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

PCVST MEZZCO 4, LLC; PCVST MEZZCO 5, LLC; PCVST MEZZCO 6, LLC; PCVST MEZZCO 7, LLC; PCVST MEZZCO 8, LLC; AND PCVST MEZZCO 9, LLC,

Plaintiffs,

-against-

WACHOVIA BANK COMMERCIAL MORTGAGE TRUST 2007-C30; COBALT CMBS COMMERCIAL MORTGAGE TRUST 2007-C2; WACHOVIA BANK COMMERCIAL MORTGAGE TRUST 2007-C31; ML-CFC COMMERCIAL MORTGAGE TRUST 2007-5; ML-CFC COMMERCIAL MORTGAGE TRUST 2007-6; CWCAPITAL ASSET MANAGEMENT LLC, BOTH DIRECTLY, AND IN ITS CAPACITY AS SPECIAL SERVICER, ACTING FOR THE FOREGOING TRUSTS AND THEIR RESPECTIVE TRUSTEES, NON-PARTY U.S. BANK, NATIONAL ASSOCIATION AND NON-PARTY WELLS FARGO BANK, NATIONAL ASSOCIATION; PCV-M HOLDINGS LLC; PCV ST OWNER LP; ST OWNER LP; PCVST-DIL LLC; ST-DIL LLC; AND JOHN DOES 1-10,

Defendants.

Index No.

COMPLAINT

Plaintiffs PCVST Mezzco 4, LLC, PCVST Mezzco 5, LLC, PCVST Mezzco 6, LLC, PCVST Mezzco 7, LLC, PCVST Mezzco 8, LLC, and PCVST Mezzco 9, LLC (collectively, "Plaintiffs"), by their attorneys, Quinn Emanuel Urquhart & Sullivan, LLP and Herrick Feinstein, LLP, for their Complaint against (a)(i) the Wachovia Bank Commercial Mortgage Trust 2007-C30 (the "2007-C30 Trust" or "Lead Lender"), (ii) the COBALT CMBS Commercial Mortgage Trust 2007-C2 (the "2007-C2 Trust"), (iii) the Wachovia Bank Commercial Mortgage Trust 2007-C31 (the "2007-C31 Trust"), (iv) the ML-CFC Commercial Mortgage Trust 2007-5 (the "2007-5 Trust"), and (v) the ML-CFC Commercial Mortgage Trust 2007-6 (the "2007-6 Trust," and together with the 2007-C30 Trust, 2007-C2 Trust, 2007-C31 Trust, and 2007-5 Trust, the "Securitization Trusts" or "Senior Lender"), (b) CWCapital Asset Management LLC ("CWC"), both directly, and in its capacity as special servicer, acting for the Securitization Trusts and their respective Trustees, non-party U.S. Bank, National Association and non-party Wells Fargo Bank, National Association, (c) PCV-M Holdings LLC ("PCV-M Holdings"), (d) PCV ST Owner LP and ST Owner LP (collectively, the "Borrowers"), (e) PCVST-DIL LLC and ST-DIL LLC (collectively, the "Nominees"), and (f) John Does 1-10 (together with the Securitization Trusts, CWC, PCV-M Holdings, Borrowers and Nominees, the "Defendants"), respectfully allege as follows:

INTRODUCTION

1. This Complaint arises out of Defendants' improper actions to wrongfully seize control of one of New York City's most unique real estate developments, Stuyvesant Town and Peter Cooper Village ("Stuy Town"), through a purported deed in lieu of foreclosure transaction orchestrated and consummated on both sides by Defendant CWC. The deed in lieu transaction was the culmination of a continuing pattern of misconduct designed to (i) keep CWC in control of Stuy Town, including its contemplated disposition, (ii) thwart Plaintiffs' contractual rights and

eliminate any possible dissenting voice that might challenge CWC's disposition of the property, (iii) reap an unjust windfall by improperly seizing the excess value from the disposition of Stuy Town that properly belongs to Junior Lenders, and (iv) enable CWC to collect hundreds of millions of dollars in default rate interest to which it is not entitled. Through these wrongful actions, CWC will capture an unjustified billion dollar windfall for itself and other Defendants, which amount should have been available to repay Plaintiffs on their junior loans. Instead, Plaintiffs received nothing.

2. Stuy Town was acquired in 2006 at a purchase price of $5.4 billion using a multi-tiered financing structure made up of 12 levels of debt. The most senior level (referred to as the "Senior Loan") was a mortgage on the property, followed by 11 levels of mezzanine debt, in decreasing order of seniority (collectively, the "Junior Loans;" a numeric designation refers to an individual Junior Loan's seniority, with "Junior 1 Loan" being the most senior and "Junior 11 Loan" being the most junior). The rights of the Senior and Junior Lenders amongst each other are governed by the Amended and Restated Intercreditor Agreement dated February 16, 2007 (the "Intercreditor Agreement"), a true and correct copy of which is submitted herewith as Exhibit A.[1] The fundamental premise of the Intercreditor Agreement is that while the lender of the Senior Loan gets paid before the lenders of the Junior Loans (collectively, the "Junior Lenders"), the Junior Lenders, who were instrumental in the financing of the 2006 acquisition of Stuy Town, have contractual protections to ensure that the Senior Lender does not receive a windfall at the expense of the Junior Lenders. As discussed below, Defendants violated those fundamental protections to obtain and protect an inappropriate billion dollar windfall.

[1] Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Intercreditor Agreement.

3. Despite the fact that Stuy Town is believed to be worth approximately $5 billion, CWC – simultaneously acting for the Borrowers, the Senior Lender and the Nominees – orchestrated a purported deed in lieu of foreclosure to further CWC's own interests. The deed in lieu of foreclosure was executed on the flawed premise that the amount owed on the Senior Loan was greater than the value of the property. While CWC represented that $4.4 billion was owed on the mortgage, in fact, the correct mortgage amount owed is approximately $3.45 billion, almost ***one billion dollars less***.[2] This discrepancy results from the fact that CWC has been miscalculating and accruing interest at 9.434% since it obtained a June 2010 Foreclosure Judgment from a New York federal court. That Foreclosure Judgment, by its express terms, limited the accrual of interest thereafter to the federal legal rate of 0.30%. Thus, far from being underwater, had Stuy Town been sold at market value, it would have fetched a price high enough that more than one billion dollars would have been left over the correct mortgage amount to repay the Junior Lenders whose loans remain wholly unpaid.

4. The Securitization Trusts currently hold the senior mortgage on Stuy Town, with the 2007-C30 Trust serving as Lead Lender pursuant to an Amended and Restated Co-Lender Agreement dated March 12, 2007 (the "Co-Lender Agreement"). At the time of the deed in lieu of foreclosure, the Securitization Trusts also controlled the senior-most Junior Loans through Defendant PCV-M Holdings, for which the 2007-C30 Trust, through its special servicer CWC, serves as managing member. Days before the deed in lieu of foreclosure was effectuated, CWC, in its conflicted position acting on behalf of both the Securitization Trusts (as Senior Lender) and

[2] Pursuant to the Judgment of Foreclosure and Sale dated June 21, 2010 ("Foreclosure Judgment") rendered in *Bank of Am., N.A, v. PCV ST Owner LP*, 10 Civ. 1178 (AKH) (S.D.N.Y.), the amount owed on the Senior Loan was approximately $3.71 billion, which accrued interest at the federal legal rate but must be reduced by cash payments made to the Senior Lender between the date of the Foreclosure Judgment and 2014.

PCV-M Holdings (as holder of the senior-most Junior Loans), attempted to engineer a rigged UCC auction of the Equity Collateral[3] securing PCV-M Holdings' Junior Loans meant solely to cut off and wipe out the rights of the other Junior Lenders, deliver uncontested control of the Borrowers to the Senior Lender and preserve a significant windfall for CWC and the other Defendants. To effectuate this unjust result, CWC fixed the auction with such commercially unreasonable terms so that no one but PCV-M Holdings could emerge as the winner – including the tenants who continue to express an interest in owning the property where they reside. For example, CWC's commercially unreasonable terms required that every potential bidder – except its preferred bidder PCV-M Holdings, which CWC itself controlled – promptly pay off the vastly overstated $4.4 billion Senior Loan. This discriminatory treatment, combined with PCV-M Holdings' ability to credit bid, relieved Defendants of the need to actually come up with any money to win the auction. The terms were designed precisely to suppress competing bids, and to ensure that PCV-M Holdings would win the rigged auction, acquire the interests in the Equity Collateral, and cut off the rights of all other Junior Lenders.

5. Plaintiffs, however, declined to follow Defendants' unjust playbook. Shortly after Defendants noticed their rigged auction, Plaintiffs' predecessor in interest notified PCV-M Holdings and CWC that it intended to exercise one of the most critical contractual protections afforded to Junior Lenders – a purchase option right to acquire in a matter of days PCV-M Holdings' Junior Loans at par. Had Defendants complied with the contract and honored the Junior Lenders' purchase option rights, Defendants would have been thwarted in their attempt to complete the deed in lieu of foreclosure, and, thus, would not have received their unjust windfall,

[3] The "Equity Collateral" included 100% of the limited partnership interests in the Borrowers, as well as 100% of the limited liability company member interests in the limited liability companies that are the general partners of the Borrowers.

including their improper and inflated interest accruals. Knowing that their rigged auction was exposed and wanting more than to be paid in full on PCV-M Holdings' Junior Loans, CWC – without providing the contractually required notice to the Junior Lenders and in complete disregard of the exercised purchase option – took precipitous action to execute the deed in lieu to deprive Junior Lenders of their rights and protections under the contracts.

6. As noted above, Defendants' actions were part of an ongoing plan to maintain control over Stuy Town, undermine Plaintiffs' contractual rights, misappropriate the excess value of Stuy Town, and avoid any challenge to CWC's miscalculation and accrual of approximately one billion dollars in overstated interest on the Senior Loan over the last four years (approximately $400 million of which represents default interest that will go directly to CWC as special servicer). Despite the fact that for almost four years CWC took no action to dispose of Stuy Town, CWC, in a period of just a few weeks, engaged in a series of machinations to gain complete control over Stuy Town, including the rigged auction followed immediately thereafter by a secret deed in lieu transaction, in the face of a Junior Lender's exercise of its purchase option. In so doing, Defendants ignored numerous contractual protections and frustrated a Junior Lender's exercise of a purchase option – a fundamental right afforded to Junior Lenders to prevent exactly such abuses.

7. As a result of Defendants' breaches, the holders of Junior Loans have suffered up to a billion dollars or more in damages. The value of Stuy Town is believed to be approximately $5 billion. The total current outstanding indebtedness on the Senior Loan, which is approximately $3.45 billion, leaves tremendous excess value that rightfully must be repaid to the Junior Lenders. The true value of the property could only be realized if Stuy Town were sold pursuant to a fair and equitable process – one that recognizes the unique nature of Stuy Town

and its interrelationship with its tenants and the city. Such a sale would result in payment in full of all amounts properly owed in respect of the Senior Loan, with ample excess to repay the Junior Loans, while ensuring stability for the tenants of Stuy Town.

8. CWC's motive for these misdeeds is simple: to divert to itself and the other Defendants money rightfully belonging to the Junior Lenders. CWC and the other Defendants attempt to unjustly realize the approximately one billion dollar gain resulting from CWC's improper calculation of interest since June 2010. Much of this unjust gain will go directly to CWC. Whereas the Foreclosure Judgment cut off the Senior Lender's right to contract-based interest, including the right to any default interest, CWC has claimed an entitlement to approximately $400 million in such interest that, but for its misconduct, would have flowed to the Junior Lenders. The remaining hundreds of millions of dollars would flow to the Securitization Trusts.

