

Exhibit 3

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

**In the matter of the MASTR Adjustable Rate
Mortgages Trust 2007-1**

Case Type: Other
Court File No. 62-tr-cv-18-46

**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 December 1, 2006, and as amended on April 1, 2008, (as amended, the "PSA") for the MASTR Adjustable Rate Mortgages Trust 2007-1 (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 and 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, and Custodian; and U.S. Bank National

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.

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 Group I Certificate Insurer² (“Assured” or the “Group I 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,³ 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 Certificate Group 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 Group I Certificate Insurer, including through subrogation, by means of reimbursement, or both.⁴

² The PSA refers to Assured as the “Group I Certificate Insurer” because the only Certificates that it insures are two Classes of Group I Senior Certificates.

³ 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 2007-3 (the “2007-3 Trust,” with the Trust and the 2006-OA2 Trust, the “Trusts”).

⁴ See Settlement Agreement (defined below and attached as Exhibit 6) § 2(f) (discussing the “Trust Administrator Trust Instruction Proceeding”).

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 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, and Custodian, 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.⁵

6. Assured serves as Group I Certificate Insurer for the Trust’s Class I-2A2 and I-2A4 Certificates (the “Insured Certificates”)⁶ pursuant to the Financial Guaranty Insurance Policy,

⁵ See PSA § 1.01, definition of “Group I Available Funds”; PSA § 1.02, definition of “Group II Available Funds.”

⁶ Neither of the Classes of Insured Certificates remain outstanding. Both Classes have paid off and have no remaining principal balance.

Policy No. ■ 805-N (the “Policy”). A copy of the Policy 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.⁷

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

⁷ The Trustee also brought the Putback Action on behalf of the 2006-OA2 Trust and the 2007-3 Trust. The Trustee made similar allegations regarding breach of representations and warranties for the 2006-OA2 Trust and the 2007-3 Trust.

award and/or settlement of the Putback Action (the “May 2013 Notice”).⁸ 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.⁹

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.

⁸ The May 2013 Notice also applied to the 2007-3 Trust and the 2006-OA2 Trust.

⁹ 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 or Recoveries (as applicable) and distributed in accordance with and pursuant to the PSA and a Final Distribution Order (as defined in the Settlement Agreement).¹⁰ 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.

¹⁰ See Settlement Agreement § 6(b); see also PSA § 1.01, definition of “Subsequent Recoveries”; PSA § 1.02, definition of “Recovery.”

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 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 or a 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 Group I Certificate Insurer (or any of its successors-in-interest or assigns), including by means of reimbursement, through subrogation, or both. Assured's rights with respect to the 2007-3 Trust 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. Because the PSA contains insurance-related

provisions that are similar (and in most cases identical) to the 2007-3 PSA, the MARM 2007-3 Interpleader Action is instructive.

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 2007-3 Trust. Specifically, there was a dispute between Assured and Wales regarding whether 2007-3 PSA 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.¹¹ That is, even though (generally speaking) principal and interest on the Mortgage Loans are segregated and distributed through separate waterfalls per the 2007-3 PSA, Assured contended that its repayment rights under the 2007-3 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 [2007-3] PSA provisions detailing the structure of the payment waterfalls.”¹² Specifically, “[t]hese provisions provide for payments to Assured at

¹¹ 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.

¹² MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *2.

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.”¹³ Additionally, the court found that the 2007-3 PSA “contains provisions setting forth Assured’s rights of subrogation.”¹⁴

22. Wales argued that the 2007-3 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.”¹⁵ Assured countered that the 2007-3 PSA definition of the Certificate Insurer Reimbursement Amount grants to it a right to repayment that is separate and “in addition to its subrogation rights.”¹⁶ 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 2007-3 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.”¹⁷ Accordingly, the court concluded that one reasonable reading of the 2007-3 PSA would allow Assured to repay both interest and principal claims from interest funds under 2007-3 PSA Section 4.02(a)(2)(B)(b).¹⁸

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

¹³ *Id.* (citing 2007-3 PSA §§ 4.02, 4.03, 1.01).

