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At an IAS Part of the Supreme Court of the State of New York held in the County of Schoharie at the Courthouse, located at 290 Main Street, Schoharie, New York 12157 on November 10, 2021.

PRESENT: Hon. George R. Bartlett III
JUSTICE OF THE SUPREME COURT, *Acting*
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U.S. BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS OWNER TRUSTEE FOR LEGACY
MORTGAGE ASSET TRUST 2019-GS4,

Plaintiff,

INDEX NO.: 2020-8

**ORDER AMENDING CAPTION,
GRANTING NUNC PRO TUNC
RELIEF DEFAULT JUDGMENT
AND JUDGMENT OF
FORECLOSURE AND SALE**

-against-

MORTGAGED PROPERTY:
124 High Street
Richmondville, NY 12149

SBL #: 90.7-2-11

DAVID SPERBECK; DEBRA SPERBECK A/K/A
DEBRA S. SPERBECK; CAPITAL ONE BANK
(USA), N.A.; "JOHN DOE #1" through "JOHN DOE
#10" inclusive the names of the ten last named
Defendants being fictitious, real names unknown to the
Plaintiff, the parties intended being persons or
corporations having an interest in, or tenants or persons
in possession of, portions of the mortgaged premises
described in the Complaint,

MORTGAGOR SERVICER: Rushmore
Loan Management Service, LLC

MORTGAGE SERVICER PHONE
NUMBER: 1-888-504-7300

Defendants.
-----X

UPON the Summons, Complaint, and Notice of Pendency filed in this
action on January 9, 2020, with proof of due service thereof; the Notice of Motion
and the Affirmation of Richard F. Komosinski, Esq. both dated April 1, 2021, and
the exhibits annexed thereto, the Affidavit of Merit and Amount Due by Diana L.
Shaner, Assistant Vice President of Rushmore Loan Management Service, LLC,

Schoharie County Clerk
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the Plaintiff herein, duly sworn to on January 5, 2021, all in support of Plaintiff's motion for nunc pro tunc relief, amending the caption, a Default Judgment and Judgment of Foreclosure and Sale; and

UPON proof this action was brought to foreclose a mortgage on real property located at 124 High Street, Richmondville, New York 12149 in the County of Schoharie, State of New York [Section 90.7, Block 2, Lot 11]; and

UPON proof that each of the defendants herein has been duly served with the Summons and Complaint in this action, and did not answer or otherwise appear, nor has their time to do so been extended; and it appearing that more than the legally required number of days have elapsed since the Defendants Debra Sperbeck a/k/a Debra S. Sperbeck, Capital One Bank (USA), N.A. and Jessie Sperbeck were served and/or appeared; and Plaintiff having established to the court's satisfaction that a judgment against the defendants is warranted; and

UPON the affidavits of mailing reflecting compliance with CPLR 3215(g)(3); and

UPON proof that non-appearing defendants Debra Sperbeck a/k/a Debra S. Sperbeck, Capital One Bank (USA), N.A. and Jessie Sperbeck are not absent, in accordance with RPAPL §1321(2);

AND the court having held a mandatory settlement conference pursuant to CPLR 3408 and a settlement was not reached and the case was released from the settlement

conference part on December 10, 2020;

AND Plaintiff having waived its right to a deficiency judgment and accepted the sale of the property in full satisfaction of the mortgage debt; and

UPON proof of notice of this motion to all parties and persons entitled thereto;

NOW, on motion by Richard F. Komosinski, Esq., attorney for the Plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the New York State Department of Financial Services Step 2 filing, which occurred on January 22, 2020, be ratified Nunc Pro Tunc as if same had occurred within five (5) business days of the filing of the Notice of Pendency with the Schoharie County Clerk; and it is further

ORDERED, ADJUDGED AND DECREED that the default of all non-appearing defendants is hereby fixed and determined; and it is further

ORDERED, ADJUDGED AND DECREED that, in accordance with the Affidavit of Merit and Amount Due dated January 5, 2021, the sum of \$71,997.02 is awarded to the Plaintiff as of December 31, 2020; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property described in the Complaint and as hereafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of this action as provided by the RPAPL be sold, within 90 days of the date of this Judgment,

in one parcel, at a public auction at Schoharie County Courthouse Lobby
290 Main Street, Schoharie, New York

by and under the direction of Kelly D. Hoyt, Esq., P.O. Box 1119
Broadalbin, New York 12025 / (518) 883-4816
kellyhoyt@frontier.com

who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of sale in accordance with RPAPL §231 in Times Journal
Cobleskill, New York

_____ ; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment") and §36.2 (d) ("Limitations on appointments based upon compensation"); and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors

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