9. CWC and/or its affiliates also stand to reap an additional windfall through its ownership of bonds in the Securitization Trusts that now own Stuy Town as a result of the deed in lieu of foreclosure. Specifically, upon information and belief, CWC or its affiliate holds various classes of bonds issued by the Securitization Trusts, certain of which are believed to have previously suffered significant losses. Upon the anticipated sale of Stuy Town, those trusts stand to receive the full value – believed to be approximately $5 billion – which would represent a windfall of ***over a billion dollars***, over and above the $3.45 billion mortgage payment, which is all that the Senior Lender is entitled to receive. Consequently, by diverting more than a billion dollars away from the Junior Lenders to the Securitization Trusts, CWC and/or its affiliates stand to realize massive gains, as the additional value is believed to be more than ample to reverse the losses on the bonds held by CWC, and restore those bonds to a substantially higher value.

10. In order to provide all stakeholders – including Stuy Town's tenants – fair and equitable treatment going forward, and to ensure that Stuy Town's tenants are completely unaffected by, and protected from, CWC's actions, Plaintiffs seek the imposition of a constructive trust over Stuy Town so that the future of the property can be resolved with proper judicial oversight. Plaintiffs also seek an award of damages in an amount to be determined at trial, believed to be up to one billion dollars or more.

PARTIES

The Plaintiffs

11. Plaintiffs PCVST Mezzco 4, LLC, PCVST Mezzco 5, LLC, PCVST Mezzco 6, LLC, PCVST Mezzco 7, LLC, PCVST Mezzco 8, LLC, and PCVST Mezzco 9, LLC are limited liability companies organized under the laws of the State of Delaware. Plaintiffs are the owners of nearly all of the Junior 4-9 Loans[4] and stand directly behind Defendant PCV-M Holdings, the owner of Junior 1-3 Loans, in the mezzanine stack.

The Defendants

12. Defendant CWC is a limited liability company organized under the laws of the State of Delaware and has its principal place of business in the State of Maryland. CWC is a wholly owned subsidiary of CW Financial Services LLC ("CWFS"). As a special servicer, CWC manages distressed and nonperforming loans and real estate owned properties that are part of assets under management for CWFS and third parties. Upon information and belief, CWC or an affiliate of CWC, as directing certificate holder of the Lead Lender, designated CWC as special servicer. Following the default on the Senior Loan (discussed *infra*), CWC, in its

[4] Plaintiffs acquired all of the right, title and interest in the Junior 4-9 Loans and to the Intercreditor Agreement from STown Mezz, Inc. ("STown Mezz"). The Junior 4, 5, 7, 8 and 9 Loans are owned by Plaintiffs. With respect to the Junior 6 Loan, Plaintiff PCVST Mezzco 6, LLC owns a 75% participation interest. The remaining 25% is owned by an entity not party to this action.

capacity as special servicer, had and continues to have the exclusive right and obligation to make all decisions concerning the Senior Loan on behalf of the Securitization Trusts. Furthermore, in its capacity as special servicer for the Lead Lender, CWC acts on behalf of PCV-M Holdings because the Lead Lender is the managing member of PCV-M Holdings.

13. Defendants 2007-C30 Trust, 2007-C2 Trust, 2007-C31 Trust, 2007-5 Trust and 2007-6 Trust are trusts created under New York common law. Non-party U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America with its principal place of business in Minneapolis, Minnesota, is the Trustee for the 2007-C30 Trust, 2007-C2 Trust, 2007-C31 Trust, and 2007-6 Trust. Non-party Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America with its principal place of business in San Francisco, California, is the Trustee for the 2007-5 Trust. Pursuant to the Co-Lender Agreement, the 2007-C30 Trust was appointed the Lead Lender among the Securitization Trusts, granting it the authority to act on behalf of the other trusts.[5]

14. Defendant PCV-M Holdings is a limited liability company organized under the laws of the State of Delaware. PCV-M Holdings is the entity that purportedly acquired the Junior 1-3 Loans through a servicing advance from the Lead Lender. The Lead Lender is the managing member of Defendant PCV-M Holdings, and holder of all economic benefit in PCV-M Holdings.

15. Defendant Borrowers are limited partnerships organized under the laws of the State of Delaware. In connection with financing the 2006 acquisition of Stuy Town by an affiliate of Tishman Speyer Properties, L.P. ("Tishman"), Wachovia Bank, N.A. ("Wachovia")

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[5] All references contained herein to the 2007-C30 Trust refer to the 2007-C30 Trust acting in its capacity as Lead Lender for the Securitization Trusts, unless context indicates otherwise.

and Merrill Lynch Mortgage Lending, Inc. ("Merrill") made the Senior Loan to Borrowers in the original principal amount of $3 billion.

16. Defendant Nominees are limited liability companies organized under the laws of the State of Delaware. Upon information and belief, the Nominees were incorporated on May 30, 2014 by CWC, acting on behalf of the Lead Lender.[6]

17. Plaintiffs are ignorant of the true names and capacity of Defendants sued in this Complaint as John Does 1-10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs allege that such John Doe Defendants are in some manner liable for the wrongful acts and damages alleged in this Complaint. Plaintiffs will amend this Complaint to allege the true names and capacities of such John Doe Defendants when ascertained.

18. Upon information and belief, John Does 1-10 are entities organized under the laws of states to be determined. Plaintiffs allege that, at all times alleged in this Complaint, each of the Defendants John Does 1-10 was the agent, servant, employee, partner, joint venturer, representative, subsidiary, parent, affiliate, alter ego, or co-conspirator of the other Defendants, each had full knowledge of and gave substantial assistance to the alleged activities, and in doing the things alleged, each was acting within the scope of such agency, service, employment, partnership, joint venture, representation, affiliation, or conspiracy, and each is legally responsible for the acts and omissions of the other Defendants.

JURISDICTION AND VENUE

19. This Court has jurisdiction over the Defendants because: (i) under Section 25 of the Intercreditor Agreement, the Securitization Trusts and PCV-M Holdings unconditionally consented to the jurisdiction of any court in the State of New York located in the borough of

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[6] The Nominees were incorporated the day after the Defendants received notice of STown Mezz's exercise of the purchase option.

Manhattan; (ii) upon information and belief, pursuant to CPLR § 302(a)(1) & (2), each of the Defendants is transacting business in the State of New York and this action arises out of Defendants' in-state transactions; and (iii) pursuant to CPLR § 302(a)(4), the Nominees, the Borrowers, and the Securitization Trusts own, use or possess real property situated in the State of New York.

20. Venue is proper in this Court because: (i) pursuant to CPLR § 501, the Securitization Trusts and PCV-M Holdings have contractually agreed to venue in New York County; (ii) pursuant to CPLR § 507, this action affects real property that is located in New York County; and (iii) pursuant to CPLR § 503, Plaintiffs reside in the County of New York when this action was commenced.

FACTUAL BACKGROUND

21. In 1943, New York Mayor Fiorello H. La Guardia concluded an unprecedented plan to address the problem of housing for the immense number of New Yorkers in need of a place to live. Mayor La Guardia teamed up with Metropolitan Life ("MetLife") to develop a community in lower Manhattan with thousands of rent regulated apartments that could be called home for tens of thousands of middle-class residents. After construction was completed, Stuy Town became the largest rent regulated apartment complex in Manhattan. For nearly sixty years, MetLife continued to own Stuy Town, and provided affordable living to hundreds of thousands of middle-class workers.

22. In July 2006, MetLife issued a press release that it would be selling Stuy Town. Following the public announcement, MetLife crafted a process to sell the property, which included marketing Stuy Town and multiple rounds of bidding. Out of thirteen bidders, MetLife accepted the highest bid of $5.4 billion made by Tishman, edging out Apollo-ING Clarion-

Dermot Group's $5.33 billion offer. Tishman and MetLife entered into a Purchase and Sale Agreement dated October 17, 2006.

I. FINANCING THE ACQUISITION OF STUY TOWN

A. The $3 Billion Senior Loan

23. When Tishman purchased Stuy Town in 2006, it financed the acquisition by issuing two categories of debt. The first category was a Senior Loan, in the original principal amount of $3 billion, made to the Borrowers by Wachovia and Merrill. The Senior Loan was secured by the physical property itself, and evidenced by an Amended and Restated Loan and Security Agreement dated February 16, 2007 ("Senior Loan Agreement"), and other documents as defined in the Recitals to the Intercreditor Agreement (together with the Senior Loan Agreement, the "Senior Loan Documents").

24. The Senior Loan was divided into six promissory notes of varying amounts, designated A-1 through A-6 (the "Notes"). The Notes were subsequently sold into the Securitization Trusts, which, in turn, issued commercial mortgage-backed securities ("CMBS") that were purchased by various investors. The beneficiaries of the Securitization Trusts are the bondholders that own the securities issued by the Securitization Trusts, including CWC or its affiliates. Table 1 below shows the Notes, the original principal amount of the Notes, and the trust to which the Notes were sold.

Table 1

Promissory Note	Original Principal Amount (approx.)	Securitization Trust
Note A-1	$1.5 billion	2007-C30 Trust (Lead Lender)
Note A-2	$250 million	2007-C2 Trust

Note A-3	$50 million	2007-C31 Trust
Note A-4	$198 million	2007-C31 Trust
Note A-5	$800 million	2007-5 Trust
Note A-6	$202 million	2007-6 Trust

25. As noted above, pursuant to the Co-Lender Agreement, the 2007-C30 Trust was appointed the Lead Lender among the Securitization Trusts. As the Lead Lender, the 2007-C30 Trust had the exclusive right and obligation to administer the Senior Loan and to enforce the loan documents on behalf of the Securitization Trusts. Because the Senior Loan has defaulted, CWC, as special servicer, now has the exclusive right and obligation to administer, service and make all decisions and determinations regarding the Senior Loan on behalf of the Securitization Trusts.

26. Upon information and belief, CWC or an affiliate of CWC holds numerous classes of certificates issued by the trusts that own the Senior Loan, including 100% of the Class Q and Class S Certificates issued by the Lead Lender. Class S was the "Controlling Class" under the Pooling and Servicing Agreement dated March 1, 2007 ("PSA"). As a result, CWC or its affiliate was the directing certificate holder. As directing certificate holder, CWC or its affiliate had the power to appoint the special servicer and, in this case, appointed CWC as the special servicer of the Lead Lender. Upon information and belief, since the Class S Certificates have realized a certain amount of losses, the Class Q Certificates have become the "Controlling Class" and thus CWC or its affiliate remains the directing certificate holder in the Lead Lender. Upon information and belief, CWC or its affiliate holds numerous classes of certificates issued by, and is the directing certificate holder for, three of the remaining four trusts. CWC has been appointed special servicer for those three trusts as well.

27. Upon information and belief, CWC has inappropriately miscalculated and claimed for itself as special servicer approximately $400 million in default interest, on top of its $7.5 million per year servicing fee and a loan resolution fee of $15 million.