¹⁴ *Id.* (citing 2007-3 PSA § 12.05).

¹⁵ *Id.* at *9.

¹⁶ *Id.* at *7.

¹⁷ *Id.* at *11–12.

¹⁸ *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 MARM 2006-OA2 Trust. *See* MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *12-15.

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 or a Recovery. Specifically, the Trust Administrator seeks an order instructing it regarding whether it should distribute the allocable portion of the Trust Settlement Payment to Group I Certificates (the “Group I Trust Settlement Payment”) in accordance with the “write up first” method (as described below) and whether it should distribute the Trust Settlement Payment allocable to the Group II Certificates (the “Group II Trust Settlement Payment”) as described below in Section III.D.

A. Subsequent Recoveries and 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” or as “recoveries.” With respect to Group I Mortgage Loans, the PSA defines Subsequent Recoveries as “[u]nanticipated amounts received on a liquidated Group I Mortgage Loan the absence of which resulted in a Realized Loss in a prior month.”¹⁹ With respect to Group II Mortgage Loans, the PSA defines Recovery as “an amount, net of any reimbursable expenses, received in respect of principal on such Group II Mortgage Loan during the related Prepayment Period which has previously been allocated as a Realized Loss to a Class of Certificates.”²⁰

¹⁹ PSA § 1.01, definition of “Subsequent Recoveries.”

²⁰ PSA § 1.02, definition of “Recovery.”

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 2007-1 PSA with respect to Group I Mortgage Loans . . .) or a Recovery, with respect to Group II Mortgage Loans in MARM 2007-1 (as defined in the MARM 2007-1 PSA), as applicable, 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.”²¹

27. In the Trust, the Mortgage Loans and the Certificates are segregated into two Groups—Group I and Group II. The Group I Mortgage Loans and Certificates are further divided into Subgroup 1 and Subgroup 2. With some exceptions, collections on the Mortgage Loans in a specific Loan Group or Subgroup are allocated to the corresponding Certificates for that Loan Group or 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 Articles IV and V) and related definitions (PSA Article I).

28. Loan losses, referred to as Realized Losses in the PSA,²² 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. The Trust employs different structures and credit enhancement mechanisms for the Group I and Group II Certificates. Accordingly, the PSA allocates loan losses to Group I

²¹ Settlement Agreement § 6(b).

²² PSA § 1.01, definition of “Realized Loss.”

Certificates and Group II Certificates differently.

29. Realized Losses are not directly allocated to the Group I Certificates. Rather, the PSA allocates losses to the Group I Certificates by calculating the amount by which (a) the aggregate Class Principal Balance of the Group I Certificates exceeds (b) the aggregate Stated Principal Balance of the Group I Mortgage Loans. Then, this amount, defined in the PSA as “Applied Realized Loss Amount,” is allocated as a loss to the Group I Certificates in accordance with Section 4.02(e).²³ Realized Losses on Group II Mortgage Loans, however, are allocated directly to the Group II Certificates.²⁴ In either case, 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 (for Group I) or Realized Losses (for Group II) are allocated to those Certificates.

30. Processing a Subsequent Recovery or a Recovery for any Mortgage Loan involves reversing the prior loss incurred by such loan in the amount of the Subsequent Recovery or the Recovery. If a Class of Certificates was allocated an Applied Realized Loss Amount or Realized Loss (as applicable), then its balance was reduced by that amount without receiving any principal

²³ PSA § 1.01, definition of “Applied Realized Loss Amount” (“With respect to any Distribution Date, the amount, if any, by which the aggregate Class Principal Balance of all Classes of Group I Certificates (other than the Interest Only Certificates and after all distributions of principal on such Distribution Date) exceeds the aggregate Stated Principal Balance of the Group I Mortgage Loans as of the Due Date in the month of such Distribution Date.”).

