

Exhibit 2

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

**In the matter of the MASTR Adjustable Rate
Mortgages Trust 2007-3**

Case Type: Other
Court File No. 62-tr-cv-18-47

**PETITION OF WELLS FARGO BANK, N.A., AS TRUST ADMINISTRATOR, FOR
INSTRUCTIONS IN THE ADMINISTRATION OF A CERTAIN TRUST PURSUANT
TO MINN. STAT. § 501C.0201, et seq.**

TO THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT:

1. Petitioner Wells Fargo Bank, N.A. ("Wells Fargo"), a national banking association, solely in its capacity as Trust Administrator (in such capacity, the "Trust Administrator") under the Pooling and Servicing Agreement dated as of April 1, 2007, and as amended on April 1, 2008, (as amended, the "PSA") for the MASTR Adjustable Rate Mortgages Trust 2007-3 (the "Trust") files this petition (the "Petition") pursuant to Minn. Stat. § 501C.0201, et seq. seeking authorization and instruction concerning the implementation of the Settlement Agreement and the distribution of Subsequent Recoveries, including the Trust Settlement Payment (all as defined below).¹

2. The Trust is governed by the PSA by and among Mortgage Asset Securitization Transactions, Inc., as Depositor; UBS Real Estate Securities Inc., as Transferor ("UBS RESI"); Wells Fargo, as Master Servicer, Trust Administrator, Custodian, and Credit Risk Manager; and

¹ Unless otherwise defined, capitalized terms used herein shall have the meaning ascribed to them in the PSA or the Settlement Agreement (as defined below), as applicable. Unless otherwise specified, section references herein are to the PSA.

U.S. Bank National Association, as Trustee (the “Trustee”). A copy of the PSA and Amendment No. 1 to the PSA (excluding exhibits) are attached as Exhibits 1 and 2, respectively. Pursuant to the terms of the PSA, the Trust issued mortgage-backed securities (the “Certificates”) that were sold to investors (the “Certificateholders”). Assured Guaranty Municipal Corp. (f/k/a Financial Security Assurance Inc.) serves as Certificate Insurer (“Assured” or the “Certificate Insurer”) for certain Classes of Certificates.

3. As discussed below, certain legal claims belonging to the Trust have been conditionally settled. Upon the satisfaction of certain conditions, this settlement will result in the Trust receiving the Trust Settlement Payment (as defined below). In this proceeding,² the Trust Administrator generally seeks authorization and instruction under the relevant Trust documents regarding:

- i. the order of operations to be followed by the Trust Administrator with respect to distribution of the Trust Settlement Payment, including (x) any increases in Certificate Principal Balances of Certificates relating to the Trust and related Group or Subgroup as prescribed by the PSA; (y) any relevant overcollateralization-related calculations and triggers (including, without limitation, any overcollateralization release amounts) based on Certificate Principal Balances; and (z) any distribution of the Trust Settlement Payment in accordance with the PSA; and
- ii. the extent of any distribution of the Trust Settlement Payment to the Certificate Insurer, including through subrogation, by means of reimbursement, or both.³

The Trust Administrator also seeks confirmation that any instructions it receives from the Court regarding distribution matters will apply to the administration of the Trust going forward. The

² The Trust Administrator has filed two additional petitions in this Court seeking authorization and instruction concerning the implementation of the Settlement Agreement in respect of the Allocable Share (defined below) of the Payment for the MASTR Adjustable Rate Mortgages Trust 2006-OA2 (the “2006-OA2 Trust”) and the MASTR Adjustable Rate Mortgages Trust 2007-1 (the “2007-1 Trust,” with the Trust and the 2006-OA2 Trust, the “Trusts”).

³ See Settlement Agreement (defined below and attached as Exhibit 6) § 2(f) (discussing the “Trust Administrator Trust Instruction Proceeding”).

Trust Administrator anticipates that interested parties may take conflicting positions with respect to the matters set forth in this Petition.

I. JURISDICTION AND VENUE

4. This Court has jurisdiction over this Petition for trust instruction pursuant to Minn. Stat. §§ 501C.0102, 501C.0201, 501C.0202(3) and (4), and 501C.0207(a)(2) because the PSA for the Trust is a corporate trust agreement; the Trust is a corporate trust; the Trustee is located in Minnesota and performs functions of trust administration for the Trust in this state; the Trustee has a corporate trust office in St. Paul, Minnesota; and Wells Fargo, in its capacities as Trust Administrator, Master Servicer, Custodian, and Credit Risk Manager, is an interested person. Pursuant to Minn. Stat. § 501C.0201(c), the Petitioner invokes the jurisdiction of this court as an *in rem* proceeding.

II. BACKGROUND

5. The Certificates represent 100 percent of the beneficial interest in the Mortgage Loans and related assets of the Trust and entitle the Certificateholders, in accordance with the PSA's terms, to certain distributions. Distributions to Certificateholders, along with other amounts owed to various parties, are paid on a specified date each month (each, a "Distribution Date") from Available Funds, which generally consist of interest and principal received in respect of the Mortgage Loans and other assets of the Trust.⁴

6. Assured serves as Certificate Insurer for the Trust's Class 1-1A2, 1-2A2, 2-1A2, 2-2A3, and 2-2A6 Certificates (the "Insured Certificates")⁵ pursuant to the Financial Guaranty Insurance Policy, Policy No. ■ 834-N, dated May 15, 2007 (the "Policy"). A copy of the Policy

⁴ See PSA § 1.01, definitions of "Available Funds," "Interest Funds," and "Principal Funds."

⁵ Of the Insured Certificates, only the Class 2-2A3 Certificates remain outstanding. The other Insured Certificates have paid off and have no remaining principal balance.

is attached hereto as Exhibit 3. Assured guarantees the payment of certain distributions of interest and principal to Certificateholders of the Insured Certificates under the terms of the PSA and the Policy.

A. The Trustee’s Litigation

7. In 2012, in accordance with the PSA and at the direction of Assured, the Trustee commenced litigation for the Trust against UBS RESI in the United States District Court for the Southern District of New York, Case No. 1:12-CV-7322 (PKC) and styled *U.S. Bank National Ass’n, solely in its capacity as Trustee of the MASTR Adjustable Rate Mortgages Trust 2006-OA2, et al. v. UBS Real Estate Securities, Inc.* (the “Putback Action”). The Trustee alleged that UBS RESI breached representations and warranties under the PSA with respect to the Mortgage Loans.⁶

1. Prior Correspondence from Assured Related to the Putback Action

8. On May 6, 2013, Assured terminated its participation in the Putback Action via a letter to the Trustee. On May 16, 2013, Assured sent the Trustee a second letter (the “Assured 2013 Letter”) stating:

[Assured] reiterates its direction to the Trustee to cease pursuing claims on behalf of [Assured] and to exclude from any award and/or settlement of the [Putback Action] any amounts owed to [Assured] as Certificate Insurer or in its capacity as a subrogated holder.

A copy of the Assured 2013 Letter is attached as Exhibit 4.

9. On May 20, 2013, the Trustee notified Certificateholders that Assured and UBS RESI had entered into a settlement agreement with respect to Assured’s claims against UBS RESI in connection with the Trust and advised the Trustee that Assured should be excluded from any

⁶ The Trustee also brought the Putback Action on behalf of the 2006-OA2 Trust and the 2007-1 Trust. The Trustee made similar allegations regarding breach of representations and warranties for the 2006-OA2 Trust and the 2007-1 Trust.

award and/or settlement of the Putback Action (the “May 2013 Notice”).⁷ A copy of the May 2013 Notice is attached as Exhibit 5.

2. Trial of the Putback Action

10. Between April 18 and May 13, 2016, the Putback Action was tried before the Hon. P. Kevin Castel. On September 6, 2016, Judge Castel issued a Memorandum and Order (Putback Action, ECF No. 505) that resolved claims about certain Mortgage Loans and issues in dispute and established a post-trial process for generating proposed findings of fact and conclusions of law relating to all other Mortgage Loans at issue.⁸

3. Settlement of the Putback Action

11. On July 13, 2018, the Trustee executed an agreement with UBS RESI and Countrywide Home Loans, Inc. (“Countrywide”), which had originated certain Mortgage Loans in the Trust, to resolve the Putback Action for the Trusts (the “Settlement Agreement”). The Trust Administrator is also a party to certain provisions of the Settlement Agreement for the purpose of distributing the Payment (defined below), including the Trust Settlement Payment (defined below). The Settlement Agreement is attached as Exhibit 6.

12. The Settlement Agreement does not become effective, by its terms, until two conditions are satisfied: (i) Final Settlement Court Approval; and (ii) receipt and approval by the Trustee and Trust Administrator of an acceptable REMIC Tax Opinion.

13. Within 15 business days following the Effective Date (the date when both of the conditions identified above have been met to the Trustee’s satisfaction), UBS RESI must pay \$850 million (the “Payment”) to the Trustee on behalf of the three Trusts.

⁷ The May 2013 Notice also applied to the 2007-1 Trust and the 2006-OA2 Trust.

⁸ The Putback Action is further described in the Approval TIP (defined below) filed by the Trustee.

14. Section 5 of the Settlement Agreement sets forth how the Payment will be allocated between the Trusts (the amount to each Trust comprising each of the Trusts' "Allocable Share"). Following the Payment, each Trusts' Allocable Share will be held in an interest-bearing escrow account, pursuant to an Interim Agent Escrow Agreement, pending the final resolution of the Approval TIP (as defined below) (the Trust's Allocable Share plus any interest thereon, the "Trust Settlement Payment").

