plaintiff. (A true and correct copy of the Assignment of \$15 Million ALR is attached hereto as **Exhibit “R”** and incorporated herein by reference.

47. Pursuant to that certain Assignment of Assignment of Leases and Rents dated March 13, 2014 (the “Assignment of \$5 Million ALR”), Signature assigned all of its right, title and interest in and to, *inter alia*, the \$5 Million ALR to Plaintiff. (A true and correct copy of the Assignment of \$5 Million ALR is attached hereto as **Exhibit “S”** and incorporated herein by reference.

48. Plaintiff is currently the holder and owner of all of the Loan Documents and indebtedness due thereunder.

**B. The Maturity Default**

49. MSI breached the terms of each of the \$15 Million Note by reason of its failure to pay the entire unpaid balance due under the terms of the \$15 Million Note, including all unpaid interest, fees and other charges and expenses due under the terms of the \$15 Million Note, by the maturity date thereunder – March 17, 2014 (the “\$15 Million Note Maturity Default”).

50. MSI breached the terms of each of the \$5 Million Note by reason of its failure to pay the entire unpaid balance due under the terms of the \$5 Million Note, including all unpaid interest, fees and other charges and expenses due under the terms of the \$5 Million Note, by the maturity date thereunder – March 17, 2014 (the “\$5 Million Note Maturity Default”).

51. Each of the \$15 Million Note Maturity Default and the \$5 Million Note Maturity Default constituted an Event of Default (as that term is defined in the Loan Documents) under the terms of the Loan Documents.

52. By reason of the foregoing, Plaintiff became entitled to enforce those remedies available to it under the terms of the Loan Documents, including the Mortgages, and applicable law, including the right to foreclose on the Mortgages and on the Mortgaged Property..

53. As of March 17, 2014, the total amount due to Plaintiff under the terms of the \$15 Million Note and related Loan Documents was in an amount not less than \$14,306,128.46, plus accrued and unpaid interest, late charges, attorneys’ fees, costs and any other amounts due under the terms of the Loan Documents, all of which will continue to accrue (collectively, the “\$15 Million Debt”).

54. As of March 17, 2014, the total amount due to Plaintiff under the terms of the \$5 Million Note and related Loan Documents was in an amount not less than \$3,022,122.49, plus accrued and unpaid interest, late charges, attorneys' fees, costs and any other amounts due under the terms of the Loan Documents, all of which will continue to accrue (collectively, the "\$5 Million Debt").

**AS AND FOR A FIRST CAUSE OF ACTION**  
(Foreclosure of \$15 Million Mortgage)

55. Plaintiff repeats, reiterates and realleges each of the foregoing allegations of this Complaint as if more fully set forth herein.

56. In order to protect its interest in and to the Mortgaged Property, Plaintiff may hereafter during the pendency of this Action be compelled to pay, taxes, assessments, water charges, sewer rents, insurance premiums and/or other charges affecting the Mortgaged Property, including amounts which may be due for labor and materials furnished thereto, and improvements made thereon, and to incur various expenses in connection therewith.

57. Accordingly, Plaintiff requests that any sums so paid by Plaintiff, together with contractual interest thereon, be added to the sum otherwise due and deemed secured by the Mortgaged Property and adjudged a valid lien on the Mortgaged Property.

58. By reason of the foregoing, Plaintiff is entitled to a Judgment of Foreclosure and Sale of the Mortgaged Property and application of the proceeds of the sale of the Mortgaged Property to the sum secured by the \$15 Million Mortgage.

59. Upon information and belief, no other persons or entities, except those named as defendants herein, have any interest in the Mortgaged Property which is subject to and/or subordinate to Plaintiff's lien on the Mortgaged Property.

60. No other action or proceeding has been brought at law or otherwise for the recovery of the sums due under \$15 Million Note or the sums secured by the \$15 Million Mortgage, or any part thereof.

**AS AND FOR A SECOND CAUSE OF ACTION**

(Foreclosure of \$5 Million Mortgage)

61. Plaintiff repeats, reiterates and realleges each of the foregoing allegations of this Complaint as if more fully set forth herein.

62. In order to protect its interest in and to the Mortgaged Property, Plaintiff may hereafter during the pendency of this Action be compelled to pay, taxes, assessments, water charges, sewer rents, insurance premiums and/or other charges affecting the Mortgaged Property, including amounts which may be due for labor and materials furnished thereto, and improvements made thereon, and to incur various expenses in connection therewith.