²⁴ See PSA § 5.03(a)(i) (“any Realized Loss (other than an Excess Loss) on a Group II Mortgage Loan shall be allocated *first*, to the Group II Subordinate Certificates in reverse order of their respective numerical Class designations (beginning with the Class of Group II Subordinate Certificates then outstanding with the highest numerical Class designation) until the respective Class Principal Balance of each such Class is reduced to zero and *second*, to the Classes of Group II Senior Certificates, *pro rata* on the basis of their respective Class Principal Balances immediately prior to the related Distribution Date until the Class Principal Balance of each such Class has been reduced to zero; *provided, however*, that on or after the Cross-Over Date, the losses allocable to the Class II-A-1 Certificates under this paragraph will instead be allocated to the Class II-A-2 Certificates (in addition to other losses borne by such Certificates) until the Class Principal Balance of the Class II-A-2 Certificates has been reduced to zero.”).

cash. In most cases, a Subsequent Recovery or Recovery reverses that loss by increasing, or “writing up,” the Certificate Principal Balances of certain Classes of Certificates and distributing the Subsequent Recovery or Recovery cash as principal.²⁵ Because of the differences between the PSA’s treatment of Subsequent Recoveries for the Group I Certificates and Recoveries for the Group II Certificates, this Petition addresses Subsequent Recoveries and Recoveries separately.

B. Order of Operations for Group I Subsequent Recoveries

31. There are two components to processing Subsequent Recoveries: the application of the principal cash received and the reversal of prior losses to the relevant Classes of Group I 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.²⁶ The PSA also sets forth specific instructions for reversing losses to Classes of Group I Certificates by increasing, or “writing up,” Certificate Principal Balances by the amount of Subsequent Recoveries received by the Trust.²⁷

32. In addition, at closing, the Group I Certificates were overcollateralized, which means that the aggregate Stated Principal Balances of the Mortgage Loans in Group I at closing exceeded the aggregate Certificate Principal Balances of the Group I Certificates. The transaction

²⁵ As further discussed below, the PSA does not provide for writing up the Certificate Principal Balances of the Group II Certificates in this instance.

²⁶ See PSA § 1.01, definition of “Subgroup Principal Remittance Amount” (stating in pertinent part: “With respect to any Distribution Date and either Loan Subgroup, 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 Group I Mortgage Loans in that Loan Subgroup”) (emphasis added).

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

²⁷ See PSA § 4.02(f).

was originally designed to maintain a certain percentage of overcollateralization for Group I Certificates, though for many years, due to loan losses, there has been insufficient cash flow from the remaining Group I Mortgage Loans to maintain the Overcollateralization Target Amount. Several of the PSA's principal-related provisions (*e.g.*, Group I Loan Basic Principal Distribution Amount, Group I Loan Principal Remittance Amount, and Group I Senior Enhancement Percentage)²⁸ require various calculations designed to 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.

33. In this context, the phrase "order of operations" refers to the time order on any Distribution Date in which the Trust Administrator, for the Group I Certificates, 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.

34. Based on its interpretation of the PSA, the Trust Administrator would distribute the Group I 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 Group I Certificates to which Subsequent Recoveries will be allocated in accordance Section 4.02(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 Group I Certificates in

²⁸ See definitions of such terms in PSA § 1.01.

accordance with the PSA priorities and terms; and *fourth*, allocate Applied Realized Loss Amounts in accordance with Section 4.02(e).

35. 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 Group I Certificates in accordance with the PSA priorities and terms; *third*, write up the Certificate Principal Balances of any Classes of Certificates to which Subsequent Recoveries will be allocated in accordance Section 4.02(f); and *fourth*, allocate Applied Realized Loss Amounts in accordance with Section 4.02(e).