15. The Settlement Agreement does not express a specific method for distributing the Trust Settlement Payment. Rather, it provides that such amounts will be treated as Subsequent Recoveries and distributed in accordance with and pursuant to the PSA and a Final Distribution Order (as defined in the Settlement Agreement).⁹ Under the Settlement Agreement, the Trust Administrator must file this Petition seeking entry of a Distribution Order (as defined in the Settlement Agreement, and which is a prerequisite to securing the Final Distribution Order) with respect to the Trust that shall set forth and approve the procedures by which the Trust Administrator shall distribute the Trust Settlement Payment pursuant to the PSA.

16. According to the Trustee, UBS RESI, Countrywide, and/or their affiliates have informed the Trustee that, as a result of their certificate holdings in one or more of the Trusts and/or the settlement with Assured, they expect to receive some portion of the Trust Settlement Payment when the Trust Administrator distributes it following this proceeding.

B. The Trustee's Trust Instruction Proceeding

17. Because the Settlement Agreement requires Final Settlement Court Approval, the Trustee filed its *Petition of U.S. Bank National Association, As Trustee, For Instructions In The Administration Of Trusts Pursuant To Minn. Stat. § 501C.0201 et seq.*, in the District Court for

⁹ See Settlement Agreement § 6(b); see also PSA § 1.01, definition of "Subsequent Recoveries."

the Second Judicial District, Ramsey County, File No. 62-TR-CV-18-35, on July 25, 2018 (the “Approval TIP”). A copy of the Approval TIP petition (without exhibits) is attached as Exhibit 7.

18. In the Approval TIP, the Trustee seeks authorization and instructions approving the Trustee’s entry into the Settlement Agreement and authorizing and instructing the Trustee to implement the terms thereof. The Trustee also seeks authorization and instructions approving the Trustee’s and Trust Administrator’s treatment of the Trust Settlement Payment as a Subsequent Recovery, as set forth in the Settlement Agreement and in accordance with the terms of the PSA, and finding that such treatment complies with the Trustee’s and Trust Administrator’s duties under the PSA and applicable law.

C. Prior Related Litigation

19. This Petition seeks, among other things, instruction regarding the extent of any distribution of the Trust Settlement Payment to the Certificate Insurer (or any of its successors-in-interest or assigns), including by means of reimbursement, through subrogation, or both. The rights of the Certificate Insurer under the PSA were the subject of a prior interpleader action styled *Wells Fargo Bank, N.A., solely in its capacity as Trust Administrator for the MASTR Adjustable Rate Mortgages Trust 2007-3 v. Wales LLC, et al.*, Case No. 1:13-CV-6781, in the United States District Court for the Southern District of New York (the “MARM 2007-3 Interpleader Action”). A copy of the Amended Interpleader Complaint in the MARM 2007-3 Interpleader Action is attached as Exhibit 8.

20. The Trust Administrator filed the MARM 2007-3 Interpleader Action because it faced conflicting demands by Assured and Interpleader Defendant Wales LLC (“Wales”) with respect to certain Interest Funds of the Trust. Specifically, there was a dispute between Assured and Wales regarding whether Section 4.02(a)(2)(B)(b) entitled Assured to be repaid from Interest

Funds for amounts that Assured had previously paid for claims by Insured Certificates for both interest and principal.¹⁰ That is, even though (generally speaking) principal and interest on the Mortgage Loans are segregated and distributed through separate waterfalls per the PSA, Assured contended that its repayment rights under the PSA entitled it to be repaid for claims it had paid for both interest **and** principal in the earlier interest waterfall (*i.e.*, from Interest Funds) and that it need not wait to be paid for principal claims from the later principal waterfall (*i.e.*, from Principal Funds).

21. The court assessed the issue in its Memorandum Opinion & Order in connection with a motion for judgment on the pleadings filed by Wales (the “MARM 2007-3 Interpleader Order”). A copy of the MARM 2007-3 Interpleader Order, 2016 WL 5719761, 13-Civ-6781, (S.D.N.Y. Sept. 29, 2016), is attached as Exhibit 9. There, the court explained that “[t]he dispute between the parties concerns the type and extent of Assured’s repayment rights,” and that these “repayment rights are defined primarily in the PSA provisions detailing the structure of the payment waterfalls.”¹¹ Specifically, “[t]hese provisions provide for payments to Assured at various points in the distribution process,” and that “[a]t these stages in the distribution process, Assured is entitled to the ‘Certificate Insurer Reimbursement Amount’ as to a given Group or Subgroup of certificates.”¹² Additionally, the court found that the PSA “contains provisions setting forth Assured’s rights of subrogation.”¹³

¹⁰ See Am. Interpleader Compl. ¶¶ 33-34. As set forth in detail below, the Trust establishes multiple order-of-payment, or “waterfall,” provisions. Generally speaking, principal and interest on the Mortgage Loans are segregated and distributed under the PSA through separate waterfalls.

¹¹ MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *2.

¹² *Id.* (citing PSA §§ 4.02, 4.03, 1.01).

¹³ *Id.* (citing PSA § 12.05).

22. Wales argued that the PSA's definition of the Certificate Insurer Reimbursement Amount "merely describes Assured's right of subrogation and the manner in which subrogation payments are to be made."¹⁴ Assured countered that the PSA's definition of the Certificate Insurer Reimbursement Amount grants to it a right to repayment that is separate and "in addition to its subrogation rights."¹⁵ The court denied Wales's motion for judgment on the pleadings, concluding that, based on the records and arguments before it, one could reasonably read the PSA so that the definition of the Certificate Insurer Reimbursement Amount grants Assured a right of repayment separate and "in addition to its right of subrogation."¹⁶ Accordingly, the court concluded that one reasonable reading of the PSA would allow Assured to be repaid both interest and principal claims from Interest Funds under Section 4.02(a)(2)(B)(b).¹⁷

23. On December 22, 2016, Wales informed the court that it had sold its interests in the applicable Certificates. As a result, the court terminated the case before it fully resolved the issues presented in the case or concluded which interpretation of Assured's rights should control.

III. FIRST ISSUE FOR TRUST INSTRUCTION—Order of Operations for the Distribution of the Trust Settlement Payment

24. The first issue for trust instruction concerns the order of certain operations that the Trust Administrator must perform in connection with distribution of the Trust Settlement Payment as a Subsequent Recovery. Specifically, the Trust Administrator seeks an order instructing it

¹⁴ *Id.* at *9.

¹⁵ *Id.* at *7.

¹⁶ *Id.* at *11–12.

¹⁷ *Id.* In denying the motion for judgment on the pleadings, the court also distinguished *Wells Fargo Bank, N.A. v. ESM Fund I, LP*, 785 F. Supp. 2d 188 (S.D.N.Y. 2011), a decision in a prior interpleader action filed in connection with the 2006-OA2 Trust. See MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *12-15.

regarding whether it should distribute the Trust Settlement Payment in accordance with the “write up first” method (described below).

A. Subsequent Recoveries

25. From time to time in the servicing of mortgage loans, a servicer may recover unanticipated funds related to a defaulted mortgage loan after the loan has liquidated (*i.e.*, its balance reduced to zero) with a loss. These funds are generally referred to as “subsequent recoveries.” The PSA defines Subsequent Recoveries as “[u]nanticipated amounts received on a liquidated Mortgage Loan the absence of which resulted in a Realized Loss in a prior month.”¹⁸

26. The Settlement Agreement states that “the Parties agree that the Trust Administrator shall treat each Trust’s Allocable Share of the Payment . . . as a Subsequent Recovery (as defined in the . . . MARM 2007-3 PSA) . . . available for distribution on the related Distribution Date . . . The Parties agree that the Trust Administrator shall distribute each Trust’s Allocable Share of the Payment . . . in accordance with and pursuant to the related PSA and the Final Distribution Order applicable to each Trust.”¹⁹

27. In the Trust, the Mortgage Loans and the Certificates are segregated into two Groups and two Subgroups within each Group. With some exceptions, collections on the Mortgage Loans in a specific Loan Group or Loan Subgroup are allocated to the corresponding Certificates for that Loan Group or Loan Subgroup. The Trust Administrator makes payments to Certificateholders from principal and interest collections on the underlying Mortgage Loans. The Trust Administrator calculates and distributes such payments in accordance with the waterfall provisions (PSA Article IV) and related definitions (PSA Article I).

¹⁸ PSA § 1.01, definition of “Subsequent Recoveries.”

¹⁹ Settlement Agreement § 6(b).

28. Loan losses, referred to as Realized Losses in the PSA,²⁰ result in the reduction of loan balances without any corresponding receipt of principal cash. This causes the Stated Principal Balance of the Mortgage Loans to decrease faster than the Certificate Principal Balances of the Certificates decrease. Realized Losses are not directly allocated to the Certificates. Rather, the PSA allocates losses to the Certificates by calculating the amount by which (a) the aggregate Class Principal Balance of a Group's Certificates exceeds (b) the aggregate Stated Principal Balance of the related Loan Group's Mortgage Loans.²¹ Then, this amount is allocated as a loss to the Group's Certificates in accordance with Section 4.02(e) (for Group 1) or Section 4.03(e) (for Group 2). The allocation results in a decrease to the Certificate Principal Balance of such Certificates with no corresponding payment of principal cash. Thus, most of the Certificates have a Certificate Principal Balance that *decreases* over time as principal is paid and any Applied Realized Loss Amounts are allocated to those Certificates.

29. Processing a Subsequent Recovery for any Mortgage Loan involves reversing the prior loss incurred by such loan in the amount of the Subsequent Recovery. If a Class of Certificates was allocated an Applied Realized Loss Amount, then its balance was reduced by the Applied Realized Loss Amount without receiving any principal cash. A Subsequent Recovery reverses that loss by increasing, or "writing up," the Certificate Principal Balances of certain Classes of Certificates and distributing the Subsequent Recovery cash as principal.