B. The $1.4 Billion Junior Loans

28. The second category of debt in the Stuy Town financing structure are the Junior Loans, in the original aggregate principal amount of $1.4 billion. There are 11 mezzanine loans in total. Junior 1-3 Loans are purportedly owned by PCV-M Holdings, an entity that is itself owned by the 2007-C30 Trust. Junior 4-9 Loans are owned almost entirely by Plaintiffs. Junior 10-11 Loans are owned by other entities. Table 2 below shows the current Junior Lender for the Junior 1-9 Loans and the borrowing entities (the "Junior Borrowers").[7]

Table 2

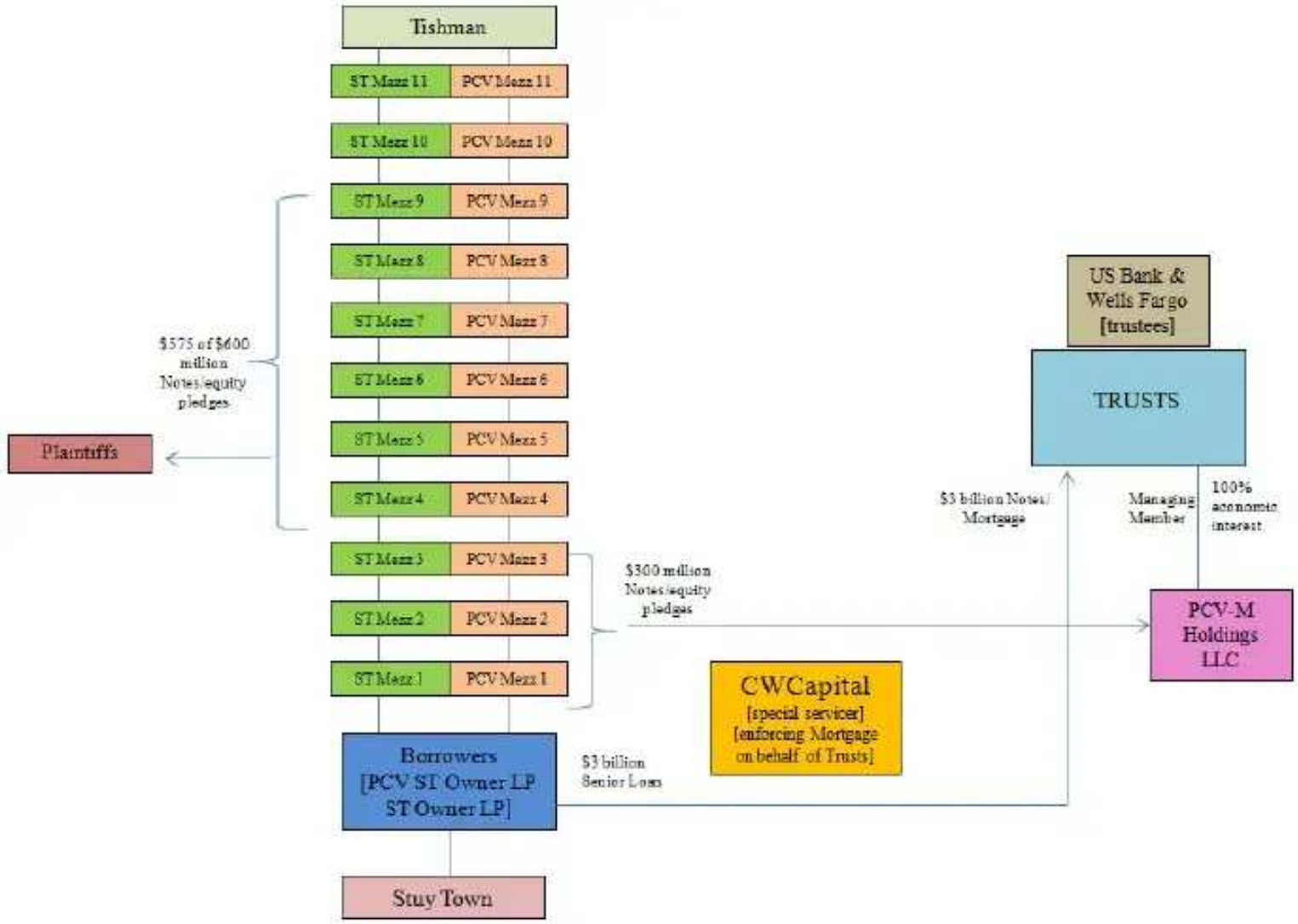
Junior Loan	Junior Borrower	Current Junior Lender
Junior 1 Loan	PCV ST Mezz 1 LP ST Mezz 1 LP	PCV-M Holdings
Junior 2 Loan	PCV ST Mezz 2 LP ST Mezz 2 LP	PCV-M Holdings
Junior 3 Loan	PCV ST Mezz 3 LP ST Mezz 3 LP	PCV-M Holdings
Junior 4 Loan	PCV ST Mezz 4 LP ST Mezz 4 LP	PCVST Mezzco 4 LLC
Junior 5 Loan	PCV ST Mezz 5 LP ST Mezz 5 LP	PCVST Mezzco 5 LLC
Junior 6 Loan	PCV ST Mezz 6 LP ST Mezz 6 LP	PCVST Mezzco 6 LLC (75%)
Junior 7 Loan	PCV ST Mezz 7 LP ST Mezz 7 LP	PCVST Mezzco 7 LLC

[7] The borrowers for the Junior 10 Loan are PCV ST MEZZ 10 LP and ST MEZZ 10 LP, and the borrowers for the Junior 11 Loan are PCV ST MEZZ 11 LP and ST MEZZ 11 LP.

Junior 8 Loan	PCV ST Mezz 8 LP	PCVST Mezzco 8 LLC
	ST Mezz 8 LP	
Junior 9 Loan	PCV ST Mezz 9 LP	PCVST Mezzco 9 LLC
	ST Mezz 9 LP	

29. Each of the Junior 1-9 Loans was in the original principal amount of $100 million, for a total of $900 million. Each Junior Borrower is a limited partnership whose general partner is a limited liability company. Pursuant to the documents governing each Junior Loan (the "Junior Loan Documents," as defined in the Recitals to the Intercreditor Agreement), each Junior Lender was granted a first-priority security interest in the corresponding Junior Borrower's ownership interest in (a) the limited partnership interests owned by such Junior Borrower in such Junior Borrower's respective subsidiary Junior Borrower and (b) the member interests owned by such Junior Borrower in the limited liability company that is the general partner of such Junior Borrower's respective subsidiary Junior Borrower (the "Equity Collateral"). By way of example, the Junior 5 Lender was granted a first-priority security interest by the Junior 5 Borrower in 100% of the limited partnership interests in the Junior 4 Borrower as well as 100% of the member interests in the limited liability company that is the general partner of the Junior 4 Borrower.

30. The loan structure of the Senior Loan and the Junior Loans can be illustrated by the following diagram:



31. The rights and obligations among senior and junior lenders in a financing structure typically are governed by an intercreditor agreement, as they are with Stuy Town. In this case, each of the Junior Lenders as well as the Senior Lender is party to, and bound by, the Intercreditor Agreement. If the equity interests in a Junior Borrower were sold at a UCC foreclosure auction, all of the Junior Loans subordinate to the foreclosed Junior Loan could be effectively wiped out and cut off from the ability to share in the value of the underlying property, Stuy Town. Thus, because the Junior Lenders were not granted a direct security interest in Stuy Town, it was critical for the Junior Lenders to have various protections provided by the Intercreditor Agreement, including prior notice of any Enforcement Action (as discussed *infra*), the right to receive copies of all material documents impacting their loans, and, perhaps most

importantly, a purchase option giving the Junior Lenders the ability to acquire at par the loans of lenders more senior to them.

C. Intercreditor Agreement Governing The Rights Among Senior Lender And Junior Lenders

32. On February 16, 2007, the Senior Lender and the Junior Lenders entered into the Intercreditor Agreement as a condition to the mezzanine financing.

33. The Intercreditor Agreement governs the relationship among the Senior Lender and the Junior Lenders. To protect their rights and remedies, the Junior Lenders bargained for and the Senior Lender agreed to a plethora of contractually binding terms upon Borrowers' failure to make certain payments in respect of the Senior Loan (an "Event of Default," as defined in the Senior Loan Documents). Those safeguards and fundamental contractual rights include, without limitation:

(a) Senior Lender will provide Junior Lenders with notice prior to commencing any Enforcement Action and an opportunity to cure defaults under the Senior Loan;

(b) Senior Lender will provide Junior Lenders with all material documents relating to any Enforcement Action, and keep Junior Lenders reasonably apprised as to the current status of any Enforcement Action;

(c) Junior Lenders will have an option to purchase the Senior Loan or more senior Junior Loans upon the occurrence of certain material defaults under the Senior Loan Documents or Junior Loan Documents, respectively;

(d) subject to the satisfaction of certain conditions set forth in the Intercreditor Agreement, a Junior Lender may foreclose on the Equity Collateral securing its loan and potentially take control of Stuy Town, with the Senior Loan remaining in place for the remainder of its term; and

(e) Junior Lenders may transfer Junior Loans to "Qualified Transferees" subject to the terms of the agreement.

34. The Intercreditor Agreement protects the Senior Lender's expectation of getting paid ahead of the Junior Lenders, but significantly, provides the Junior Lenders with a variety of

options for protecting their ability to be repaid on the Junior Loans, provided that the Senior Loan is repaid first.

i. The Notice And Right To Cure Protections

35. Section 12 of the Intercreditor Agreement affords certain of the protections mentioned above. Under Section 12(a), prior to commencing any Enforcement Action, the Senior Lender is obligated to provide written notice of the default to each Junior Lender and permit the Junior Lenders an opportunity to cure the default. An Enforcement Action is defined in the Intercreditor Agreement to include the taking of a deed in lieu of foreclosure.[8]

36. Section 12(a) further placed obligations on the Senior Lender to provide all material documents relating to any Event of Default and any Enforcement Action to each Junior Lender, and to keep the Junior Lenders reasonably apprised of the current status of any Enforcement Action. Specifically, Section 12(a) states:

> In the event Senior Lender has delivered a Senior Loan Default Notice pursuant to Sections 12(a)(i) or (ii) below which has not been cured by a Junior Lender, Senior Lender shall provide the Junior Lenders with copies of any and all material notices relating to such Event of Default, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Enforcement Action and otherwise keep the Junior Lenders

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[8] The Intercreditor Agreement contains a broad definition of the types of "Enforcement Actions" for which prior notice is required:

> **"Enforcement Action"** means any (i) judicial or non judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or any portion thereof, or Borrower, including, without limitation, the taking of possession or control of the Premises or any portion thereof, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving notices of default and statements of overdue amounts) or (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises or any portion thereof.

> reasonably apprised as to the current status of any Enforcement Action.

37. Junior Lenders have the right to cure any default under the more senior Junior Loans. This contractual right is found in Section 12(b) of the Intercreditor Agreement. Under Section 12(b), prior to commencing any Equity Collateral Enforcement Action by reason of an Event of Default under the applicable Junior Loan Documents, the Junior Lender holding the Junior Loan that is subject to an Event of Default must provide written notice of the default to the subordinate Junior Lenders and permit the subordinate Junior Lenders an opportunity to cure the default.[9] Moreover, like Section 12(a) requires of the Senior Lender, Section 12(b) requires each Junior Lender to keep the subordinate Junior Lenders reasonably apprised as to the status of any Equity Collateral Enforcement Action.

38. Section 12 is but one of the fundamental notice provisions provided to Junior Lenders. In addition to Section 12, Section 15(j)(i) states that "[e]ach Junior Lender shall give Senior Lender and each other Junior Lender notice of any Event of Default, acceleration of its applicable Junior Loan and the commencement of any Equity Collateral Enforcement Action under its Junior Loan Documents." Likewise, Section 15(j)(ii) provides that "Senior Lender shall give each Junior Lender written notice of any Event of Default, acceleration of the Senior Loan, transfer of the Senior Loan to 'special servicing' and the commencement of an Enforcement Action under the Senior Loan Documents."