36. 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. Group I: PSA Support for the “Write Up First” Method of Order of Operations

37. The Trust Administrator interprets the PSA to require the “write up first” method for the distribution of the Group I Trust Settlement Payment. The defined terms “Certificate Principal Balance” and “Unpaid Realized Loss Amounts” used in the PSA’s “write up” provision at Section 4.02(f) (the “Group I Write Up Provision”) support the “write up first” method. The Group I Write Up Provision generally provides that, if a Class of Certificates has been allocated an Applied Realized Loss Amount, any Subsequent Recoveries are applied to increase the Class

Principal Balance²⁹ 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, if any, on Group I Mortgage Loans, to increase the Class Principal Balance of the Classes of Group I Certificates to which Applied Realized Loss Amounts have been allocated, sequentially, (I) first, concurrently, pro rata based on the Applied Realized Loss Amounts previously allocated to the Subgroup I-1 and Subgroup I-2 Certificates, (a) to the Class I-1A Certificates, **by not more than the amount of the Unpaid Realized Loss Amount for such Class** and (b) sequentially, (i) first, concurrently (pro rata, with respect to subclause (x) below based on the aggregate Unpaid Realized Loss Amounts with respect to the Class I 2A1 and Class I 2A2 Certificates, and with respect to subclause (y) below based on the aggregate Unpaid Realized Loss Amounts with respect to the Class I 2A3 Certificates) (x) sequentially, to the Class I-2A1 and Class I-2A2 Certificates, in that order, in each case, **by not more than the amount of the Unpaid Realized Loss Amount for such Class** and (y) to the Class I-2A3 Certificates, **by not more than the amount of the Unpaid Realized Loss Amount for such Class** and (ii) second, to the Class I-2A4 Certificates, **by not more than the amount of the Unpaid Realized Loss Amount for such Class** and (II) *second*, sequentially, to the Class I-M1, Class I-M2, Class I-M3, Class I-M4, Class I-M5, Class I-M6 and Class I-M7 Certificates, in that order, in each case **by not more than the amount of the Unpaid Realized Loss Amount of such Class.**³⁰

1. Definition of Certificate Principal Balance

38. The definition of Certificate Principal Balance supports the “write up first” method for processing Subsequent Recoveries.³¹ It does so because the definition suggests a specific order

²⁹ 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.”

³⁰ PSA § 4.02(f) (emphasis added).

³¹ For the Group I Certificates, the PSA defines “Certificate Principal Balance” as:

With respect to any Group I Certificate (other than the Interest Only Certificates and Class I-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 Group I Certificate (A) **plus any increase to the Certificate Principal Balance of such Group I 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 Group I Certificate; provided, however,** that solely for purposes of determining the Premium Distribution Amount payable to the Group I Certificate Insurer and the Group I 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 Group I Certificate Insurer under the Group I Certificate Insurance

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 Certificate's Applied Realized Loss Amounts.³² 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.

39. 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.³³ 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, this 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.

Policy, unless such amounts have been reimbursed to the Group I Certificate Insurer pursuant to Section 4.02, 4.09 or 4.10 **and (ii) any Applied Realized Loss Amounts allocated to such Group I 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 Group I Certificate Insurance Policy, any Subsequent Recoveries payable to the Class I-2A2 and Class I-2A4 Certificates shall be payable to the Group I Certificate Insurer

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

The Trust Administrator notes that there is an incorrect section reference in the definition of Certificate Principal Balance. The reference to “Section 4.02(c)” in clause (ii) should be “Section 4.02(e),” which is the PSA section that discusses the allocation of Applied Realized Loss Amounts.

³² PSA § 1.01, definition of “Denomination.”

³³ PSA § 1.01, definition of “Certificate Principal Balance.”