63. Accordingly, Plaintiff requests that any sums so paid by Plaintiff, together with contractual interest thereon, be added to the sum otherwise due and deemed secured by the Mortgaged Property and adjudged a valid lien on the Mortgaged Property.

64. By reason of the foregoing, Plaintiff is entitled to a Judgment of Foreclosure and Sale of the Mortgaged Property and application of the proceeds of the sale of the Mortgaged Property to the sum secured by the \$5 Million Mortgage.

65. Upon information and belief, no other persons or entities, except those named as defendants herein, have any interest in the Mortgaged Property which is subject to and/or subordinate to Plaintiff's lien on the Mortgaged Property.

66. No other action or proceeding has been brought at law or otherwise for the recovery of the sums due under \$5 Million Note or the sums secured by the \$5 Million Mortgage, or any part thereof.

**WHEREFORE**, Plaintiff respectfully demands the following relief:

(a) **on the First Cause of Action:**

(1) determining that defendants, or any of them, and persons claiming under them or any of them, and all persons claiming any interest in the Mortgaged Property subsequent to the commencement of this Action and the filing of the Notice of Pendency of this Action, be forever barred and foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption in and to the Mortgaged Property and each and every part thereof;

(2) adjudging the amount of the \$15 Million Debt;

(3) ordering that all of the Mortgaged Property, including without limitation, the Premises, the Ground Lease Estate, and the Subleasehold Estate, be sold together and at the same time, or in such other manner and/or order as Plaintiff may choose, all according to law and subject to:

(a) The terms and conditions of the Ground Lease;

(b) The terms and conditions of the Mortgaged Lease (as that term is defined in each of the Mortgages);

(c) The state of facts an accurate survey will show;

(d) All covenants, restrictions, easements, declarations, rights of way, agreements and reservations, if any, of record and to any and all violations thereof;

(e) Any and all building and zoning regulations, restrictions, ordinances and amendments thereto of the municipality, the State, the Federal Government, or any agency, bureau, commission or department in which said Premises are situated, and to any violations or notices of violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any;

(f) Any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said the Mortgaged Property and violations of the same;

(g) Any bankruptcy in which there is no automatic stay, pursuant to 11 USC section 362 (c)(4)(A), Plaintiff having no duty or obligation to obtain a comfort order pursuant to 11 USC section 362 (c)(4)(A)(ii);

(h) Rights of tenants or persons in possession, if any;

(i) Prior mortgages, judgments, liens and/or any other encumbrance, if any, except those liens addressed in section 1354(2) of the Real Property Actions and Proceedings Law;

(j) The right of redemption of the United States of America, if any;

(k) Rights of any defendants pursuant to New York law, including C.P.L.R. §§ 317, 2003 and 5015, if any;

(l) Any and all hazardous materials in or about the Mortgaged Property including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos or any material containing asbestos, and toxic substances;

(m) Any outstanding condominium charges or other building maintenance charges, if any; and

(n) All other conditions and provisions in any judgment of foreclosure and sale entered in this Action;

(4) ordering that the moneys arising from the sale be brought into Court and paid to Plaintiff;

(5) ordering that Plaintiff be paid the amounts due and the expenses of sale, with contractual interest thereon to the time of such payment, together with attorneys' fees, late charges, default interest, costs, allowances and disbursements incurred in connection with this Action, any moneys advanced and paid by Plaintiff in connection with this Action, including any sums expended by Plaintiff to protect the Mortgaged Property from vandalism or deterioration, or to protect the lien of the \$15 Million Mortgage, and any charges and liens thereon to be paid, with contractual interest from the dates of the respective payments and advances, so far as the amounts of such monies properly applicable thereto will pay the same; and

(6) ordering and adjudging that MSI pay any residue of the amounts due under the terms of the Loan Documents, including the \$15 Million Mortgage, and remaining unsatisfied after the sale of the Mortgaged Property and after the application of the sale proceeds pursuant to the directions contained in such judgment, in accordance with the terms of the Loan Documents, or so much thereof as the Court may determine to be just and equitable; and

**(b) on the Second Cause of Action:**

(1) determining that defendants, or any of them, and persons claiming under them or any of them, and all persons claiming any interest in the Mortgaged Property subsequent to the commencement of this Action and the filing of the Notice of Pendency of this Action, be forever barred and foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption in and to the Mortgaged Property and each and every part thereof;