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[9] "Equity Collateral Enforcement Action" is defined broadly in the Intercreditor Agreement as:

> **"Equity Collateral Enforcement Action"** means any action or proceeding or other exercise of a Junior Lender's rights and remedies commenced by such Junior Lender, in law or in equity, or otherwise, in order to realize upon the Equity Collateral (including, without limitation, an assignment in lieu of foreclosure or other negotiated settlement in lieu of any such enforcement action).

ii. The Purchase Option Protections

39. In addition to Sections 12 and 15, Section 14 provides additional critical safeguards to Junior Lenders. Significantly, Section 14(c) of the Intercreditor Agreement provides the Junior Lenders with the right to purchase more senior Junior Loans upon ten (10) business days written notice. Under Section 14(c), if any Equity Collateral Enforcement Action has been commenced under the Junior Loan Documents for a Junior Loan ("Junior Loan Purchase Option Event"), the Junior Lender holding such Junior Loan shall provide written notice to the subordinate Junior Lenders and the subordinate Junior Lenders shall have the right to purchase the Junior Loan that is subject to the Junior Loan Purchase Option Event.

40. Section 14(a) of the Intercreditor Agreement also provides the Junior Lenders with the right to purchase the Senior Loan, upon ten (10) business days written notice, at any time after the occurrence of an Event of Default under the Senior Loan which is subject to an Enforcement Action ("Purchase Option Event"), and requires each Junior Lender to keep the other Junior Lenders informed as to such Junior Lender's intention to exercise any of its respective rights in connection with the Purchase Option Event.

41. Consistent with the subordinated structure of the Junior Loans, in the event that multiple Junior Lenders seek to exercise their rights under Sections 12 and 14 of the Intercreditor Agreement, the subordinate Junior Lender with the lowest priority in relation to the other Junior Lenders shall have the right to cure the default or purchase the Senior Loan or senior Junior Loans, respectively.

42. Further, the Intercreditor Agreement provides, pursuant to Section 34, that "monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by any party hereunder would cause irreparable harm to any other party to this Agreement. Accordingly, each party to this Agreement agrees that upon a breach of this

Agreement by any other party, the remedies of injunction, declaratory judgment and specific performance shall be available to such non-breaching party."

II. CWC OBTAINS A FORECLOSURE JUDGMENT THAT SETS THE PAYOFF AMOUNT OF THE SENIOR LOAN AT THE FEDERAL LEGAL RATE

43. On January 8, 2010, CWC delivered a Senior Loan Default Notice, pursuant to Section 12(a) of the Intercreditor Agreement, notifying Junior Lenders that the Borrowers failed to make monthly payments. The payment default constituted an Event of Default under the Senior Loan Documents, triggering certain rights and obligations afforded to Junior Lenders.

44. On January 29, 2010, CWC declared all of the unpaid debt outstanding under the Senior Loan to be immediately due and payable. In doing so, CWC notified Junior Lenders that, as a result of the acceleration of unpaid debt outstanding, in order for a Junior Lender "to foreclose or otherwise realize upon any of its Equity Collateral or accept title to such Equity Collateral in lieu of foreclosure," Section 6(d) of the Intercreditor Agreement requires that "all defaults under (1) the Senior Loan and (2) the applicable Senior Junior Loans must be cured by the Qualified Transferee by the date of acquisition."

45. Within weeks of the acceleration of the unpaid outstanding debt, CWC filed an action in the United States District Court for the Southern District of New York to foreclose on the Senior Loan. On June 21, 2010, the district court entered a Judgment of Foreclosure and Sale of Stuy Town. The Foreclosure Judgment ordered the payoff amount of the Senior Loan, providing, in relevant part:

> **ORDERED AND ADJUDGED** as follows:
>
> That plaintiffs have judgment herein on their claim for foreclosure in the amount of $3,666,734,464.70, plus interest on the outstanding principal balance and previously unpaid interest at the interest rate of 6.434% per annum, per day past April 22, 2010, in the amount of $536,166.67 plus default interest on the outstanding principal balance and previously unpaid interest at the interest rate

> of 3.000% per annum, in the amount of $258,262.91, to the date of this judgment, **with interest at the legal rate from the date of this judgment** . . . .

Foreclosure Judgment ¶ 2 (emphasis added); *see also* Foreclosure Judgment ¶ 3 (same). The Foreclosure Judgment further ordered that the sale of Stuy Town shall take place at a public auction, in accordance with the terms of sale contained within the order.[10] Foreclosure Judgment ¶ 3.

46. The Foreclosure Judgment was entered on June 21, 2010, which was sixty days after the April 22, 2010 benchmark mentioned in the Foreclosure Judgment. Between April 22, 2010 and June 21, 2010, contract rate interest (6.434% per annum) in the amount of approximately $32 million accrued in respect of the Senior Loan, and default rate interest (an additional 3% per annum) in the amount of approximately $15 million accrued in respect of the Senior Loan. Accordingly, the payoff amount of the Senior Loan on the date the Foreclosure Judgment was entered was approximately $3.71 billion.

47. The Court thus concluded that prior to the entry of the Foreclosure Judgment, interest accrued at the contract rate of 6.434%, plus default rate interest of an additional 3%, for a total interest rate of 9.434%.

48. However, after the date the Foreclosure Judgment was entered, interest on the indebtedness would accrue at the "legal rate." Pursuant to 28 U.S.C. § 1961, interest on a federal civil judgment "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding." For the calendar week preceding entry of the Foreclosure Judgment, weekly average 1-year constant maturity

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[10] A public sale of Stuy Town was scheduled, then cancelled, several times. During this time, CWC has continued to act as special servicer, earning significant fees.

Treasury yield (and thus the applicable federal judgment rate) was 0.30% per annum (30 basis points per annum).

49. With interest accruing at 0.30% instead of 9.434%, the amount owed in respect of the Senior Loan would have increased very slowly. Consequently, four years after the date of the Foreclosure Judgment, the correct amount owed in respect of the Senior Loan is approximately $3.76 billion less cash principal and interest payments to the Senior Lender between 2010 and 2014, or approximately $3.45 billion. By obtaining the Foreclosure Judgment, CWC made an irrevocable decision that it was willing to give up contract and default rate interest in exchange for obtaining the benefits of having a Foreclosure Judgment.

III. CWC FENDS OFF CHALLENGES FOR CONTROL OF STUY TOWN

A. Junior 1-3 Lender (PSW) Notices A UCC Auction To Transfer Its Equity Collateral In Junior 1-3 Loans To Itself To Eliminate Junior 4-11 Loans From The Financing Structure

50. On August 6, 2010, PSW NYC LLC ("PSW"), a joint venture formed by Pershing Square Capital Management LP and Winthrop Realty Trust, acquired the rights, title and interest in the Junior 1-3 Loans from the original Junior 1-3 Lenders, which included, among others, Wells Fargo Bank, National Association, as successor by merger to Wachovia.

51. Having acquired Junior 1-3 Loans, PSW immediately embarked on a plan to sell its Equity Collateral for Junior 1-3 Loans at a UCC auction. On August 7, 2010, PSW, as a Junior 1 Lender, provided notice that it intended to sell all of its right, title and interest in the Borrowers. The notice further stated that PSW reserved the right to credit bid all or any portion of the purchase price against the outstanding balance of the amounts due and owing to PSW. On August 7, 2010, PSW, as Junior 2-3 Lender, also issued similar notices of its intent to sell its Equity Collateral.

52. Upon information and belief, concerned that PSW intended to acquire the Equity Collateral for Junior 1-3 Loans through a credit bid without paying off the Senior Loan, on August 10, 2010, CWC wrote:

> Section 6(d) of the Intercreditor Agreement requires that to the extent the Equity Collateral is acquired by a transferee, all defaults under (1) the Senior Loan and (2) the applicable Senior Junior Loans must be cured by such transferee as of the date of acquisition. This requirement applies equally to a credit bid by PSW. As a result of the acceleration of the unpaid debt outstanding under the Senior Loan, Section 6(d) of the Intercreditor Agreement requires the full payment of the unpaid debt as a condition to any transferee acquiring the Equity Collateral that PSW is proposing to sell.

Bank of Am., N.A. v. PSW NYC LLC, 2010 WL 5152293 (N.Y. Sup. Ct. Aug. 18, 2010).

53. Upon information and belief, CWC requested written confirmation by PSW that PSW had an obligation to cure the Senior Loan default, which required PSW to pay off the amount ordered in the Foreclosure Judgment, or "roughly $3,666,000,000.00," as a condition of any acquisition/transfer of the Equity Collateral. *Id.*

54. Upon information and belief, on August 11, 2010, PSW responded to CWC's letter and disagreed that Section 6(d) of the Intercreditor Agreement required PSW to cure the Senior Loan before acquiring the Equity Collateral. *Id.*

B. The New York Supreme Court Adopts CWC's Position That Junior 1-3 Lender Must Pay Off The Senior Loan Before Transferring Its Equity Collateral

55. In order to prevent PSW from executing its plan, CWC filed a complaint against PSW in this Court, together with a motion seeking a preliminary injunction. CWC argued that:

> [i]f the Junior Lenders are permitted to, in effect, seize ownership and control of the unique real property known as Stuyvesant Town and Peter Cooper Village in contravention of the expressly bargained-for provisions in the Loan Documents (including the Intercreditor Agreement) concerning the circumstances under which ownership and control of the Property may be transferred, the Senior Lenders will be irreparably harmed.

Bank of Am., N.A., 2010 WL 5152293.

56. In an opinion dated September 16, 2010, this Court (per the Honorable Richard Lowe) granted CWC's motion and enjoined and restrained PSW during the pendency of the action, from acquiring or selling any of the Equity Collateral without "prior payment of the total outstanding indebtedness (in excess of $3,666,000,000) in connection with the senior loan." *Bank of Am., N.A. v. PSW NYC LLC*, No. 651293/10, 29 Misc.3d 1216(A), at *13 (N.Y. Sup. Ct. 2010). The Court found the "amount due and owing to [the Senior Lender] under the Notes, the Amended Mortgage, and the related Senior Loan documents" is the amount stated in the Foreclosure Judgment. *Id.* at *3. In reaching its opinion, the Court reasoned that: "[w]hile the Senior Loan and PSW's Junior Loan are secured by different collateral, nothing contained in the Intercreditor Agreement permits PSW to acquire its Equity Collateral without complying with section 6(d)." *Id.* at *7.

57. Following the Court's September 16, 2010 ruling against it, PSW sold the Junior 1-3 Loans. Upon information and belief, PCV-M Holdings purportedly acquired the Junior 1-3 Loans and financed the acquisition through a servicing advance made by the Lead Lender. As a result, the Lead Lender is the managing member of PCV-M Holdings, and holder of 100% of the economic interests in PCV-M Holdings. An attorney for CWC told Bloomberg that the Lead Lender's purported acquisition of Junior 1-3 Loans through PCV-M Holdings gives the Lead Lender "complete control" and CWC "complete flexibility with respect to what it does with the property." Oshrat Carmiel, *Ackman's Group Exits Stuyvesant Town Investment With $45 Million Intact*, Bloomberg, October 27, 2010, *available at* http://www.bloomberg.com/news/2010-10-27/ackman-s-group-exits-stuyvesant-town-investment-with-45-million-intact.html.