2. Definition of Unpaid Realized Loss Amount

40. The definition of Unpaid Realized Loss Amount,³⁴ which is used in the Group I Write Up Provision to limit the amount by which a Group I Certificate can be written up, effectively requires the “write up first” method. For Group I Certificates, the Unpaid Realized Loss Amount is, essentially, the outstanding unreimbursed Applied Realized Loss Amounts allocated to any Group I Certificate in prior payment periods. The Trust Administrator, therefore, must first determine the level of Unpaid Realized Loss Amounts outstanding for the relevant Classes of Group I Certificates from prior payment periods before writing up the Certificate Principal Balances in the amount of any Subsequent Recoveries in accordance with the Group I Write Up Provision.

41. 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 Group I Write Up Provision 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 Section 4.02(f)) before

³⁴ The PSA defines “Unpaid Realized Loss Amount” as:

For any Class of Group I 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)

paying principal (per Section 4.02(b)) and allocating Applied Realized Loss Amounts (per Section 4.02(e)).

D. Distribution of Group II Recoveries

42. As noted above, the Trust employs different structures for the Group I and Group II Certificates. As a result, the Trust Administrator would use a different method to distribute the Group II Trust Settlement Payment. As described above, the Group I Certificates were, at closing, overcollateralized. The Trust, therefore, provides credit support to the Group I Certificates by means of the Group I Mortgage Loans having an aggregate Stated Principal Balance that exceeded (at closing) the aggregate Certificate Principal Balance of the Group I Certificates. The Group II Certificates, in contrast, employ a “senior/subordinate” structure. This structure provides credit support to the Group II Senior Certificates by directing that the Group II Senior Certificates will not be allocated any Realized Losses on Group II Mortgage Loans until the aggregate Certificate Principal Balance of all of the Group II Subordinate Certificates have been reduced to zero.³⁵ The date on which the Certificate Principal Balances of the Group II Subordinate Certificates is reduced to zero is called the “Cross-Over Date.”³⁶ The Cross-Over Date for the Group II Certificates occurred in July 2010. Commencing on the Cross-Over Date, Realized Losses are applied to the Group II Senior Certificates.³⁷

43. As with Realized Losses, the PSA allocates Recoveries to the Group II Certificates differently on and after the Cross-Over Date than it does before the Cross-Over Date. Before the

³⁵ See PSA § 5.03(a) and (b).

³⁶ See PSA § 1.02, definition of “Cross-Over Date” (“Cross-Over Date: The Distribution Date on which the Class Principal Balances of the Group II Subordinate Certificates have been reduced to zero.”)

³⁷ See PSA § 5.03(a)(i).

Cross-Over Date, Recoveries were applied in accordance with Section 5.03(d)³⁸ and the definition of Certificate Principal Balance for Group II Certificates.³⁹ The combination of these two provisions provided for increases to the Certificate Principal Balances of the Group II Certificates for each dollar of Recovery.

44. On and after the Cross-Over Date, however, the PSA allocates Recoveries to the Group II Senior Certificates in accordance with Section 5.03(e):

Commencing on the Cross-Over Date, the Trust Administrator shall distribute the amount of any Recovery with respect to a Group II Mortgage Loan received during a Prepayment Period, *pro rata*, based on Class Principal Balances, to the Classes of Group II Senior Certificates; *provided, however*, that any distribution to a Class of Group II Certificates pursuant to this Section 5.03(e) shall not reduce the Class Principal Balance of such Class.⁴⁰

³⁸ PSA § 5.03(d) requires that Recoveries be applied:

Prior to the Cross-Over Date, with respect to Recoveries received during a Prepayment Period with respect to any Group II Mortgage Loans, the Class Principal Balance of one or more Classes of Group II Certificates that have previously had Realized Losses allocated, will be increased, as follows:

- (i) first, up to the amount of the Recoveries with respect to the Group II Mortgage Loans, the Class Principal Balance of each Class of Group II Senior Certificates will be increased, *pro rata*, up to the amount of the unrecovered Realized Losses previously allocated to each such Class, if any; and
- (ii) second, up to the amount of the Recoveries remaining after the allocation pursuant to the preceding clause (i), the Class Principal Balance of each Class of Group II Subordinate Certificates, in order of seniority, will be increased, by the amount of unrecovered Realized Losses previously allocated to each such Class, if any.