B. Order of Operations for Subsequent Recoveries

30. There are two components to processing Subsequent Recoveries: the application of

²⁰ PSA § 1.01, definition of "Realized Loss."

²¹ The PSA refers to the amount by which Certificate Principal Balances exceed Stated Principal Balances for the Group 1 and Group 2 Certificates, respectively, as the "Group 1 Applied Realized Loss Amount" and the "Group 2 Applied Realized Loss Amount" (collectively, the "Applied Realized Loss Amounts").

the principal cash received and the reversal of prior losses to the relevant Classes of Certificates. The cash amount of the Subsequent Recovery is treated as principal and is distributed in accordance with the principal waterfall provisions in the PSA.²² The PSA also sets forth specific instructions for reversing losses to Classes of Certificates by increasing, or “writing up,” Certificate Principal Balances by the amount of Subsequent Recoveries received by the Trust.²³

31. In addition, at closing, the Certificates were overcollateralized, which means that the aggregate Stated Principal Balances of the Mortgage Loans in each Loan Group at closing exceeded the aggregate Certificate Principal Balances of the related Certificates in each Certificate Group. The transaction was originally designed to maintain a certain percentage of overcollateralization, though for many years, due to loan losses, there has been insufficient cash flow from the remaining Mortgage Loans to maintain the overcollateralization target amount²⁴ for each Certificate Group. Several of the PSA’s principal-related provisions (*e.g.*, Group 1 and Group 2 Basic Principal Distribution Amount, Group 1 and 2 Principal Distribution Amount and Group 1 and Group 2 Senior Enhancement Percentage)²⁵ require various calculations designed to

²² See PSA § 1.01, definition of “Principal Remittance Amount” (stating in pertinent part: “With respect to any Distribution Date and any Loan Group or Loan Subgroup, (a) the sum of . . . (iii) the principal portion of all related Net Liquidation Proceeds, Insurance Proceeds **and Subsequent Recoveries** received during such Prepayment Period with respect to the Mortgage Loans in that Loan Group or Loan Subgroup, as applicable) (emphasis added).

There are four different principal waterfalls, two for Group 1 and two for Group 2. For example, Section 4.02(b)(A)(1) provides that the Subgroup 1-1 Principal Distribution Amount and the Subgroup 1-2 Principal Distribution Amount is paid to the Subgroup 1-1 Certificates and the Subgroup 1-2 Certificates. The definition of Subgroup 1-1 Principal Distribution Amount and the Subgroup 1-2 Principal Distribution Amount includes the Principal Remittance Amount. PSA § 1.01, definitions of “Subgroup 1-1 Principal Distribution Amount” and “Subgroup 1-2 Principal Distribution Amount.” The definition of Principal Remittance Amount includes Subsequent Recoveries. PSA § 1.01, definition of “Principal Remittance Amount.” See also PSA § 4.02(b)(B)(1) (second Group 1 principal waterfall); PSA §§ 4.03(b)(A)(1) and 4.03(b)(B)(1) (Group 2 principal waterfalls).

²³ See PSA §§ 4.02(f) (Group 1 Certificates) and 4.03(f) (Group 2 Certificates).

²⁴ See PSA § 1.01, definitions of “Group 1 Overcollateralization Target Amount” and “Group 2 Overcollateralization Target Amount.”

²⁵ See definitions of such terms in PSA § 1.01.

maintain a certain percentage of overcollateralization. Subsequent Recovery cash can affect the overcollateralization-related calculations because it is included in principal and cash payments of principal reduce Certificate Principal Balances.

32. In this context, the phrase “order of operations” refers to the time order on any Distribution Date in which the Trust Administrator increases Certificate Principal Balances, performs overcollateralization-related calculations, distributes cash, and allocates Applied Realized Loss Amounts. The order in which these tasks are performed on any Distribution Date can affect other waterfall-related calculations.

33. Based on its interpretation of the PSA, the Trust Administrator would distribute the Trust Settlement Payment as a Subsequent Recovery in accordance with the “write up first” method. Using this method, the Trust Administrator would *first*, write up the Certificate Principal Balances of any Classes of Certificates to which Subsequent Recoveries will be allocated in accordance with Sections 4.02(f) and 4.03(f); *second*, make the necessary overcollateralization-related calculations for that month; *third*, distribute the principal Subsequent Recovery cash (along with the related monthly Mortgage Loan collections) to the relevant Classes of Certificates in accordance with the PSA priorities and terms; and *fourth*, allocate Applied Realized Loss Amounts in accordance with Sections 4.02(e) and 4.03(e).

34. The alternative order of operations—referred to as the “pay first” method—would be to reverse the order of the increase to Certificate Principal Balances and the distribution: *first*, make the necessary overcollateralization-related calculations for that month; *second*, distribute the principal Subsequent Recovery cash (along with the related monthly Mortgage Loan collections) to the relevant Classes of Certificates; *third*, write up the Certificate Principal Balances of any Classes of Certificates to which Subsequent Recoveries will be allocated in accordance with

Sections 4.02(f) and 4.03(f); and *fourth*, allocate Applied Realized Loss Amounts in accordance with Sections 4.02(e) and 4.03(e).

35. The issue of which method—“write up first” or “pay first”—should be applied has arisen in actions involving the distribution of proceeds from other RMBS settlements. As holders of certificates in those trusts and other interested parties have advocated for one or the other method, Certificateholders may seek to advocate for one or the other method here, regardless of the Trust Administrator’s interpretation of the proper order of operations based on the PSA.

C. PSA Support for the “Write Up First” Method of Order of Operations

36. The Trust Administrator interprets the PSA to require the “write up first” method for the distribution of the Trust Settlement Payment. The defined terms “Certificate Principal Balance” and “Unpaid Realized Loss Amounts” used in the PSA’s “write up” provisions at Sections 4.02(f) and 4.03(f) (the “Write Up Provisions”) support the “write up first” method. The Write Up Provisions generally provide that, if a Class of Certificates has been allocated an Applied Realized Loss Amount, any Subsequent Recoveries are applied to increase the Class Principal Balance²⁶ of certain Classes, **but only to the extent of Unpaid Realized Loss Amounts applicable to that Class:**

On each Distribution Date, the Trust Administrator shall allocate the amount of the Subsequent Recoveries with respect to Group 1 Loans, if any, **to increase the Class Principal Balance** of the Classes of Group 1 Certificates **to which Group 1 Applied Realized Loss Amounts have been previously allocated**, *first*, pro rata based on the Group 1 Applied Realized Loss Amounts previously allocated the Subgroup 1-1 Certificates and Subgroup 1-2 Certificates: (a) sequentially, to the Class 1-1A1 and Class 1-1A2 Certificates (or, with respect to the Class 1-1A2 Certificates, to the extent that Group 1 Applied Realized Loss Amounts have been covered by payments under the Certificate Insurance Policy, to the Certificate Insurer), **in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount for each such Class** and (b) sequentially, to the Class 1-

²⁶ The PSA defines “Class Principal Balance” as “the aggregate of the Certificate Principal Balances of all Certificates of such Class as of such date.” PSA § 1.01, definition of “Class Principal Balance.”

2A1 and Class 1-2A2 Certificates (or, with respect to the Class 1-2A2 Certificates, to the extent that Group 1 Applied Realized Loss Amounts have been covered by payments under the Certificate Insurance Policy, to the Certificate Insurer), **in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount for each such Class**, and *second*, sequentially, to the Class 1-A3, Class 1-M1, Class 1-M2, Class 1-M3, Class 1-M4, Class 1-M5 Certificates, in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount of such Class.²⁷

1. Definition of Certificate Principal Balance

37. The definition of Certificate Principal Balance supports the “write up first” method for processing Subsequent Recoveries.²⁸ It does so because the definition suggests a specific order to the steps for calculating a Certificate Principal Balance. The calculation begins by adding to the Denomination, or the initial principal balance, of the related Certificate any increases to the original balance resulting from the application of Subsequent Recoveries up to the amount of such

²⁷ PSA § 4.02(f) (emphasis added). Section 4.03(f) establishes a similar order of priority and *pro rata* basis for writing up or increasing Certificate Principal Balances of the Group 2 Senior Certificates in the amount of Subsequent Recoveries for the Group 2 Mortgage Loans. *See* PSA § 4.03(f).

²⁸ The PSA defines “Certificate Principal Balance” as:

With respect to any Certificate (other than the Interest Only Certificates and Class C Certificates) at any date, the maximum dollar amount of principal to which the Holder thereof is then entitled under this Agreement, such amount being equal to the Denomination of that Certificate **(A) plus any increase to the Certificate Principal Balance of such Certificate pursuant to Section 4.02 due to the receipt of Subsequent Recoveries and (B) minus the sum of (i) all distributions of principal previously made with respect to that Certificate; provided, however,** that solely for purposes of determining the Premium Distribution Amount payable to the Certificate Insurer and the Certificate Insurer’s rights as subrogee to the Holders of the Insured Certificates, the Certificate Principal Balance of any Insured Certificate shall be deemed not to be reduced by any principal amounts paid to the Holder thereof from payments made by the Certificate Insurer under the Certificate Insurance Policy, unless such amounts have been reimbursed to the Certificate Insurer pursuant to Section 4.02, **and (ii) any Applied Realized Loss Amounts allocated to such Certificate on previous Distribution Dates pursuant to Section 4.02(c) without duplication; provided, however,** that to the extent that any Realized Loss was paid under the Certificate Insurance Policy, any Subsequent Recoveries payable to any of the Insured Certificates shall be payable to the Certificate Insurer

PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added).