58. Upon information and belief, PCV-M Holdings may not be a "Qualified Transferee" as defined in the Intercreditor Agreement, and thus was not eligible to acquire the

Junior 1-3 Loans, due to the limitations set forth in Section 5(a) of the Intercreditor Agreement.[11] Accordingly, any actions PCV-M Holdings, or a party acting on its behalf, may have taken asserting rights as a Junior Lender may be void *ab initio*.

IV. CWC ATTEMPTS TO CONSOLIDATE ITS CONTROL OVER STUY TOWN IN BREACH OF DUTIES OWED TO JUNIOR LENDERS

A. Junior 1-3 Lender (PCV-M Holdings) Notices A UCC Auction To Transfer Its Equity Collateral In Junior 1-3 Loans To Itself To Eliminate Junior 4-11 Loans From The Financing Structure

59. Upon information and belief, in May 2014, CWC, acting on behalf of PCV-M Holdings, began to hatch a plan to improperly wipe out the other Junior Loans, which would give CWC effective control over Stuy Town. However, to accomplish its plan, CWC attempted to do precisely what it argued, and the Court subsequently ordered, was impermissible under the Intercreditor Agreement in *Bank of Am., N.A. v. PSW NYC LLC*. Thus, CWC sought to create a loophole for itself to gain complete control over Stuy Town.

60. In furtherance of this plan, on May 13, 2014, PCV-M Holdings, as Junior 1-3 Lender, provided notice to the other Junior Lenders, among others, that PCV-M Holdings:

> intends to sell the Pledged Securities (as defined in the Pledge Agreement) through a non-judicial foreclosure sale of the Pledged Securities in accordance with the provisions of the Pledge Agreement and the applicable Uniform Commercial Code (the "Sale"). The Sale will occur on June 13, 2014 at 10:00 a.m., Eastern Time, at the New York Supreme Court located at 60 Centre Street, New York, New York 10007.[12]

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[11] In the event Plaintiffs determine that PCV-M Holdings was not a Qualified Transferee, Plaintiffs reserve the right to seek additional remedies.

[12] Junior 1 Lender's "Pledged Securities" in respect of the Junior 1 Loan include the following:

> All of PCV ST MEZZ 1 LP's right, title and interest in 100% of the limited partnership interests in PCV ST OWNER LP, a Delaware limited partnership;

61. The same day that PCV-M Holdings provided notice to the Junior Lenders of the UCC foreclosure sale, a real estate brokerage firm sent an email flyer (the "Flyer") to a small number of real estate companies stating that the firm has been retained by PCV-M Holdings to market Stuy Town in connection with a proposed UCC public auction. The Flyer provided some general information about Stuy Town and the proposed auction process. The Flyer stated that interested purchasers should execute a form of confidentiality agreement. Significantly, the Flyer also stated that "[i]nterested purchasers will be required to make representations that, among other things, they . . . will purchase or pay off in full the senior mortgage loan at closing."

62. On May 15, 2014, STown Mezz, as the Junior 4-9 Lender, sent a letter to PCV-M Holdings requesting clarification as to "whether the requirement to pay or purchase the Senior Loan is applicable to [PCV-M Holdings], in the event that the [PCV-M Holdings] (or any subsequent owner of the mezzanine loans being foreclosed) is the successful bidder at the public auction, through a credit bid or otherwise."

63. By letter dated May 16, 2014, PCV-M Holdings, acting through CWC, responded that:

> the lead lender for the Senior Loan, the Wachovia Bank Commercial Mortgage Trust (the "Trust"), is the sole managing member of and holder of all the economic benefit in [PCV-M

> All of ST MEZZ 1 LP's right, title and interest in 100% of the limited partnership interest in ST OWNER LP, a Delaware limited partnership;
>
> All of PCV ST MEZZ 1 LP's right, title and interest in 100% of the limited liability company membership interests in PCV ST OWNER GP LLC, a Delaware limited liability company;
>
> All of ST MEZZ 1 LP's right, title and interest in 100% of the limited liability company membership interests in ST OWNER GP LLC, a Delaware limited liability company ….

Junior 2-3 Lender similarly intended to sell such Pledged Securities.

> Holdings]. **Accordingly, if [PCV-M Holdings] is the winning bidder in the Auction, [PCV-M Holdings] will not be required to pay or purchase the Senior Loan.**

64. By letter dated May 28, 2014, counsel for the Junior 4-9 Lender reminded CWC that this Court, in the *Bank of Am., N.A. v. PSW NYC LLC* litigation, found that Section 6(d) of the Intercreditor Agreement obligates the Junior Lender to cure all Senior Loan defaults if the Junior Lender acquires the Equity Collateral. STown Mezz asserted that CWC's latest position was not only at odds with the Court's holding in *Bank of Am.* and an anticipatory breach of Section 6(d) of the Intercreditor Agreement, but it was also inconsistent with CWC's earlier position in the *Bank of Am.* case. The letter further posited that a "public" auction on June 13, 2014 would be commercially unreasonable under N.Y. U.C.C. Law § 9-610(b), due to the insufficient time for bidders to, among other things, perform essential due diligence and arrange financing to support a competing bid. The letter averred that "CWC's inappropriate position that PCV-M Holdings is not required to pay or purchase the Senior Loan to acquire the equity interests at the auction rigs the auction in its favor," and concluded by requesting that CWC "postpone the notice that is expected to be published on or about June 2, 2014 and suspend the auction that is scheduled to be held on June 13, 2014." Additionally, STown Mezz requested, in accordance with Section 15(d) of the Intercreditor Agreement, among other information, "[c]alculation of the Senior Loan Purchase Price (under and as defined in the Intercreditor Agreement), showing the individual components of such purchase price and the party or parties entitled to receive such component."

65. By letter dated May 30, 2014, PCV-M Holdings, acting through CWC, rejected this request, stating that Section 6(d) of the Intercreditor Agreement was only applicable if a default under the Senior Loan had not been cured or waived, and asserted that "[n]othing in either Judge Lowe's opinion or the Intercreditor Agreement precludes the Senior Lender from

waiving any requirement that inures to its benefit." By this statement, CWC clearly exposed its unwavering intent to conduct the UCC auction in an unfair, discriminatory, and commercially unreasonable manner, and to apply a double-standard to chill the auction: while relieving itself of the obligation to pay off the Senior Loan, CWC expressly required other bidders to undertake that financial burden which, in any event, was overstated by approximately one billion dollars over the actual amount of the Senior Loan. This requirement – intended to give advantage to CWC over other bidders – was completely inconsistent with the position that CWC took in the *Bank of Am.* case. Indeed, the payoff amount of the Senior Loan provided to bidders used a wholly unauthorized calculation that would deliver to Defendants a windfall of approximately one billion dollars.

66. On Monday, June 2, 2014, Notices for the Public Sale of Collateral related to the Junior 1-3 Loans (the "Sale Notices") were published in each of the Wall Street Journal, New York Times, Financial Times and Delaware News Journal. The Sale Notices confirmed the terms of the proposed auction, including the requirement that bidders would be required to pay off or purchase the Senior Loan. Notwithstanding the Sales Notice, PCV-M Holdings, acting through CWC, fully planned to circumvent this requirement for itself.

67. In other words, by (a) conducting its UCC auction in an unreasonable timeframe, *e.g.*, a mere nine business days after public notice, (b) requiring any competing bidder (other than itself and its affiliates) to pay off in full the billions of dollars owed on the Senior Loan, including principal, accrued interest, yield maintenance, and various other fees, charges and expenses, and (c) overstating the purported payoff amount on the Senior Loan by nearly a billion dollars – at approximately $4.4 billion – due to the improper inclusion of inflated post-judgment contract rate and default rate interest, CWC and the other Defendants sought to give PCV-M

Holdings a huge bidding advantage over third parties, and to ensure that PCV-M Holdings would be the winner of the auction, thus maintaining control of the Borrowers and wiping out all of the Junior Lenders.

68. If any of the sales of Equity Collateral contemplated by the Sales Notices had been consummated, the equity chain connecting the Junior Lenders to the Borrowers (and ultimately to Stuy Town) would have been severed, and over a billion dollars of obligations in respect of the Junior Loans would effectively have been extinguished.

69. The next day, on June 3, 2014, at 7:18 pm (and unbeknownst to STown Mezz the deed in lieu agreement had been executed earlier that morning at 8:30 a.m.), CWC finally responded to STown Mezz's May 28, 2014 request for the calculation of the Senior Loan Purchase Price. However, rather than providing a response in line with the Foreclosure Judgment (or disclosing the deed in lieu transaction), CWC stated that the calculation "will be supplied per the intercreditor agreement; however, we will need to know as of what date the amount should be calculated in order to do so." By responding in this way, CWC side-stepped the issue of the true amount owed in respect of the Senior Loan, and never provided that information to Plaintiffs until after the deed in lieu transaction had been completed.

B. Junior 4-9 Lender (STown Mezz) Exercises Its Bargained-For Fundamental Right To Purchase Junior 1-3 Loans To Protect Its Investment

70. In light of the foregoing, and faced with the prospect of seeing its Junior 4-9 Loans wiped out in a commercially unreasonable UCC auction conducted in an inappropriately compressed time frame, STown Mezz, prior to the deed in lieu transaction, exercised one of the fundamental protections afforded to a Junior Lender: the purchase option.

71. Specifically, by notices dated May 29, 2014 (the "Purchase Option Notices"), STown Mezz notified PCV-M Holdings, as Junior 1-3 Lender, and the other required notice

parties, that STown Mezz, in its capacity as Junior 5 Lender, was exercising its option under Section 14(c) of the Intercreditor Agreement to purchase at par the Junior 1-3 Loans (the "Purchase Option") on June 12, 2014 – one day before the scheduled UCC auction. Pursuant to Section 14(a) of the Intercreditor Agreement, the Purchase Option Notices requested from PCV-M Holdings a good faith estimate of the purchase price for the Junior 1-3 Loans.

72. PCV-M Holdings, as the purported owner of the Junior 1-3 Loans, was obligated under Section 14 of the Intercreditor Agreement to fulfill its obligations in connection with the Purchase Option. The Intercreditor Agreement provides no basis for PCV-M Holdings to refuse to fulfill these obligations. If PCV-M Holdings had fulfilled its obligations in respect of the Purchase Option, it would have received approximately $380 million from the Plaintiffs for the Junior 1-3 Loans. The approximately $380 million would have been payable to the Lead Lender, as holder of 100% of the economic interests in PCV-M Holdings. But had PCV-M Holdings honored Plaintiffs' Purchase Option, it would have surrendered the ability to seize effective control of the Borrowers and to direct the disposition of Stuy Town for hundreds of millions of dollars more in misbegotten profits rightfully belonging to the Junior Lenders.

73. After validly exercising the Purchase Option, STown Mezz sent a letter to the Lead Lender and PCV-M Holdings on June 2, 2014 (the "June 2 Letter"), requesting certain information the Lead Lender and PCV-M Holdings were obligated to provide under the Intercreditor Agreement. STown Mezz also reminded the Lead Lender and PCV-M Holdings of its duty to keep STown Mezz "reasonably apprised" of the current status of any Enforcement Action, and gave clear notice to the Lead Lender and PCV-M Holdings that any Enforcement Action taken after exercise of the Purchase Option would constitute a breach of the Junior Loan Documents. Specifically, the June 2 Letter stated:

> As you know, pursuant to Section 12(a) of the Intercreditor Agreement, Senior Lender is obligated to provide the Junior Lenders with copies of agreements with any party to any Enforcement Action and to otherwise keep the Junior Lenders reasonably apprised as to the current status of any Enforcement Action, including without limitation the taking of a deed or assignment in lieu of foreclosure. While the undersigned has not consented to any such Enforcement Action and would view such Enforcement Action to constitute a breach of the Junior Loan Documents, we hereby request that Senior Lender provide copies of any agreements and advise as to any other understandings by and between Senior Lender and Senior Borrower and/or their respective affiliates relating to the taking of a deed or assignment in lieu of foreclosure, and any other information appropriate to keep the Junior Lenders reasonably apprised as to the current status of any such Enforcement Action.