PSA § 5.03(d).

³⁹ The PSA defines Certificate Principal Balance for Group II Certificates as:

With respect to any Group II Certificates (other than the Class II-P Certificates) at any date, the maximum dollar amount of principal to which the Holder thereof is then entitled hereunder, such amount being equal to the Denomination thereof minus the sum of (i) all distributions of principal previously made with respect thereto and (ii) all Realized Losses allocated thereto and, in the case of any Group II Subordinate Certificates, all other reductions in Certificate Principal Balance previously allocated thereto pursuant to Section 5.03; ***provided, however, that pursuant to Section 5.03(d), the Class Principal Balance of a Class of Group II Certificates may be increased up to the amount of Realized Losses previously allocated to such Class, in the event that there is a Recovery on a related Group II Mortgage Loan, and the Certificate Principal Balance of any individual Certificate of such Class will be increased by its *pro rata* share of the increase to such Class.***

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

⁴⁰ PSA § 5.03(e).

45. Unlike Section 5.03(d) and the definition of Certificate Principal Balance for Group II Certificates (addressing the processing of Recoveries before the Cross-Over Date), Section 5.03(e) (addressing the processing of Recoveries on and after the Cross-Over Date) does not explicitly provide for the increase of Certificate Principal Balances for the Group II Senior Certificates, and the definition of Certificate Principal Balance for Group II Certificates refers only to Recovery write ups pursuant to Section 5.03(d). Instead, Section 5.03(e) indicates to distribute Recovery principal cash *pro rata*, based on Class Principal Balances, to the Group II Senior Certificates, but to do so without decreasing Certificate Principal Balances in the amount of such Recovery cash.⁴¹ Another difference between Sections 5.03(d) and 5.03(e) is that the former clause provides that, before the Cross-Over Date, Recoveries can only be paid to any Class of Group II Certificates up to the amount of Realized Losses previously allocated to such Class.⁴² In contrast, on and after the Cross-Over Date, Section 5.03(e) does not expressly limit the amount of Recoveries that are distributable to any Class of Group II Senior Certificates to the amount of Realized Losses incurred by such Class.

46. Since the Cross-Over Date occurred over eight years ago, there is not currently any order of operations question with respect to Recoveries allocated to the Group II Certificates because the PSA does not explicitly require an increase to the Certificate Principal Balance of Group II Certificates separate from the allocation of principal Recovery cash when processing

⁴¹ The Trust Administrator gives effect to this PSA requirement by first paying the Recovery principal cash to the related Class of Certificates with a Certificate Principal Balance reduction in the amount of the cash (like any regular principal payment), and second, increasing the Certificate Principal Balance of the same Class of Certificates by the same amount it was reduced. The net effect of these two steps is a payment of Recovery principal cash with no reduction in the Certificate Principal Balance, which results in a reduction of prior losses to the Certificate.

⁴² See PSA 5.03(d) (“Prior to the Cross-Over Date, with respect to Recoveries received during a Prepayment Period with respect to any Group II Mortgage Loans, the Class Principal Balances of one or more Classes of Group II Certificates **that have previously had Realized Losses allocated**, will be increased, as follows:...””) (emphasis added).

Recoveries (unlike Subsequent Recoveries and the Group I Senior Certificates which do explicitly require an increase to the Certificate Principal Balance).

47. There is, however, an issue with regard to how the Trust Administrator should distribute the Group II Trust Settlement Payment upon entry of a Distribution Order. As set forth above, Section 5.03(e) requires that the Trust Administrator distribute Recoveries from Group II Mortgage Loans to the Group II Senior Certificates,⁴³ *pro rata* based on their Class Principal Balances.⁴⁴ As of the date of filing of this Petition, however, only the Class II-A-1 Certificates remains outstanding. Accordingly, only the Class II-A-1 Certificates would receive any amount of the Group II Trust Settlement Payment.