The Trust Administrator notes that there are several section references in the definition of Certificate Principal Balance that are incorrect. Because the definition applies to Group 1 and Group 2 Certificates, the reference to “Section 4.02” in clause (A) should be “Sections 4.02 and 4.03.” The reference to “Section 4.02(c)” in clause (ii) should be “Sections 4.02(e) and 4.03(e).” Sections 4.02(e) and 4.03(e) discuss the allocation of Applied Realized Loss Amounts.

Certificate’s Applied Realized Loss Amounts.²⁹ Then, the Trust Administrator **subtracts** from this increased balance (1) all principal **previously** paid to that Certificate, and (2) any Applied Realized Loss Amounts allocated to the Certificate on **previous** Distribution Dates.

38. Although the amount subtracted from the Certificate Principal Balance in clause (B) is limited to “distributions of principal **previously made**” and “Applied Realized Loss Amounts allocated . . . on **previous** Distribution Dates” (emphasis added), there is no such time limitation on the amount of Subsequent Recoveries added to the Denomination in clause (A) of the calculation.³⁰ Thus, the amount of Subsequent Recoveries included in the calculation encompasses Subsequent Recoveries applied in the current payment period, but **not** principal paid or Applied Realized Loss Amounts allocated in the current payment period. Accordingly, the provision appears to require the write up of Certificate Principal Balances before paying principal or allocating Applied Realized Loss Amounts for any given Distribution Date.

2. Definition of Unpaid Realized Loss Amount

39. The definition of Unpaid Realized Loss Amount,³¹ which is used in the Write Up Provisions to limit the amount by which a Certificate can be written up, effectively requires the “write up first” method. The Unpaid Realized Loss Amount is, essentially, the outstanding unreimbursed Applied Realized Loss Amount allocated to any Certificate in prior payment periods. The Trust Administrator, therefore, must first determine the level of Unpaid Realized

²⁹ PSA § 1.01, definition of “Denomination.”

³⁰ PSA § 1.01, definition of “Certificate Principal Balance.”

³¹ The PSA defines “Unpaid Realized Loss Amount” as:

For any Class of Certificates, (x) the portion of the aggregate Applied Realized Loss Amount previously allocated to that Class **remaining unpaid from prior Distribution Dates** minus (y) any increase in the Class Principal Balance of that Class due to the allocation of Subsequent Recoveries to the Class Principal Balance of that Class.

PSA § 1.01, definition of “Unpaid Realized Loss Amount” (emphasis added).

Loss Amounts outstanding for the relevant Classes of Certificates from prior payment periods before writing up the Certificate Principal Balances in the amount of any Subsequent Recoveries in accordance with the Write Up Provisions.

40. The Unpaid Realized Loss Amount calculation starts with the aggregate outstanding Applied Realized Loss Amounts previously allocated to that Class **and remaining unpaid from prior Distribution Dates**. Thus, for any Distribution Date, the Unpaid Realized Loss Amount used to limit the allocation of the increased Certificate Principal Balance amounts in the Write Up Provisions is calculated **only for prior payment periods**. The calculation does not include Applied Realized Loss Amounts for the **current** period because an Applied Realized Loss Amount in the current period has not yet become an Unpaid Realized Loss Amount. The only way to ensure that Unpaid Realized Loss Amounts relate to **prior periods only** is to first increase the Certificate Principal Balances for Subsequent Recoveries (per Sections 4.02(f) and 4.03(f)) before paying principal (per Sections 4.02(b) and 4.03(b)) and allocating Applied Realized Loss Amounts (per Sections 4.02(e) and 4.03(e)).

D. Request for Instruction Regarding Order of Operations for Distribution of Trust Settlement Payment

41. Because of the PSA's support for the "write up first" method, the Trust Administrator generally uses that method to process Subsequent Recoveries. Since the Trust Settlement Payment will be treated as a Subsequent Recovery per the Settlement Agreement, it is appropriate to use the same method for processing the Trust Settlement Payment. In sum, using the "write up first" method to process the Trust Settlement Payment, the Trust Administrator would first increase the Certificate Principal Balances of the relevant Certificates in the manner set forth in Sections 4.02(f) or 4.03(f) by the amount of Subsequent Recoveries received, including the Trust Settlement Payment. The Trust Administrator would then perform the overcollateralization

calculations necessary to calculate principal payments, including the Trust Settlement Payment, for the Certificates. Next, the Trust Administrator would pay the interest and principal funds, including the Trust Settlement Payment, through the appropriate waterfalls. Finally, the Trust Administrator would allocate any Applied Realized Loss Amounts in accordance with Sections 4.02(e) and 4.03(e). Certificateholders and (depending on how the Court addresses the second and third issues for trust instruction discussed below) possibly the Certificate Insurer will receive the Trust Settlement Payment. If the Trust Settlement Payment is distributed in accordance with the “pay first” method, depending on how the Court addresses the second and third issues for trust instruction discussed below, it is probable that a significant amount of the Trust Settlement Payment will be distributed to the Certificate Insurer.

42. The Trust Administrator therefore seeks instruction from the Court that authorizes, approves, and instructs the Trust Administrator regarding the order of operations for the Trust Administrator to follow. Specifically, the Trust Administrator seeks an order that authorizes, approves, and instructs the Trust Administrator to use the “write up first” method to distribute Subsequent Recoveries, including the Trust Settlement Payment.

IV. SECOND ISSUE FOR TRUST INSTRUCTION—Extent of Any Distribution of the Trust Settlement Payment to the Certificate Insurer Given the Assured 2013 Letter

43. The second issue for trust instruction concerns whether the Certificate Insurer is entitled to any portion of the Trust Settlement Payment given the Assured 2013 Letter (Exhibit 4) in which the Certificate Insurer directed the Trustee “to exclude from any award and/or settlement of the [Putback Action] any amounts owed to [Assured] as Certificate Insurer or in its capacity as a subrogated holder.”

A. Interest in the Certificate Insurer's Rights

44. Soon after the Assured 2013 Letter, Assured and Battenkill Insurance Company, LLC ("Battenkill"), a subsidiary of UBS RESI, entered into the Quota Share Reinsurance Agreement, dated July 11, 2013 (the "Reinsurance Agreement"). A copy of the Reinsurance Agreement is attached as Exhibit 10. Pursuant to the Reinsurance Agreement, the parties agreed that Battenkill will provide Assured with reinsurance for the several insurance policies that Assured had issued, including the Policy.³² Battenkill agreed to indemnify Assured for 85 percent of the amount that Assured pays in satisfaction of claims under the Policy, subject to certain exclusions.

45. As further described below, the PSA grants Assured certain reimbursement rights. The PSA also suggests that Assured may have certain additional subrogation rights, although (as explained below) the nature of those subrogation rights is unclear. Assured's direction in the Assured 2013 Letter may affect these rights.

B. Request for Instruction

46. The Trust Administrator therefore seeks instruction regarding whether Assured (or any of its successors-in-interest or assigns) is entitled to any portion of the Trust Settlement Payment given the Assured 2013 Letter, whether by reimbursement, any subrogation rights that it may have under the PSA, or both.

V. THIRD ISSUE FOR TRUST INSTRUCTION – The Certificate Insurer's Rights with Respect to Subsequent Recoveries, Including the Trust Settlement Payment

47. If the Court concludes that the Assured 2013 Letter does not preclude Assured (or any of its successors-in-interest or assigns) from receiving any portion of the Trust Settlement

³² See Reinsurance Agreement, Schedule A.

Payment, the Trust Administrator seeks instruction concerning the interpretation of certain Certificate Insurer provisions in the PSA. The interpretation of those provisions could materially impact which Classes of Certificates receive a portion of the Trust Settlement Payment and the amount of that portion that any such Classes receive.

A. Background – Certificate Insurer Reimbursement and Subrogation Provisions Relevant to the Trust Settlement Payment

1. Certificate Insurer Reimbursement Amounts

48. For each of the four Certificate Subgroups (1-1, 1-2, 2-1, 2-2), the PSA defines a Certificate Insurer Reimbursement Amount term.³³ For example, the term “Subgroup 1-1 Certificate Insurer Reimbursement Amount” is defined as:

With respect to any Distribution Date, any amount owing to the Certificate Insurer under Section 4.02 or 4.07 for reimbursement, with interest, for claims paid with respect to the Class 1-1A2 Certificates under the Certificate Insurance Policy and any amounts with respect to the Class 1-1A2 Certificates owing to the Certificate Insurer and remaining unpaid for such Distribution Date.³⁴

³³ The Group 1 Certificate Insurer Reimbursement Amount applies to claims paid on the insured Group 1 Certificates. More specifically, the “Subgroup 1-1 Certificate Insurer Reimbursement Amount” applies to claims paid on the insured Class 1-1A2 Certificates, and the “Subgroup 1-2 Certificate Insurer Reimbursement Amount” applies to claims paid on the insured Class 1-2A2 Certificates. The “Subgroup 1-1 Certificate Insurer Reimbursement Amount” and the “Subgroup 1-2 Certificate Insurer Reimbursement Amount” are together referred to as the “Group 1 Certificate Insurer Reimbursement Amount.” See PSA § 1.01, definitions of “Subgroup 1-1 Certificate Insurer Reimbursement Amount,” “Subgroup 1-2 Certificate Insurer Reimbursement Amount,” and “Group 1 Certificate Insurer Reimbursement Amount.”