74. By the same June 2 Letter, STown Mezz further reminded the Lead Lender and PCV-M Holdings of its duty to keep STown Mezz "reasonably apprised" of the status of any Equity Collateral Enforcement Action, and gave clear notice to the Lead Lender and PCV-M Holdings that any Equity Collateral Enforcement Action taken after exercise of the Purchase Option would constitute a breach of the Junior Loan Documents. Specifically, the June 2 Letter further stated:

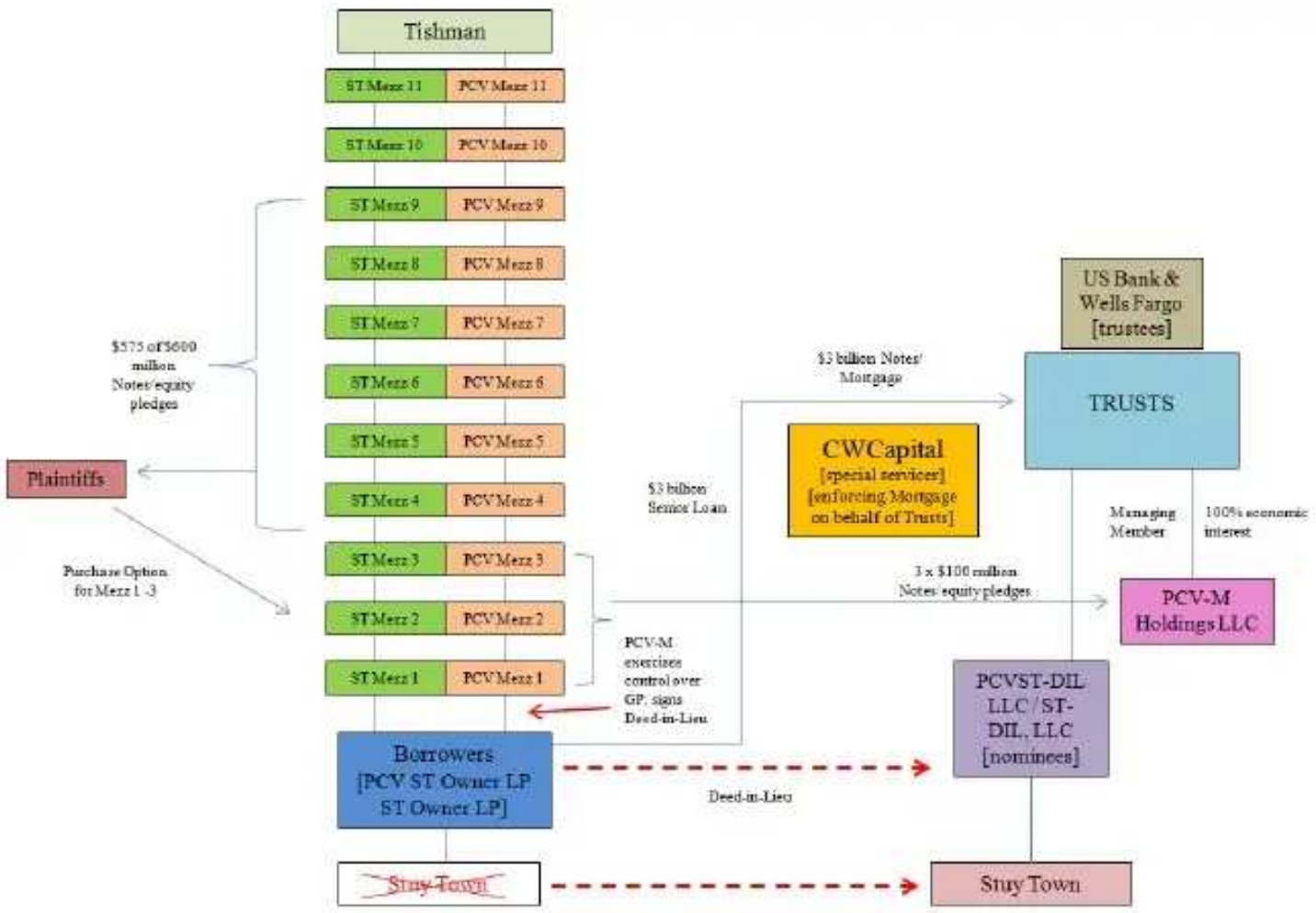
> Similarly, pursuant to Section 12(b) of the Intercreditor Agreement, each Junior Lender shall keep the applicable Subordinate Junior Lenders reasonably apprised as to the status of any Equity Collateral Enforcement Action, including without limitation an assignment in lieu of foreclosure or other negotiated settlement in lieu of any such enforcement action. While the undersigned has not consented to any such Equity Collateral Enforcement Action and would view such Equity Collateral Enforcement Action to constitute a breach of the Junior Loan Documents, we further request that each of Mezzanine 1 Lender, Mezzanine 2 Lender and Mezzanine 3 Lender provide copies of any agreements and advise as to any other understandings by and between such Junior Lender and any of Mezzanine 1 Borrower, Mezzanine 2 Borrower or Mezzanine 3 Borrower and/or their respective affiliates relating to an assignment in lieu of foreclosure or other negotiated settlement in lieu of any such enforcement action, and any other information appropriate to keep the applicable Subordinate Junior Lenders

reasonably apprised as to the status of any Equity Collateral Enforcement Action.

75. STown Mezz requested that the information sought in the June 2 Letter be provided on or before 12:00 p.m. on Wednesday, June 4, 2014.

C. CWC, PCV-M Holdings And The Securitization Trusts Deprive STown Mezz Of Its Bargained-For Fundamental Right To Purchase Junior 1-3 Loans By Effectuating The Deed In Lieu Of Foreclosure Transaction

76. Rather than accepting $380 million and ceding control of the Borrowers to the Junior 5 Lender, as required under the Intercreditor Agreement, CWC on behalf of PCV-M Holdings, took control of the Borrowers and executed a deed in lieu of foreclosure. The deed in lieu transferred Stuy Town to special purpose entities that were designated *by CWC* as nominees to receive the property on behalf of the Securitization Trusts. STown Mezz received no notice prior to CWC effectuating the deed in lieu transaction. The transaction is illustrated in the diagram below.



77. After CWC completed the deed in lieu transaction, it notified STown Mezz for the first time, by letter dated June 5, 2014, that "by deeds in lieu of foreclosure delivered on June 3, 2014, nominees for the Senior Lender accepted title to the multifamily properties commonly known as Peter Cooper Village and Stuyvesant Town." Accompanying the letter were notices of cancellation of the UCC auction scheduled for June 13, 2014, as well as a copy of a Deed In Lieu of Foreclosure Agreement, dated June 3, 2014. Underscoring the duplicity and self-dealing at work here, the Managing Director of CWC signed the agreement on behalf of U.S. Bank, National Association, as Trustee for the Lead Lender, and also signed the agreement on behalf of the Borrowers – *the very parties purportedly surrendering Stuy Town to the Lead Lender*. CWC *also* signed this agreement on behalf of the Nominees to take title to Stuy Town pending its further disposition.

78. Additionally, the deed in lieu agreement executed on all sides by CWC falsely and self-servingly stated that the fair market value of Stuy Town is *less* than the amount owed on the Senior Loan. However, Stuy Town is worth approximately $5 billion versus the approximately $3.45 billion owed on the Senior Loan. Even using CWC's incorrect and vastly overstated Senior Loan payoff amount of approximately $4.4 billion, the value of Stuy Town is still worth hundreds of millions of dollars more. In fact, the same day the deed in lieu was filed with the Office of the City Register of the City of New York, on June 5, 2014, the New York Times reported that CWC had "plans to sell [Stuy Town] to the highest bidder, for as much as $5 billion." Charles V. Bagli, *Stuyvesant Town Lenders Move to Prevent Investor From Seizing the Property*, New York Times, June 5, 2014, *available at* http://www.nytimes.com/2014/06/06/nyregion/stuyvesant-town-lenders-move-to-prevent-investor-from-seizing-the-property.html?_r=0.

D. CWC, PCV-M Holdings And The Securitization Trusts Divert Over Approximately One Billion Dollars In Excess Value In Stuy Town From Junior Lenders To Defendants

79. Without any warning or contractually required notice, and in violation of Junior 5 Lender's contractual rights, CWC executed the deed in lieu of foreclosure and purposefully frustrated the exercise of the Purchase Option by STown Mezz. Such actions were designed to deprive STown Mezz (and its successors, the Plaintiffs) and other Junior Lenders of the benefit of its bargain under the Intercreditor Agreement. The New York Real Estate News reported, on June 5, 2014, that CWC completed the deed in lieu "[t]o protect itself," fearing that STown Mezz's Purchase Option was "a step to taking control of the entire property." Adam Pincus, *Stuy Town deed transfer values complex at $4.4B*, New York Real Estate News, June 5, 2014, *available at* http://therealdeal.com/blog/2014/06/05/stuy-town-deed-values-development-at-4-4b/. Furthermore, CWC's attorney told the Wall Street Journal that the deed in lieu transaction was effectuated "in light of the risk of losing control of the mezzanine loan position." Eliot Brown, *Creditors Take Title To Stuy Town*, Wall Street Journal, June 5, 2014, *available at* http://online.wsj.com/articles/creditors-complete-foreclosure-of-stuyvesant-town-1402002189.

80. As described above, the Purchase Option is one of the fundamental protections afforded to a Junior Lender. The Purchase Option ensures that a senior Junior Lender (i.e., a mezzanine lender that is structurally senior to another mezzanine lender) that is taking an Equity Collateral Enforcement Action can be compelled to accept the full amount owed in respect of its loan. This makes good sense from a policy perspective, as it provides the senior Junior Lender with payment in full, and permits a Junior Lender who believes there is sufficient value in the underlying property to protect its Junior Loan by taking out the more senior Junior Lender at par.

81. In the present case, rather than accepting a payment in full for the Junior 1-3 Loans, as required under the Intercreditor Agreement, CWC executed the deed in lieu of

foreclosure. By executing the deed in lieu, CWC transferred Stuy Town out from under the Borrowers' corporate structure to the Nominees so that the Junior Lenders will recover nothing.

82. Defendants preferred to effectuate the deed in lieu transaction instead of receiving payment in full for the Junior 1-3 Loans in the hope of taking the entire upside value of Stuy Town and unjustly enriching themselves by many multiples of that amount. Specifically, upon information and belief, CWC and/or its affiliates, Defendants John Does 1-10, own certain interests in the Securitization Trusts, namely, among others, the junior Class Q and Class S Certificates in the 2007-C30 Trust. Due to losses suffered by the Securitization Trusts, these certificates had been rendered substantially, if not completely, worthless. CWC or its affiliates, upon information and belief, stand to receive a tremendous windfall if the excess value of Stuy Town is diverted to the Securitization Trusts and causes these certificates to regain value. Upon information and belief, CWC or its affiliates, Defendants John Does 1-10, may also hold the residual interest Class R Certificates of the Securitization Trusts. With these holdings, Defendants stand to profit enormously if, as is the case, Stuy Town's true value is approximately $5 billion, and the amount owed on the Senior Loan is approximately $3.45 billion.