48. The Settlement Agreement has allocated approximately \$9.4 million of the Payment as the Group II Trust Settlement Payment. As of the date of filing of this Petition, the Class II-A-1 Certificates have suffered cumulative Realized Losses of approximately \$7.8 million that have not yet been reimbursed. The Group II Trust Settlement Payment presently exceeds the cumulative amount of Realized Losses incurred by the Class II-A-1 Certificates by approximately \$1.6 million (such difference, the “Group II Difference”), though the Realized Losses incurred by these Certificates may change during the pendency of this proceeding.

49. The purpose of paying Recovery cash under Section 5.03(e) without a corresponding decrease to the Certificate Principal Balance of the Class II-A-1 Certificates is to reverse the effect of prior Realized Losses allocated to such Certificate. If the Trust Administrator distributes the Group II Difference in accordance with Section 5.03(e), then the Class II-A-1

⁴³ The Group II Senior Certificates are identified in the Preliminary Statement to the PSA at p. 25. All but the Class II-A-1 and Class II-A-2 Certificates are Exchangeable Certificates.

⁴⁴ PSA § 5.02(e).

Certificates would receive principal Recovery cash, with no reduction in their Certificate Principal Balances (as required by Section 5.03(e)), for Realized Losses that they have not yet incurred.

50. There are a number of other possibilities for distributing the Group II Difference to one or more Classes of Group II Senior Certificates, but each possibility raises potential issues and questions. First, the Group II Difference could be held in escrow to reimburse the Class II-A-1 Certificates for future Realized Losses, if and when they are incurred. There is no PSA provision for escrowing funds to reimburse future losses, however, and, in any event, the amount of future losses may be less than the Group II Difference.

51. Second, the Group II Difference could be distributed to the next most senior class of Group II Senior Certificates—the Class II-A-2 Certificates—to reverse Realized Losses previously allocated to that Class that were never reimbursed. However, that Class currently has a zero balance and the PSA does not contain any provision that directs distributions of Recovery principal cash to Classes that have a zero balance.

52. Finally, the Group II Difference could be distributed to the Group II Residual Certificates.⁴⁵ The Group II Residual Certificates do not have a balance, and any distributions of principal (including Recoveries) could be contrary to the expectations of investors and the settling parties. The PSA provides for the possibility of distributions to the Group II Residual Classes, but it states any such distributions are “expected to be zero.”⁴⁶ While the Settlement Agreement does not expressly prohibit distributions to Residual Certificates, such distribution may be contrary to the expectations of the other parties to the Settlement Agreement.

⁴⁵ The Group II Residual Certificates are the Class-II-A-LR and the Class II-A-UR Certificates. PSA, Preamble, p. 25.

⁴⁶ See PSA §§ 5.02(ii)(G) and (H).

53. There are issues and questions with each of the three options presented above. The Trust Administrator, therefore, seeks instruction from the Court regarding the manner in which it should distribute the Group II Difference, if any exists at the time of entry of a Distribution Order.

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

54. *Group I Certificates*. 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 Group I 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 Group I Trust Settlement Payment. In sum, using the “write up first” method to process the Group I Trust Settlement Payment, the Trust Administrator would first increase the Certificate Principal Balances of the Group I Certificates in the manner set forth in Section 4.02(f) by the amount of Subsequent Recoveries received, including the Group I Trust Settlement Payment. The Trust Administrator would then perform the overcollateralization calculations necessary to calculate principal payments, including the Group I Trust Settlement Payment, for the Group I Certificates. Next, the Trust Administrator would pay the interest and principal funds, including the Group I 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). Group I Certificateholders and (depending on how the Court addresses the second and third issues for trust instruction discussed below) possibly the Group I Certificate Insurer will receive the Group I Trust Settlement Payment. If the Group I Trust Settlement Payment is distributed in accordance with the “pay first” method (and depending on how the Court addresses the second and third issues for trust instruction below), it is probable that a significant amount of the Group I Trust Settlement Payment will be distributed to the Group I Certificate Insurer.