The Group 2 Certificate Insurer Reimbursement Amount applies to claims paid on the insured Group 2 Certificates. More specifically, the “Subgroup 2-1 Certificate Insurer Reimbursement Amount” applies to claims paid on the insured Class 2-1A2 Certificates, and the “Subgroup 2-2 Certificate Insurer Reimbursement Amount” applies to claims paid on the insured Class 2-2A3 and 2-2A6 Certificates. The “Subgroup 2-1 Certificate Insurer Reimbursement Amount” and the “Subgroup 2-2 Certificate Insurer Reimbursement Amount” are together referred to as the “Group 2 Certificate Insurer Reimbursement Amount.” See PSA § 1.01, definitions of “Subgroup 2-1 Certificate Insurer Reimbursement Amount,” “Subgroup 2-2 Certificate Insurer Reimbursement Amount,” and “Group 2 Certificate Insurer Reimbursement Amount.”

³⁴ PSA § 1.01, definition of “Subgroup 1-1 Certificate Insurer Reimbursement Amount.”

The definitions for the other Certificate Insurer Reimbursement Amount terms are similar.³⁵ This Petition collectively refers to the four Certificate Insurer Reimbursement Amount terms—Subgroup 1-1 Certificate Insurer Reimbursement Amount, Subgroup 1-2 Certificate Insurer Reimbursement Amount, Subgroup 2-1 Certificate Insurer Reimbursement Amount, and Subgroup 2-2 Certificate Insurer Reimbursement Amount—as the “CIRA Definitions.”

49. The CIRA Definitions reflect, for each Subgroup’s Insured Certificate(s) and any Distribution Date: (i) amounts owing to the Certificate Insurer under Sections 4.02 and 4.07 for reimbursement, with interest, for claims paid (“CIRA Reimbursement Amounts”), and (ii) any amounts with respect to the related Insured Certificates owing to the Certificate Insurer and remaining unpaid for such Distribution Date (“CIRA Subrogation Amounts”).³⁶ The CIRA Reimbursement Amounts do not distinguish between interest and principal claims paid by the Certificate Insurer, and the CIRA Subrogation Amounts do not distinguish between interest and principal on the related Insured Certificates owed to the Certificate Insurer. Rather, the CIRA Reimbursement Amounts and the CIRA Subrogation Amounts include both interest and principal.

50. The CIRA Definitions appear in numerous points in the “waterfall” provisions.³⁷ There are sixteen points in the PSA waterfalls at which the CIRA Definitions appear (the “Waterfall CIRA Provisions”):

³⁵ See PSA § 1.01, definitions of “Subgroup 1-2 Certificate Insurer Reimbursement Amount,” and “Group 1 Certificate Insurer Reimbursement Amount,” “Subgroup 2-1 Certificate Insurer Reimbursement Amount,” Subgroup 2-2 Certificate Insurer Reimbursement Amount,” and “Group 2 Certificate Insurer Reimbursement Amount.” The Certificate Insurer currently has outstanding unreimbursed claims for each of the five Classes of Insured Certificates.

³⁶ See MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *9 (“In sum, the definition of ‘Certificate Insurer Reimbursement Amount’ refers to two distinct forms of repayment to which Assured is entitled: (1) reimbursement for claims paid, and (2) payment of amounts owed with respect to the certificates themselves.”).

³⁷ The interest waterfalls are in Sections 4.02(a) and 4.03(a). The principal waterfalls are in Sections 4.02(b) and 4.03(b). The Net Monthly Excess Cashflow waterfalls are in Sections 4.02(c) and 4.03(c).

Section 4.02 – Group 1 Certificate Waterfall CIRA Provisions	
§ 4.02(a)(2)(B)(b)	After paying all interest to the Group 1 Senior Certificates but before paying interest to the Group 1 Mezzanine Certificates
§ 4.02(b)(A)(1)(a)(ii)	After paying the Subgroup 1-1 Principal Distribution Amount to the Subgroup 1-1 Certificates
§ 4.02(b)(A)(1)(b)(ii)	After paying the Subgroup 1-2 Principal Distribution Amount to the Subgroup 1-2 Certificates
§ 4.02(b)(A)(2)	After paying the Group 1 Principal Distribution Amount to the Group 1 Senior Certificates and before paying principal to the Group 1 Mezzanine Certificates
§ 4.02(b)(B)(1)(a)(ii)	After paying the Subgroup 1-1 Senior Principal Distribution Amount to the Subgroup 1-1 Certificates
§ 4.02(b)(B)(1)(b)(ii)	After paying the Subgroup 1-2 Senior Principal Distribution Amount to the Subgroup 1-2 Certificates
§ 4.02(b)(B)(2)	After paying the Group 1 Senior Principal Distribution Amount to the Group 1 Senior Certificates and before paying principal to the Group 1 Mezzanine Certificates
§ 4.02(c)(3)	From the Group 1 Net Monthly Excess Cashflow

Section 4.03 – Group 2 Certificate Waterfall CIRA Provisions	
§ 4.03(a)(2)(B)(b)	After paying all interest to the Group 2 Senior Certificates but before paying interest to the Group 2 Mezzanine Certificates
§ 4.03(b)(A)(1)(a)(ii)	After paying the Subgroup 2-1 Principal Distribution Amount to the Subgroup 2-1 Certificates
§ 4.03(b)(A)(1)(b)(ii)	After paying the Subgroup 2-2 Principal Distribution Amount to the Subgroup 2-2 Certificates
§ 4.03(b)(A)(2)	After paying the Group 2 Principal Distribution Amount to the Group 2 Senior Certificates and before paying principal to the Group 2 Mezzanine Certificates
§ 4.03(b)(B)(1)(a)(ii)	After paying the Subgroup 2-1 Senior Principal Distribution Amount to the Subgroup 2-1 Certificates
§ 4.03(b)(B)(1)(b)(ii)	After paying the Subgroup 2-2 Senior Principal Distribution Amount to the Subgroup 2-2 Certificates
§ 4.03(b)(B)(2)	After paying the Group 2 Senior Principal Distribution Amount to the Group 2 Senior Certificates and before paying principal to the Group 2 Mezzanine Certificates
§ 4.03(c)(3)	From the Group 2 Net Monthly Excess Cashflow

In addition to the sixteen different Waterfall CIRA Provisions, the CIRA Definitions are used in seven more provisions of the PSA:

Additional Occurrences of CIRA Definitions	
§ 4.07(b)(3)	From the Group 1 Certificate Cap Account
§ 4.07(b)(4)	From the Group 1 Certificate Cap Account
§ 4.08(b)(3)	From the Group 2 Certificate Cap Account
§ 4.08(b)(4)	From the Group 2 Certificate Cap Account
§ 4.11(4)	From the Class 2-2A3 Basis Risk Cap Account
§ 4.14(2)	From the Group 2 Credit Enhancement Reserve Fund
§ 4.14(3)	From the Group 2 Credit Enhancement Reserve Fund

These additional seven PSA sections and the sixteen Waterfall CIRA Provisions are together referred to herein as the “CIRA Provisions” and constitute the numerous points at which the Certificate Insurer can receive CIRA Reimbursement Amounts and CIRA Subrogation Amounts.

2. The Certificate Insurer’s Rights to Certain Subsequent Recovery Cash

51. The Certificate Insurer may be entitled to certain Subsequent Recoveries per the PSA’s definition of Certificate Principal Balance, which provides that “to the extent that any Realized Loss was paid under the Certificate Insurance Policy, any Subsequent Recoveries **payable to any of the Insured Certificates** shall be payable to the Certificate Insurer” (the “CISR Provision”).³⁸ That is, Subsequent Recovery cash that would be payable to the Insured Certificates may, instead, be payable to the Certificate Insurer if it had covered the related Realized Loss under the Policy. The Certificate Insurer is not, however, entitled to any Subsequent Recoveries received by the Trust that are not payable to the Insured Certificates.

3. Potential Rights of the Certificate Insurer Under the Write Up Provisions

52. Each dollar of Subsequent Recovery cash received by any Class of Certificate also results in a corresponding increase to the Certificate Principal Balance of certain Classes of Certificates pursuant to the Write Up Provisions in Sections 4.02(f) and 4.03(f). The purpose of the dollar-for-dollar increase in Certificate Principal Balances is to reverse the reduction of such balances that occurred when Applied Realized Loss Amounts were allocated to the Certificates.

53. The Write Up Provisions could be interpreted to imply that the Certificate Insurer can receive the benefit of any write up to the Certificate Principal Balance of the Insured Certificates. Section 4.02(f), pertaining to the Group 1 Certificates, provides:

³⁸ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added); *see also* footnote 28 for the entire Certificate Principal Balance definition. “CISR” is an acronym for Certificate Insurer Subsequent Recovery.

Application of Subsequent Recoveries. On each Distribution Date, the Trust Administrator shall allocate the amount of the Subsequent Recoveries with respect to Group 1 Loans, if any, to increase the Class Principal Balance of the Classes of Group 1 Certificates to which Group 1 Applied Realized Loss Amounts have been previously allocated, *first*, pro rata based on the Group 1 Applied Realized Loss Amounts previously allocated the Subgroup 1-1 Certificates and Subgroup 1-2 Certificates: (a) sequentially, to the Class 1-1A1 and Class 1-1A2 Certificates (**or, with respect to the Class 1-1A2 Certificates, to the extent that Group 1 Applied Realized Loss Amounts have been covered by payments under the Certificate Insurance Policy, to the Certificate Insurer**), in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount for each such Class and (b) sequentially, to the Class 1-2A1 and Class 1-2A2 Certificates (**or, with respect to the Class 1-2A2 Certificates, to the extent that Group 1 Applied Realized Loss Amounts have been covered by payments under the Certificate Insurance Policy, to the Certificate Insurer**), in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount for each such Class, and *second*, sequentially, to the Class 1-A3, Class 1-M1, Class 1-M2, Class 1-M3, Class 1-M4, Class 1-M5 Certificates, in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount of such Class.³⁹

Section 4.03(f), pertaining to the Group 2 Certificates, reads similarly.⁴⁰ The emphasized language in Section 4.02(f) excerpted above, and the corresponding statements in Section 4.03(f), are referred to collectively herein as the “CIWU Provisions.”⁴¹

4. PSA References to Subrogation

54. Subrogation is “the principle under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy.”⁴² The PSA discusses subrogation in several places.