E. CWC, PCV-M Holdings And The Securitization Trusts Have Attempted To Effectively Wipe Out Junior Lenders And Avoid Exposure Of Its Windfall Interest Calculations

83. By executing the deed in lieu, Defendants have attempted to effectively wipe out the Junior Loans and eliminate from the financing structure those most likely to challenge Defendants' conduct, including its improper windfall calculations of contract interest and default interest to the Senior Loan *after* the Foreclosure Judgment had been entered. In determining the current amount owed in respect of the Senior Loan, CWC, as special servicer, has asserted that interest has been accruing since 2010 at the combined contract and default interest rate of 9.434%. Calculating the amount using the contract and default interest rates owed as CWC has

done significantly overstates the amount due on the Senior Loan. As discussed above, the Foreclosure Judgment cut off the right of Senior Lender to collect the contract rate of interest, as well as the right of the special servicer to collect default rate interest, and substituted in lieu thereof the obligation of the borrower to pay interest at the federal judgment rate. At the time the Foreclosure Judgment was entered, the federal judgment rate was 0.30%. The difference stands to benefit CWC and the Securitization Trusts by approximately one billion dollars (the difference between approximately $3.45 billion as opposed to approximately $4.4 billion). Of this windfall, approximately $400 million will go directly to CWC and hundreds of millions of dollars will go to the Securitization Trusts, in which CWC or its affiliates own a substantial interest.

84. In summary, by exercising a deed in lieu of foreclosure, rather than honoring Plaintiffs' Purchase Option, as required under the Intercreditor Agreement, PCV-M Holdings and the Lead Lender sought to benefit themselves and harm Plaintiffs by (a) frustrating a contractually mandated sale of the Junior 1-3 Loans that would have divested Defendants of control over the Borrowers, (b) wiping out the Junior Lenders, whom Defendant undoubtedly perceived as threats to their plan to accrue and seize interest at improper and inflated rates, and (c) after seizing control of Stuy Town, executing a sale at its true value – estimated to be approximately $5 billion – which would line Defendants' coffers to the detriment of the Junior Lenders.

85. On the other hand, had Defendants CWC, Lead Lender and PCV-M Holdings honored their obligations under the Intercreditor Agreement and not frustrated the Purchase Option, Defendants would have received approximately $380 million and the excess value from a sale of Stuy Town would have gone to the Junior Lenders, including Plaintiffs after the Senior Loan was repaid in full. In other words, the excess value after payment of the Senior Loan

would have been used to repay the Junior Loans, as the parties all contemplated when the transaction originally closed. Defendants' actions seek to deprive the Junior Lenders of the benefit of that bargain.

86. Faced with this unsavory assortment of self-dealing, bad faith and breaches of express and implied obligations, Plaintiffs are seeking this Court's assistance in enforcing their legal and equitable rights.

87. No previous request for the relief sought in this Complaint has been made to this or any other court.

FIRST CAUSE OF ACTION

Breach of Contract

(Against Defendants Securitization Trusts and PCV-M Holdings)

88. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

89. The Intercreditor Agreement is a valid contract enforceable by Plaintiffs.

90. Section 31 of the Intercreditor Agreement provides that, even if the agreement has been terminated, "any rights or remedies of any party hereto arising out of any breach of any provision hereof occurring prior to the date of termination shall survive such termination."

91. Plaintiffs have performed all of the material conditions, covenants, and promises required to be performed in accordance with the terms and conditions of the Intercreditor Agreement.

92. Defendants Securitization Trusts and PCV-M Holdings have repeatedly and flagrantly breached their obligations to Plaintiffs under the Intercreditor Agreement by, *inter alia*:

(a) Failing to honor the Purchase Option Notices dated May 29, 2014, under which Plaintiffs (through their predecessor in interest, whose rights Plaintiffs succeeded

to) exercised the option under Section 14(c) of the Intercreditor Agreement to purchase the Junior 1-3 Loans;

(b) Entering into the deed in lieu transaction and thereby frustrating the purpose of the Intercreditor Agreement and depriving Plaintiffs of the benefit of their bargain;

(c) Failing to keep Plaintiffs reasonably apprised as to the current status of any Enforcement Actions, including plans to execute a deed in lieu of foreclosure, as required pursuant to Section 12(a) of the Intercreditor Agreement;

(d) Failing to provide Plaintiffs with copies of any and all material notices relating to such Event of Default, pleadings, agreements, motions and briefs served upon, delivered to or with any party of any Enforcement Action, as required pursuant to Section 12(a) of the Intercreditor Agreement;

(e) Failing to keep Plaintiffs reasonably apprised as to the status of any Equity Collateral Enforcement Action, including without limitation the "negotiated settlement in lieu of any such enforcement action" that culminated in the execution and delivery of the deed in lieu of foreclosure, as required pursuant to Section 12(b) of the Intercreditor Agreement;

(f) Failing to give each Junior Lender prior written notice of the commencement of any Equity Collateral Enforcement Action under its Junior Loan Documents, including, in particular and without limitation, the "negotiated settlement in lieu of any such enforcement action" that culminated in the execution and delivery of the deed in lieu of foreclosure, as required pursuant to Section 15(j)(i) of the Intercreditor Agreement;

(g) Failing to give each Junior Lender prior written notice of the commencement of an Enforcement Action under the Senior Loan Documents, including, in particular and without limitation, the taking by the Senior Lender of a deed in lieu of foreclosure, as required pursuant to Section 15(j)(ii) of the Intercreditor Agreement;

(h) Depriving Plaintiffs of its bargained-for right to purchase the Senior Loan in accordance with Section 14(a); and

(i) Failing to keep Plaintiffs informed as to PCV-M Holdings' intention to exercise any of its respective rights in connection with the Purchase Option Event, as required pursuant to Section 14(a) of the Intercreditor Agreement.

93. Securitization Trusts and PCV-M Holdings Defendants' breaches of the Intercreditor Agreement were willful and material.

94. Individually and together, the Defendants' material breaches of the Intercreditor Agreement have denied Plaintiffs the benefit of their bargain.

95. Plaintiffs have suffered damages as a direct and proximate result of Defendants' breaches of the Intercreditor Agreement in an amount to be proved at trial.

SECOND CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

(Against Defendants Securitization Trusts and PCV-M Holdings)

96. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

97. There is implied in every contract a covenant of good faith and fair dealing such that no party to such contract may act to deprive the other of the benefits and bargains of the agreement.

98. Defendants Securitization Trusts and PCV-M Holdings were thus bound by an implied-in-law covenant under the Intercreditor Agreement to perform their obligations in good faith and not take any action that might deprive Plaintiffs of the benefits of their bargain under the Intercreditor Agreement.

99. Defendants Securitization Trusts and PCV-M Holdings failed to exercise good faith and deal fairly with Plaintiffs in fulfilling their obligations under the Intercreditor Agreement. Defendants breached the implied covenant of good faith and fair dealing through a pattern of misconduct designed to (i) maintain ownership of Stuy Town in Defendants Securitization Trusts and PCV-M Holdings; (ii) eliminate any possible dissenting voice that might challenge the disposition of the property; (iii) reap an unjust windfall by improperly seizing the excess value from the disposition of Stuy Town that properly belongs to Plaintiffs

and other Junior Lenders; and (iv) ensure that CWC could collect hundreds of millions of dollars in default rate interest on the senior mortgage loan to which it is not entitled.

100. Defendants have effectuated this bad faith scheme, first by attempting to conduct the auction of this massive and unique rent-stabilized residential property with only nine business days public notice, and rigging the auction so that it had an advantage of over *four billion dollars* over other bidders, and second, when the rigged auction was mooted by the properly exercised right of a Junior Lender to purchase the three most senior mezzanine loans, by precipitously seizing corporate and voting control over the owner of Stuy Town and causing the owner to issue a deed in lieu of foreclosure to the Nominees. As a result of these breaches by Defendants Securitization Trusts and PCV-M Holdings, Plaintiffs, as the current owners of almost all of the Junior 4-9 Loans, are believed to have suffered up to one billion dollars or more in damages.

101. Defendants' bad faith conduct and continuing failure to honor their obligations under the Intercreditor Agreement, as set forth above, frustrated the performance of the agreement and thus violated the implied covenant of good faith and fair dealing.

102. Defendants' actions substantially and directly impaired the value of the Intercreditor Agreement to Plaintiffs and are inconsistent with the intent of the parties to the Intercreditor Agreement.

103. Defendants' material breaches of this implied covenant were and continue to be intentional, knowing, and in willful and reckless disregard of the rights and interests of Plaintiffs.

104. Plaintiffs have suffered and will continue to suffer harm as a result of Defendants' breach of the common law implied covenant of good faith and fair dealing.

105. Plaintiffs have suffered damages as a direct and proximate result of Defendants' breaches of the Intercreditor Agreement in an amount to be proved at trial.

THIRD CAUSE OF ACTION

Tortious Interference With Contract

(Against Defendants CWC, Borrowers and Nominees)

106. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

107. At all relevant times, Plaintiffs and the Securitization Trusts and PCV-M Holdings were parties to a valid contract, namely the Intercreditor Agreement.

108. Plaintiffs relied on these agreements when (a) Plaintiffs (through their predecessor in interest, whose rights Plaintiffs succeeded to) provided debt financing to Junior Borrowers, and (b) Plaintiffs (through their predecessor in interest, whose rights Plaintiffs succeeded to) exercised the option under the Intercreditor Agreement to purchase the Junior 1-3 Loan.

109. Upon information and belief, Defendant CWC was aware of Plaintiffs' agreement with the Securitization Trusts and PCV-M Holdings because, among other reasons, CWC acts as special servicer to the Securitization Trusts and on behalf of the Trustees for each of the Securitization Trusts.

110. Upon information and belief, Defendant Borrowers were aware of Plaintiffs' agreement with the Securitization Trusts and PCV-M Holdings because, among other reasons, Borrowers were the owners of Stuy Town that secured the Senior Loan, and PCV-M Holdings seized corporate and voting control of the Borrowers, thus giving CWC control over the Borrowers.

111. Upon information and belief, Defendant Nominees were aware of Plaintiffs' agreement with the Securitization Trusts and PCV-M Holdings because, among other reasons,

Nominees are the nominees of the Lead Lender, which is a party to the Intercreditor Agreement and is controlled by CWC.

112. In its capacity as special servicer, CWC has the exclusive right and obligation to make all decisions concerning the Senior Loan on behalf of the Securitization Trusts, as well as PCV-M Holdings. CWC exercised such rights for its own pecuniary gain, and directed the affairs of the Securitization Trusts, PCV-M Holdings, Borrowers, and Nominees for its own unjust enrichment.

113. As discussed above, Defendant CWC or its affiliates held certificate interests issued by the Trusts and thus stood to profit directly from the delivery of cash flows into the Trust waterfalls. Furthermore, Defendant CWC stood to profit directly from its miscalculation of the interest accrued following the Foreclosure Judgment. Accordingly, Defendant CWC executed the plan alleged herein, frustrated Plaintiffs' Purchase Option and directed the transfer of Stuy Town from the Borrowers to the Nominees of the Senior Lender via the deed in lieu of foreclosure. Defendant CWC acted in bad faith and in a predatory manner in respect of the interests of Plaintiffs and other Junior Lenders and thus should be held directly liable for tortious interference.