(2) adjudging the amount of the \$5 Million Debt;

(3) ordering that all of the Mortgaged Property, including without limitation, the Premises, the Ground Lease Estate, and the Subleasehold Estate, be sold together and at the same time, or in such other manner and/or order as Plaintiff may choose, all according to law and subject to:

- (a) The terms and conditions of the Ground Lease;
- (b) The terms and conditions of the Mortgaged Lease;
- (c) The state of facts an accurate survey will show;
- (d) All covenants, restrictions, easements, declarations, rights of way, agreements and reservations, if any, of record and to any and all violations thereof;
- (e) Any and all building and zoning regulations, restrictions, ordinances and amendments thereto of the municipality, the State, the Federal Government, or any agency, bureau, commission or department in which said Premises are situated, and to any violations or notices of violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any;
- (f) Any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said the Mortgaged Property and violations of the same;
- (g) Any bankruptcy in which there is no automatic stay, pursuant to 11 USC section 362 (c)(4)(A), Plaintiff having no duty or obligation to obtain a comfort order pursuant to 11 USC section 362 (c)(4)(A)(ii);
- (h) Rights of tenants or persons in possession, if any;
- (i) Prior mortgages, judgments, liens and/or any other encumbrance, if any, except those liens addressed in section 1354(2) of the Real Property Actions and Proceedings Law;
- (j) The right of redemption of the United States of America, if any;
- (k) Rights of any defendants pursuant to New York law, including C.P.L.R. §§ 317, 2003 and 5015, if any;
- (l) Any and all hazardous materials in or about the Mortgaged Property including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos or any material containing asbestos, and toxic substances;

(m) Any outstanding condominium charges or other building maintenance charges, if any; and

(n) All other conditions and provisions in any judgment of foreclosure and sale entered in this Action;

(4) ordering that the moneys arising from the sale be brought into Court and paid to Plaintiff;

(5) ordering that Plaintiff be paid the amounts due and the expenses of sale, with contractual interest thereon to the time of such payment, together with attorneys' fees, late charges, default interest, costs, allowances and disbursements incurred in connection with this Action, any moneys advanced and paid by Plaintiff in connection with this Action, including any sums expended by Plaintiff to protect the Mortgaged Property from vandalism or deterioration, or to protect the lien of the \$5 Million Mortgage, and any charges and liens thereon to be paid, with contractual interest from the dates of the respective payments and advances, so far as the amounts of such monies properly applicable thereto will pay the same; and

(6) ordering and adjudging that MSI and each of the Guarantors, are jointly and severally (subject to the terms and conditions of each of the Guarantees, as applicable), liable to pay any residue of the amounts due under the terms the \$5 Million Mortgage (subject to the terms and conditions of each of the Guarantees, as applicable), and remaining unsatisfied after the sale of the Mortgaged Property and after the application of the sale proceeds pursuant to the directions contained in such judgment, in accordance with the terms of the Loan Documents, or so much thereof as the Court may determine to be just and equitable; and

(c) awarding Plaintiff such other and further relief which as to this Court seems just, proper, and equitable.

Dated: New York, New York  
March 26, 2014

PRYOR CASHMAN LLP  
Attorneys for Plaintiff  
122 East 58th Funding LLC

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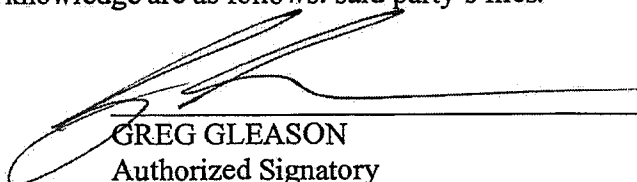


**VERIFICATION**

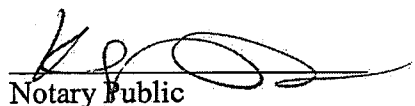
STATE OF NEW YORK )

COUNTY OF NEW YORK ) ss.:

Greg Gleason, being duly sworn, deposes and says that deponent is the Authorized Signatory of plaintiff; that deponent has read the foregoing and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because said party is a corporation authorized to do business in New York and deponent is an officer, namely the president of said party. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: said party's files.

  
GREG GLEASON  
Authorized Signatory

Sworn to before me, this 26<sup>th</sup>  
day of March, 2014

  
Notary Public

**KACY RICE**  
Notary Public - State of New York  
No. 01RI6280221  
Qualified in New York County  
My Commission Expires April 22, 2017