³⁹ PSA § 4.02(f) (emphasis added).

⁴⁰ See PSA § 4.03(f). “CIWU” is an acronym for Certificate Insurer Write Up.

⁴¹ The CIWU Provisions are unique to this PSA and do not appear in the corresponding sections of the 2007-1 PSA and the 2006-OA2 PSA that discuss the application of Subsequent Recoveries.

⁴² Black’s Law Dictionary (10th ed. 2014).

55. Section 12.04(f) states “. . . to the extent the Certificate Insurer makes payments, directly or indirectly, on account of principal of or interest on any Insured Certificates, **the Certificate Insurer will be fully subrogated to the rights of the Holders of such Insured Certificates to receive such principal and interest from the Trust Fund . . .**”⁴³

56. Section 12.05 states “. . . (i) to the extent the Certificate Insurer makes payments, directly or indirectly, on account of principal of or interest on any Insured Certificate to the Holder of such Certificate, **the Certificate Insurer will be fully subrogated to the rights of such Holder to receive such principal and interest from the Trust Fund and (ii) the Certificate Insurer shall be paid such principal and interest but only from the sources and in the manner provided herein for the payment of such principal and interest.**”⁴⁴

57. The definition of Certificate Principal Balance states “that solely for purposes of determining the . . . **Certificate Insurer’s rights as subrogee** to the Holders of the Insured Certificates, the Certificate Principal Balance of any Insured Certificate shall be deemed not to be reduced by any principal amounts paid to the Holder thereof from payments made by the Certificate Insurer under the Certificate Insurance Policy, unless such amounts have been reimbursed to the Certificate Insurer pursuant to Section 4.02”⁴⁵

58. Finally, Section 12.04(f) further states that, “solely for purposes of determining the Premium Distribution Amount payable to the Certificate Insurer and the Certificate Insurer’s rights, as applicable, **as subrogee for payments distributable pursuant to Section 4.02**, any payment with respect to distributions to the Insured Certificates which is made with funds received

⁴³ PSA § 12.04(f) (emphasis added).

⁴⁴ PSA § 12.05 (emphasis added).

⁴⁵ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added).

pursuant to the terms of the Certificate Insurance Policy, shall not be considered payment of the Insured Certificates from the Trust Fund and shall not result in the distribution or the provision for the distribution in reduction of the Class Certificate Balance of the Insured Certificates within the meaning of Article IV.”⁴⁶

59. As mentioned above, while the second part of each CIRA Definition (“ . . . and any amounts with respect to the [given Class of Insured] Certificates owing to the Certificate Insurer and remaining unpaid for such Distribution Date”)⁴⁷ does not use the word “subrogation,” the court in the MARM 2007-3 Interpleader Order construed such second part as referring to subrogation.⁴⁸

60. The PSA provisions described immediately above are referred to herein as the “PSA Subrogation Provisions.” The PSA does not further discuss how these subrogation provisions should be implemented and administered.

B. Issues with the Relevant CI Provisions

61. As stated above, the Trust Administrator seeks instruction regarding various issues concerning the interpretation of the PSA Subrogation Provisions, the CIRA Provisions, the CISR Provision, and the CIWU Provisions (collectively, the “Relevant CI Provisions”). The Relevant CI Provisions raise a number of questions concerning the points in the waterfalls at which the Certificate Insurer is entitled to repayment, whether such repayment is by reimbursement, subrogation, or both, and whether and how the Trust Administrator should perform certain calculations in light of the Certificate Insurer’s rights. The resolution of these issues and the

⁴⁶ PSA § 12.04(f) (emphasis added).

⁴⁷ See the CIRA Definitions in Section 1.01.

⁴⁸ See MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *9.

detailed items for instruction below will substantially affect the distribution of the Trust Settlement Payment and may result in significant distributions to the Certificate Insurer (or any of its successors-in-interest or assigns).

1. Issues with the CIRA Provisions

62. There are several issues involving the CIRA Provisions that must be resolved before distributing the Trust Settlement Payment.

63. The court in the MARM 2007-3 Interpleader Order determined that one reasonable reading of the PSA was that the Certificate Insurer possessed both subrogation rights and a separate right of reimbursement.⁴⁹ That determination appears to have been based primarily on the court’s reading of the CIRA Definitions and certain PSA Subrogation Provisions.⁵⁰

64. Because the court dismissed the case before fully resolving the issue, the court never resolved whether the Waterfall CIRA Provisions represent the **only** points at which the Certificate Insurer could be paid the CIRA Subrogation Amounts. In other words, the court never resolved whether the multiple points in the waterfalls at which the CIRA Definitions are used represent the **only** points at which the Certificate Insurer could be paid any amounts with respect to the related Insured Certificates owing to the Certificate Insurer and remaining unpaid for such Distribution Date. The PSA Subrogation Provisions suggest that the Certificate Insurer could be paid for CIRA Subrogation Amounts at the same places in the waterfall at which the Insured Certificates would be paid. Accordingly, it remains unclear and unresolved at which points in the waterfalls the Certificate Insurer should be paid CIRA Subrogation Amounts.

⁴⁹ *Id.* at *11-12.

⁵⁰ *Id.*

2. Issues with the CISR Provision

65. As discussed in Section V.A.2 above, the Certificate Insurer may be entitled to certain Subsequent Recoveries allocable to the Insured Certificates if the Certificate Insurer covered the related Applied Realized Loss Amount. This potential right is set forth in the CISR Provision, which states: “. . . that to the extent that any Realized Loss was paid under the Certificate Insurance Policy, any Subsequent Recoveries **payable to any of the Insured Certificates** shall be payable to the Certificate Insurer.”⁵¹ The CISR Provision presents several issues.

66. *First*, the phrase “payable to the Insured Certificates” in the CISR Provision is unclear in the context of directing Subsequent Recovery cash to the Certificate Insurer. Currently, all of the Insured Certificates except the Class 2-2A3 Certificates have paid off and have a Certificate Principal Balance of zero. Those Certificates were paid off by a combination of collections on the Mortgage Loans and payments by the Certificate Insurer under the Policy. The PSA directs distributions of principal, which include Subsequent Recoveries (and, hence, the Trust Settlement Payment), until the Certificate Principal Balance of the relevant Class of Certificates is reduced to zero.⁵² After a Class of Certificates’ balance is reduced to zero, it is no longer entitled to receive funds through the waterfall—*i.e.*, no funds are **payable** to a Class of Insured Certificates with a zero balance.

67. Accordingly, one interpretation of the phrase “payable to the Insured Certificates” in the CISR Provision is that, if the Insured Certificates no longer exist because they have a zero

⁵¹ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added); *see also* paragraphs 37 and 38 of this Petition and footnote 28 for the entire Certificate Principal Balance definition.

⁵² *See, e.g.*, PSA § 4.02(b) (directing principal payments to various Classes of Certificates “. . . until their respective Certificate Principal Balances are reduced to zero”).

balance, then no Subsequent Recoveries are “payable to” such Insured Certificates. In turn, no Subsequent Recoveries would be payable to the Certificate Insurer.

68. The PSA’s definition of Certificate Principal Balance states in the proviso before the CISR Provision “that solely for purposes of determining . . . the Certificate Insurer’s rights as **subrogee** to the Holders of the Insured Certificates, the Certificate Principal Balance of any Insured Certificate shall be deemed not to be reduced by any principal amounts paid to the Holder thereof from payments made by the Certificate Insurer under the Certificate Insurance Policy.”⁵³ There are other PSA Subrogation Provisions that echo that general concept.⁵⁴ Thus, an alternative interpretation of the CISR Provision would be to construe “payable to the Insured Certificates” in light of the proviso preceding the CISR Provision and not in light of the principal waterfall provisions (directing principal payments to various Classes of Certificates “until their respective Certificate Principal Balances are reduced to zero”). Under such alternative interpretation of the CISR Provision, any past reductions in the Certificate Principal Balance of the Insured Certificates from unreimbursed payments of principal by the Certificate Insurer under the Policy would be disregarded for the purpose of determining such Certificates’ allocable share of such Subsequent Recoveries. This alternative interpretation, however, is not express, and the PSA makes clear that the Trust Administrator has no duty to effectuate anything outside of the express provisions of the PSA.⁵⁵

⁵³ *Id.* §1.01, definition of “Certificate Principal Balance” (emphasis added).

⁵⁴ *See, e.g.*, PSA § 12.04(f) (“Anything herein to the contrary notwithstanding, solely for purposes of determining the Premium Distribution Amount payable to the Certificate Insurer and the Certificate Insurer’s rights, as applicable, as subrogee for payments distributable pursuant to Section 4.02, any payment with respect to distributions to the Insured Certificates which is made with funds received pursuant to the terms of the Certificate Insurance Policy, shall not be considered payment of the Insured Certificates from the Trust Fund and shall not result in the distribution or the provision for the distribution in reduction of the Class Certificate Balance of the Insured Certificates within the meaning of Article IV.”).