114. Defendant CWC, acting solely for itself and in bad faith, intentionally procured and facilitated the Securitization Trusts and PCV-M Holdings' breaches of their agreements with Plaintiffs in the ways alleged in the First and Second Causes of Action, and by, *inter alia*:

(a) Knowingly inducing and/or causing PCV-M Holdings, Lead Lender, Borrowers, and Nominees to execute the deed in lieu of foreclosure, thereby (a) frustrating Plaintiffs' contractual right to close on its Purchase Option under the Intercreditor Agreement and (b) eviscerating any excess value that would have flowed to Plaintiffs as Junior Lenders;

(b) Knowingly signing and/or causing or facilitating the signing of the Deed In Lieu of Foreclosure Agreement on behalf of every party to the Deed in Lieu of

Foreclosure Agreement, namely Borrowers, Nominees, PCV-M Holdings and Lead Lender.

115. Defendant Borrowers, acting solely for CWC and in bad faith, intentionally procured and facilitated the Securitization Trusts and PCV-M Holdings' breaches of their agreements with Plaintiffs in the ways alleged in the First and Second Causes of Action, and by, *inter alia*:

(a) Knowingly executing the deed in lieu of foreclosure, thereby (a) frustrating Plaintiffs' contractual rights on its Purchase Option under the Intercreditor Agreement and (b) eviscerating any excess value that would have flowed to Plaintiffs as Junior Lenders.

116. Defendant Nominees, acting solely for CWC and in bad faith, intentionally procured and facilitated the Securitization Trusts and PCV-M Holdings' breaches of their agreements with Plaintiffs in the ways alleged in the First and Second Causes of Action, and by, *inter alia*:

(a) Knowingly accepting title to Stuy Town via the deed in lieu of foreclosure, thereby (a) frustrating Plaintiffs' contractual rights on its Purchase Option under the Intercreditor Agreement and (b) eviscerating any excess value that would have flowed to Plaintiffs as Junior Lenders.

117. The Securitization Trusts and PCV-M Holdings breached the Intercreditor Agreement with Plaintiffs as detailed in the First Cause of Action and Second Cause of Action.

118. But for CWC's, Borrowers', and Nominees' misconduct, the Securitization Trusts and PCV-M Holdings would not have been able to effectuate these breaches of their contract with Plaintiffs.

119. CWC's, Borrowers', and Nominees' intentional interference with Plaintiffs' contract with the Securitization Trusts and PCV-M Holdings was undertaken without legal justification and in bad faith.

120. CWC's, Borrowers', and Nominees' intentional interference with Plaintiffs' contract with the Securitization Trusts and PCV-M Holdings was willful, wanton, and malicious, warranting an award of punitive damages in an amount to be determined at trial.

121. CWC's, Borrowers', and Nominees' tortious interference with Plaintiffs' contract has resulted in damage to Plaintiffs in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Lender Misconduct/Breach Of Fiduciary Duty

(Against Defendants Securitization Trusts)

122. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

123. The Securitization Trusts, as the holders of the Senior Loan, are the Senior Lender to the Borrowers (PCV ST Owner LP and ST Owner LP).

124. When, as here, the lender exercises total domination and control over the borrower, the applicable law creates a duty owed by a lender to a borrower and to those who have equity or a stake in the borrower.

125. Plaintiffs are Junior Lenders that own nearly all of the Junior 4-9 Loans, which are secured, in successive levels, by the respective equity of the Junior 3 Borrower, the Junior 4 Borrower, the Junior 5 Borrower, the Junior 6 Borrower, the Junior 7 Borrower, and the Junior 8 Borrower. These Junior Borrowers are the indirect equity owners of the Borrowers, which own Stuy Town.

126. The Junior 4-9 Lenders relied upon the value of Stuy Town, and the protections of the transaction documents – including the Senior Lender's obligation to act in good faith – in making hundreds of millions of dollars of loans to these Junior Borrowers.

127. The Senior Lender, through its domination of PCV-M Holdings, the Junior 1 Lender and a party to the Intercreditor Agreement, exerted actual, participatory, and total control and complete domination over the Borrowers and caused the execution of the deed in lieu of foreclosure that transferred Stuy Town to the Nominees. The total control and domination over the Borrowers exerted by the Senior Lender extended not only to finances, but also to the policy and business practice in respect to the deed in lieu of foreclosure transaction. Such domination and control was exerted through special servicer CWC, which executed the deed in lieu of foreclosure on behalf of the Securitization Trusts, the Nominees, and the Borrowers. At the time of the transaction, the Borrowers had no separate mind, will or existence of their own, but rather were forced to acquiesce to the will of the Senior Lender.

128. PCV-M Holdings and CWC achieved complete domination over the Borrowers when CWC, acting on behalf of PCV-M Holdings in its capacity as Junior 1 Lender, obtained voting and corporate control over the Borrowers and used its complete control over the Borrowers to execute the Deed in Lieu of Foreclosure Agreement on behalf of the Borrowers. Because PCV-M Holdings as Junior 1 Lender, acting through CWC, had complete control over the Borrowers, and because CWC was the special servicer through which the Senior Lender acted, the Senior Lender had complete control over the Borrowers. This total control and domination is evidenced by the fact that CWC signed the Deed in Lieu of Foreclosure Agreement on behalf of (i) the Senior Lender, (ii) the Nominees, and (iii) *the Borrowers*. Senior Lender used this complete control to divert over a billion dollars of value away from the Junior Lenders to Senior Lender.

129. Senior Lender, through CWC, committed improper and unjust acts in contravention of Plaintiffs' legal rights. By executing the Deed in Lieu of Foreclosure

Agreement, the Senior Lender unjustly deprived Junior Lenders, including the Plaintiffs, of the ability to receive the excess value that would have flowed to the Junior Borrowers and ultimately to the Junior Lenders, including the Plaintiffs. Acting through PCV-M Holdings and CWC, the Senior Lender forced the Borrowers to recite in the Deed of Lieu of Foreclosure Agreement that "Borrower believes that the fair market value of the Real Estate is less than or equal to the indebtedness owed by Borrower to Lender." The acts of PCV-M Holdings and the Senior Lender, through CWC, were in contravention of Plaintiffs' legal rights because: (1) the Intercreditor Agreement contains an implied covenant of good faith that prevented Senior Lender from accepting a deed in lieu of foreclosure if the value of the property exceeds the amount of the mortgage deficiency; and (2) PCV-M Holdings breached certain provisions of the Intercreditor Agreement requiring it to provide notice to the Junior Lenders of the deed in lieu of foreclosure transaction before it happened, and thereby prevented the Junior Lenders from protecting their interests in the Junior Loans by exercising certain purchase options and/or bringing legal action to prevent the execution of the deed in lieu of foreclosure.

130. Because the Senior Lender, through CWC, executed the Deed in Lieu of Foreclosure Agreement, PCV-M Holdings, the Senior Lender, CWC, and/or John Does 1-10 received an unfair benefit, and Plaintiffs suffered substantial, material, and adverse injury and unjust loss. The Senior Lender, PCV-M Holdings, and CWC unjustly took for the Defendants the excess value in Stuy Town at the direct expense of the Junior Lenders, including the Plaintiffs. But for the actions of the Senior Lender and PCV-M Holdings, through CWC, the excess value would have flowed to the Junior Lenders, including Plaintiffs.

131. The Senior Lender breached its fiduciary duty to the Borrowers and to those who have equity or a stake in the Borrowers by abusing its control over the Borrowers, through PCV-

M Holdings, to execute the Deed in Lieu of Foreclosure Agreement for the benefit of the Senior Lender, PCV-M Holdings, CWC, and /or John Does 1-10, and simultaneously breached its duty of good faith owed to the Plaintiffs.

132. The foregoing complete domination, through CWC, of the Borrowers and the breach by the Senior Lender of its duties and obligations to the Borrowers and to those who have equity or a stake in the Borrowers, directly and proximately caused the substantial, material, and adverse injury and unjust loss suffered by Plaintiffs.

133. Upon information and belief, the misconduct of the Senior Lender was intentional, willful, wanton, and without justification and of such egregious nature that punitive damages are appropriate in addition to any compensatory damages for harm done to Plaintiffs.

FIFTH CAUSE OF ACTION

Unjust Enrichment

(Against Defendants CWC, Securitization Trusts, PCV-M Holdings, Borrowers and Nominees)

134. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

135. In executing the Deed In Lieu of Foreclosure Agreement, Defendants unjustly took for themselves the excess value in Stuy Town – value that amounts to over a billion dollars – at the direct expense of Plaintiffs.

136. Defendants' economic benefit is a direct and proximate result of Defendants' unjust and unconscionable conduct. But for Defendants' unjust and inequitable conduct, the excess value in Stuy Town would have flowed to Plaintiffs. Defendants' misconduct therefore enabled Defendants to unjustly retain all value in Stuy Town for themselves, saving them the direct expense of sharing it with Junior Lenders, including Plaintiffs.

137. As a result of their misconduct, Defendants have been unjustly enriched at Plaintiffs' expense.

138. In equity and good conscience, if it is determined by the Court herein that certain provisions of the Intercreditor Agreement and/or the implied covenants contained therein cannot be enforced or are not applicable to protect Plaintiffs' legal rights, Defendants will be unjustly enriched by their actions. Thus, Plaintiffs request that the Court grant the relief requested in this Fifth Cause of Action, to prevent the unjust enrichment of the Defendants.

139. Accordingly, the circumstances are such that in equity and good conscience restitution should be made by Defendants to Plaintiffs in an amount to be proved at trial.

140. Moreover, to protect Plaintiffs' right to recover damages for Defendants' actions, and to prevent the unjust enrichment of Defendants, a constructive trust should be imposed upon Stuy Town and all sums unlawfully or inequitably received by Defendants traceable to the property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

(a) In respect of each of the First Cause of Action, Second Cause of Action, Third Cause of Action, Fourth Cause of Action, and Fifth Cause of Action, entry of judgment in favor of Plaintiffs awarding damages in an amount to be determined at trial;

(b) In respect of the Fifth Cause of Action, entry of judgment in favor of Plaintiffs establishing a constructive trust over Stuy Town pending payment to Plaintiffs of damages awarded in connection with this Complaint;

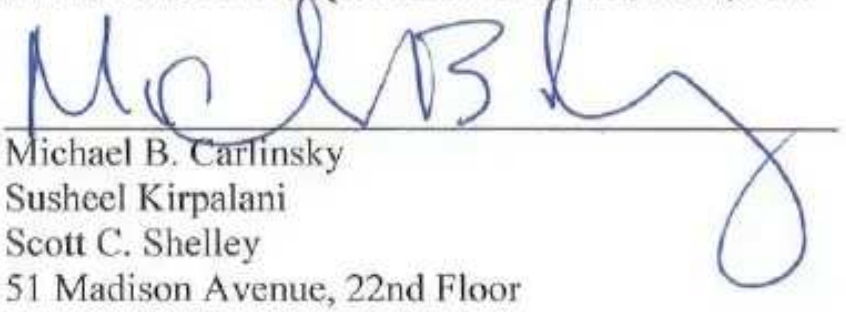
(c) The entry of a judgment awarding punitive damages to Plaintiffs;

(d) Plaintiffs reserve the right to seek all remedies available at law and equity; and

(e) Such other and further relief as this Court deems just and proper.

DATED: New York, New York
July 3, 2014

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: 

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