⁵⁵ *See* PSA § 9.01(i) (“the duties and obligations of the Trust Administrator shall be determined solely by the **express** provisions of this Agreement, the Trust Administrator shall not be liable except for the performance of such duties

69. While the CISR Provision follows this proviso in the definition of “Certificate Principal Balance,” the CISR Provision does not expressly indicate that it is a right which the Certificate Insurer has **as a subrogee**, which would trigger the proviso’s directive to not reduce the Certificate Principal Balance of any Insured Certificate by amounts paid under the Policy. The PSA nowhere identifies the specific rights that the Certificate Insurer has as a subrogee which would be subject to such proviso. Although the PSA Subrogation Provisions suggest that the Certificate Insurer has general subrogation rights, nowhere does the PSA distinguish the Certificate Insurer’s specific rights to subrogation from its rights to reimbursement.

70. This question is important for directing Subsequent Recoveries to the Certificate Insurer. For purposes of the Trust Settlement Payment, if the CISR Provision is interpreted so that Subsequent Recoveries are allocable to an Insured Certificate even after the Insured Certificate’s balance is reduced to zero, it is probable that substantial portions of the Trust Settlement Payment will be distributed to the Certificate Insurer. Certain Certificateholders may not anticipate this result or agree with this interpretation of the CISR Provision, which is one reason the Trust Administrator has initiated this action.

71. *Second*, if the CISR Provision is interpreted in such a manner as to disregard any past reductions in the Certificate Principal Balance of such Insured Certificates from unreimbursed payments of principal by the Certificate Insurer under the Policy for the purpose of determining such Certificates’ allocable share of such Subsequent Recoveries, then several other issues arise:

- i. The Trust Administrator will need to maintain a separate balance for the Insured Certificates for the purpose of determining such Certificates’ allocable share of Subsequent Recoveries equal to the Certificate Insurer Reimbursement Amount for the related Insured Certificate (for each Insured

and obligations as are specifically set forth in this Agreement, **no implied covenants or obligations shall be read into this Agreement against the Trust Administrator...**) (emphasis added). *See also* PSA § 9.01 (“The Trust Administrator shall undertake to perform such duties and only such duties **as are specifically set forth in this Agreement**) (emphasis added).

Certificate, the “Related CIRA Balance”), but there is no instruction in the PSA regarding how to calculate that balance.

- ii. Whether, since Subsequent Recoveries are recoveries of principal losses, the Related CIRA Balance is limited to outstanding principal claims paid by the Certificate Insurer or also includes outstanding interest claims paid by the Certificate Insurer.
- iii. Whether the Related CIRA Balance also includes the accrued interest on such outstanding principal and/or interest claim.⁵⁶
- iv. Whether the Related CIRA Balance is reduced/increased as the outstanding claims comprising such balance increase/decrease.

None of these issues are addressed in the PSA. As a result, the Trust Administrator has been unable to apply the CISR Provision in such a manner as to disregard any past reductions in the Certificate Principal Balance of such Insured Certificates from payments of principal by the Certificate Insurer under the Policy for the purpose of determining such Certificates’ share of such Subsequent Recoveries.

72. *Third*, the PSA is unclear whether the CISR Provision is a subrogation right, a separate reimbursement right, or both. The PSA Subrogation Provisions do not expressly identify the CISR Provision as a subrogation right. Given that the CISR Provision itself does not mention the word “subrogation,” it is reasonable to conclude that the CISR Provision is a reimbursement right separate from any subrogation concepts and separate from the CIRA Provisions. On the other hand, the CISR Provision could be interpreted as a subrogation right because it directs certain Subsequent Recoveries that are payable to the Insured Certificates to the Certificate Insurer. If that were the proper interpretation, the question of whether Subsequent Recovery cash would be payable to the Certificate Insurer under the second prong of the CIRA Definitions and thus from

⁵⁶ The CIRA Definitions refer to accrued interest on amounts owed to the Certificate Insurer.

the CIRA Provisions in the principal waterfall, or payable to the Certificate Insurer at the same point in the principal waterfalls at which the Insured Certificates receive principal arises.

73. In addition, there is no reference to the Certificate Insurer receiving Subsequent Recovery cash in any of the defined terms relating to the distribution of principal (*e.g.*, Principal Remittance Amount, Group 1 and Group 2 Principal Distribution Amount, *etc.*) or in the principal waterfalls. The only reference to the Certificate Insurer receiving Subsequent Recovery cash is in the definition of a balance-related term.

74. *Fourth*, the Putback Action included claims for liquidated loans and active loans, but only past actual loan losses that caused Applied Realized Loss Amounts resulted in claims under the Policy that were paid by the Certificate Insurer. The Class 1-1A2, 1-2A2, 2-1A2, and 2-2A6 Insured Certificates all have a current balance of zero. Accordingly, the Certificate Insurer will pay no further claims on those Classes. Only Class 2-2A3 of the Insured Certificates currently has a balance. If the Certificate Insurer is entitled to receive any portion of the Trust Settlement Payment under the CISR Provision, the Trust Administrator will need instruction regarding whether the Certificate Insurer is entitled to receive the full amount of such portion of the Trust Settlement Payment or whether such portion should be reduced to account for the fact that the Certificate Insurer will pay no further claims on the Class 1-1A2, 1-2A2, 2-1A2, and 2-2A6 Insured Certificates because they have a zero balance.

75. *Fifth*, the PSA does not address how payments to the Certificate Insurer via subrogation impact the accounting of outstanding unreimbursed claims to which the Certificate Insurer also has a reimbursement right. If the CISR Provision is interpreted as a subrogation right, it is unclear whether funds paid to the Certificate Insurer under the CISR Provision should reduce, dollar for dollar, unreimbursed claim amounts that are eligible for reimbursement to the Certificate

Insurer, whether by reimbursement, subrogation, or both. The Relevant CI Provisions imply that such reduction is necessary (among other reasons) to avoid double recovery by the Certificate Insurer. This interpretation, however, is not express, and the PSA makes clear that the Trust Administrator has no duty to effectuate anything outside of the express provisions of the PSA.⁵⁷

3. Issues with the CIWU Provisions

76. As explained above, one possible interpretation of the CIWU Provisions is that they provide that an increased balance of an Insured Certificate should be maintained for the Certificate Insurer in the amount of Subsequent Recoveries allocated to that Insured Certificate. Among the Trusts, these provisions are unique to the PSA and are not found in the 2007-1 PSA and the 2006-OA2 PSA. Such Subsequent Recovery subrogation balance is referred to herein as an “SRS Balance.” There are numerous issues with implementing and administering this interpretation.

77. Under the PSA, when the Certificate Principal Balance of an uninsured Certificate is increased due to Subsequent Recoveries, that increase is accompanied by certain rights, including, but not limited to, accrued interest at the prescribed rate for the Certificate on the increased balance, the right to receive principal to pay down the increased balance, and additional voting rights. The increased balance is part of the issued security. The increase is also accompanied by certain future risks, including, but not limited to, the possibility of shortfalls of accrued interest on the increased balance, allocated losses that reduce the increased balance, and potential tax liability. These rights and risks are well understood because the PSA specifically addresses them in various provisions.

⁵⁷ See PSA § 9.01(i) (“the duties and obligations of the Trust Administrator shall be determined solely by the **express** provisions of this Agreement, the Trust Administrator shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, **no implied covenants or obligations shall be read into this Agreement against the Trust Administrator...**”) (emphasis added).

78. In contrast, the PSA is silent about the rights and risks that would accompany an SRS Balance created under the CIWU Provisions for the Certificate Insurer. For example, for the SRS Balance to accrue and receive interest in the same manner as the increased balance of an uninsured Certificate, numerous issues would need to be resolved, including:

- i. The rate at which such SRS Balance interest should accrue—the Pass-Through Rate for the related Insured Certificate, the rate at which outstanding claims accrue interest under the Policy, or some other rate.
- ii. The accrual methodology to be used to calculate the interest.
- iii. The point in the waterfall priorities at which interest would be paid and, if it is at the same place at which current and past due interest is paid to the Certificates, the priority between the Certificate Insurer's interest on the SRS Balance and the current and past interest owed to Certificateholders.
- iv. Whether, if there are insufficient funds to pay interest on the SRS Balance in any month, the Certificate Insurer is entitled to such unpaid interest on future Distribution Dates.
- v. Whether interest on an SRS Balance is subject to any tax reporting.
- vi. Whether interest payments on the SRS Balance reduce the related Certificate Insurer Reimbursement Amount dollar for dollar. If they do not, the Certificate Insurer could double recover.
- vii. Whether interest payments on the SRS Balance can be netted against other claims paid by the Certificate Insurer on any Distribution Date.
- viii. Whether the monthly statement to Certificateholders should report the accrued interest on the SRS Balance.⁵⁸

79. Similarly, for the SRS Balance to receive payments of principal in the same manner as the increased balance of an uninsured Certificate, even more issues would need to be resolved, including:

- i. The point in the waterfall priorities at which principal would be paid, and, if it is the same point at which current principal is paid to the Certificates, the priority between the Certificate Insurer's payments of principal to

⁵⁸ The PSA expressly sets forth information that must be included in the monthly statement to Certificateholders. This provision does not contemplate reporting any information related to an SRS Balance. *See* PSA § 4.04.

reduce the SRS Balance and the current and past principal owed to Certificateholders.

- ii. The amount of principal paid to Senior Certificates is affected by overcollateralization-related calculations. Generally speaking, such calculations compare the balance of the Mortgage Loans to the balance of the Certificates. It is necessary to resolve whether the SRS Balance should be treated like a Certificate Principal Balance for purposes of the overcollateralization calculations and, if not, the manner in which the Trust Administrator should determine how much principal to pay to the SRS Balance each month.
- iii. Whether the Trust Administrator should allocate Applied Realized Loss Amounts to the SRS Balance in the same manner as the increased balance of an uninsured Certificate. If so, whether the Certificate Insurer is then entitled to Subsequent Recoveries and related increases to principal balances on the Applied Realized Loss Amounts allocated to the SRS Balance.
- iv. Whether the principal payments on an SRS Balance are subject to any tax reporting.
- v. Whether principal payments on the SRS Balance reduce the outstanding Certificate Insurer Reimbursement Amount dollar for dollar. If they do not, then the Certificate Insurer could double recover.
- vi. Whether principal payments on the SRS Balance can be netted against other claims paid by the Certificate Insurer on any Distribution Date.
- vii. Whether the monthly statement to Certificateholders should report the principal paid on the SRS Balance anywhere.

80. The concept of an SRS Balance leads to other issues as well. For example:

- i. Whether the Certificate Insurer has voting rights equal to the amount of the SRS Balance.
- ii. Whether the SRS Balance should be considered part of the Certificate Principal Balance for purposes of any other calculations.
- iii. Whether the Certificate Insurer can trade, assign, or pledge the SRS Balance to another party.
- iv. Whether the SRS Balance causes any adverse tax consequences to the REMIC treatment of the Trust.

81. Again, the PSA establishes that the Trust Administrator has no duty to effectuate anything outside of the express provisions of the PSA.⁵⁹ Because of the issues presented by the CIWU Provisions and the notion of an SRS Balance, along with the absence of any language in the PSA instructing the Trust Administrator how to implement those concepts, the Trust Administrator has been unable to give effect to the CIWU Provisions or maintain an SRS Balance. Thus, if the Court gives effect to the CIWU Provisions and determines that an SRS Balance should be maintained, instructions are needed to properly and fully address the issues discussed above.

C. Request for Instruction

82. If the Court concludes that it must address this third issue for trust instruction, the Trust Administrator seeks instruction regarding the following issues related to the Certificate Insurer’s rights with respect to Subsequent Recoveries, including the Trust Settlement Payment.

1. Request for Instruction Regarding CIRA Provisions

83. The Trust Administrator seeks instruction from the Court regarding the points in the waterfall at which the Certificate Insurer should be paid any CIRA Subrogation Amounts, including the Trust Settlement Payment to the extent included in the CIRA Subrogation Amount. Specifically, the Trust Administrator seeks instruction from the Court whether the Waterfall CIRA Provisions represent the only points at which the Certificate Insurer should be paid any CIRA Subrogation Amounts, or whether the Certificate Insurer should be paid any CIRA Subrogation Amounts at the same place in the waterfall at which the Insured Certificates are paid recoveries of amounts paid by the Certificate Insurer.

⁵⁹ See PSA § 9.01(i) (“the duties and obligations of the Trust Administrator shall be determined solely by the **express** provisions of this Agreement, the Trust Administrator shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, **no implied covenants or obligations shall be read into this Agreement against the Trust Administrator . . .**”) (emphasis added).

2. Request for Instruction Regarding CISR Provision

84. With respect to the CISR Provision, the Trust Administrator seeks instruction from the Court on several points.

85. *First*, the Trust Administrator seeks instruction from the Court regarding whether, under the CISR Provision, Subsequent Recoveries, including the Trust Settlement Payment, are considered “payable to” the Insured Certificates that have Certificate Principal Balances of zero, for the purpose of directing such Subsequent Recoveries to the Certificate Insurer (to the extent the Certificate Insurer covered the Realized Loss associated with such Subsequent Recoveries).

86. *Second*, the Trust Administrator seeks instruction from the Court regarding whether the reductions to an Insured Certificate’s Certificate Principal Balance attributable to payments under the Policy should be disregarded and a Related CIRA Balance maintained for the purpose of determining such Certificates’ share of Subsequent Recovery cash, including the Trust Settlement Payment, and directing such cash to the Certificate Insurer per the CISR Provision. If so, the Trust Administrator seeks instruction on how to calculate the Related CIRA Balance and seeks further instruction as to the issues listed in paragraph 71.

87. *Third*, to extent that the Court determines the Certificate Insurer is entitled to Subsequent Recovery cash under the CISR Provision, including the Trust Settlement Payment, the Trust Administrator seeks instruction from the Court regarding whether such Subsequent Recovery cash would be payable to the Certificate Insurer at the CIRA Provisions or would be payable to the Certificate Insurer at the same point in the principal waterfalls at which the Insured Certificates receive Subsequent Recoveries.

88. *Fourth*, to extent that the Court determines that the Certificate Insurer is entitled to any portion of the Trust Settlement Payment under the CISR Provision, the Trust Administrator seeks instruction from the Court regarding whether the Certificate Insurer is entitled to receive the

full amount of such portion of the Trust Settlement Payment or whether such portion should be reduced to account for the fact that the Certificate Insurer will pay no further claims on those Insured Certificates that have a zero balance.

89. *Fifth*, to extent that the Court determines that the Certificate Insurer is entitled to any portion of the Trust Settlement Payment under the CISR Provision, the Trust Administrator seeks instruction from the Court regarding whether funds paid to the Certificate Insurer under the CISR Provision should reduce, dollar for dollar, unreimbursed claim amounts that are eligible for repayment to the Certificate Insurer.

3. Request for Instruction Regarding CIWU Provisions

90. The Trust Administrator seeks instruction from the Court regarding whether the CIWU Provisions require it to maintain an SRS Balance for the Certificate Insurer. If the Court instructs the Trust Administrator to maintain an SRS Balance, the Trust Administrator seeks further instruction from the Court regarding the issues referred to in paragraphs 78 through 80.

BASIS FOR RELIEF

91. Section 501C.0202 of the Minnesota Statutes provides, in pertinent part, that the district court may issue an order “to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests” (Minn. Stat. § 501C.0202(3)) and “to construe, interpret, or reform the terms of a trust” (Minn. Stat. § 501C.0202(4)).

92. Here, the instruction sought by the Trust Administrator should be granted, and the Trust Administrator, the Trustee, and all other applicable persons or entities responsible under the Trust documents, should be permitted to follow, without liability, the instruction of the Court with respect to the processing and distribution of Subsequent Recoveries, including the Trust Settlement Payment.

WHEREFORE, pursuant to the provisions of Minn. Stat. §§ 501C.0202, 501C.0203, 501C.0204, and all other applicable law, the Trust Administrator respectfully requests that this Court:

- a. Take jurisdiction in this matter as a proceeding *in rem* and make and enter an order designating the time and place when the respective parties in interest may be heard upon the matters set forth in this Petition, and that notice of the hearing be served in the manner specified in the accompanying Order for Hearing and as provided by Minn. Stat. § 501C.0203, subd. 1;
- b. At such designated time and place make a further Order as follows:
 - i. determining that such Order is binding upon the Trustee, the Trust, the Certificateholders, the Certificate Insurer (and any of its successors-in-interest or assigns), the Trust Administrator, servicers, master servicer, all other parties responsible for the administration of the Trust, and all interested persons in the Trust;
 - ii. determining that the Trust Administrator should use the “write up first” method to distribute any Subsequent Recovery to the Trust, including the Trust Settlement Payment;
 - iii. determining whether, given the Assured 2013 Letter, any of the Trust Settlement Payment should be distributed to the Certificate Insurer (or any of its successors-in-interest or assigns) and, if so, how the PSA should be interpreted and/or reformed to distribute appropriate portions of the Trust Settlement Payment and any future Subsequent Recovery payable to the Certificate Insurer or any of its successors-in-interest or assigns;

- iv. instructing the Trust Administrator, and any other party responsible for the administration of the Trust, to apply the Trust Settlement Payment in accordance with the determination contemplated by the immediately preceding paragraphs;
- v. determining that the actions of the Trust Administrator, and all other parties responsible for the administration of the Trust taken in connection with the implementation of Subsequent Recoveries, including the Settlement Agreement, and the processing and distribution of Subsequent Recoveries, including the Trust Settlement Payment as contemplated by the Court's order, comply with all applicable duties and are fully authorized and protected by the PSA, and that Wells Fargo Bank, N.A., individually or as Trust Administrator, U.S. Bank National Association, individually or as Trustee, or any other party responsible for the administration of the Trusts shall not be subject to any liability whatsoever in connection therewith;
- vi. determining that Wells Fargo Bank, N.A., individually or as Trust Administrator, U.S. Bank National Association, individually or as Trustee, and all other parties responsible for administering the Trusts are entitled to exculpation from liability in connection with their implementation of the Settlement Agreement and processing and distribution of Subsequent Recoveries, including the Trust Settlement Payment;
- vii. ordering that the Court's order regarding the distribution method shall be binding upon the Trust, the Trust Administrator, the Certificate Insurer (and any of its successors-in-interest or assigns), all parties to the PSA and other Trust documents and all other parties involved in the administration of the Trust, all

parties to the Settlement Agreement, and all persons or entities claiming a beneficial, ownership, or other interest in the Trust, vested or contingent, even though unascertained or not in being, including, without limitation, all past, present, or future Certificateholders and their successors-in-interest or assigns;

viii. directing that the Trust shall not be subject to the continuing supervision of the Court for the purposes of Minn. Stat. § 501C.0205 or General Rule of Practice 417.02; and

ix. granting such other and further relief as the Court may deem lawful, just, and proper.

Dated: September 11, 2018

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated: September 11, 2018

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