55. 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 received by the Trust and allocable to the Group I Certificates, including the Group I Trust Settlement Payment.

56. *Group II Certificates.* Unlike the Write Up Provision for the Group I Certificates, neither Section 5.03(e) nor the definition of Certificate Principal Balance for the Group II Certificates explicitly requires that Recoveries on Group II Mortgage Loans result in an increase to the Certificate Principal Balances of the Group II Senior Certificates on and after the Cross-Over Date, which occurred over eight years ago. Accordingly, there is no order of operations issue with respect to distributing the Group II Trust Settlement Payment as a Recovery. The Trust Administrator does, however, seek instruction from the Court regarding how to distribute the Group II Difference in a manner that is consistent with the PSA, the Settlement Agreement and the expectations of investors and the settling parties.

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

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

A. Interest in the Group I Certificate Insurer’s Rights

58. 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.⁴⁷ 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.

59. 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

60. 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 Group I 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 Group I Certificate Insurer’s Rights with Respect to Subsequent Recoveries, Including the Group I Trust Settlement Payment

61. 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 Group I Trust

⁴⁷ See Reinsurance Agreement, Schedule A.

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

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

1. Group I Certificate Insurer Reimbursement Amounts

62. For each of the two Classes of Insured Certificates, the PSA defines a Certificate Insurer Reimbursement Amount term.⁴⁸ For example, the PSA defines the term “Class I-2A2 Certificate Insurer Reimbursement Amount” as:

With respect to any Distribution Date, any amount owing to the Group I Certificate Insurer under Section 4.02, 4.09 or 4.10 for reimbursement, with interest, for claims paid with respect to the Class I-2A2 Certificates under the Group I Certificate Insurance Policy and any amounts with respect to the Class I-2A2 Certificates owing to the Group I Certificate Insurer and remaining unpaid as of and including such Distribution Date.⁴⁹

The definition for the Class I-2A4 Certificate Insurer Reimbursement Amount is similar.⁵⁰ This Petition collectively refers to the two Group I Certificate Insurer Reimbursement Amount terms—Class I-2A2 Certificate Insurer Reimbursement Amount and Class I-2A4 Certificate Insurer Reimbursement Amount—as the “CIRA Definitions.”

⁴⁸ The Class I-2A2 Certificate Insurer Reimbursement Amount applies to claims paid on the Class I-2A2 Certificates and the Class I-2A4 Certificate Insurer Reimbursement Amount applies to claims paid on the Class I-2A4 Certificates. The PSA further defines the two terms together as the “Aggregate Certificate Insurer Reimbursement Amount.” See PSA § 1.01, definitions of “Class I-2A2 Certificate Insurer Reimbursement Amount,” “Class I-2A4 Certificate Insurer Reimbursement Amount,” and “Aggregate Certificate Insurer Reimbursement Amount.” The Certificate Insurer currently has outstanding unreimbursed claims for both Classes of Insured Certificates.

⁴⁹ PSA § 1.01, definition of “Class I-2A2 Certificate Insurer Reimbursement Amount.”

⁵⁰ See PSA § 1.01, definition of “Class I-2A4 Certificate Insurer Reimbursement Amount.”

63. The CIRA Definitions reflect, for each of the Insured Certificates and any Distribution Date: (i) amounts owing to the Group I Certificate Insurer under Sections 4.02, 4.09, or 4.10 for reimbursement, with interest, for claims paid (“CIRA Reimbursement Amounts”), and (ii) any amounts with respect to the related Insured Certificates owing to the Group I Certificate Insurer and remaining unpaid for such Distribution Date (“CIRA Subrogation Amounts”).⁵¹ The CIRA Reimbursement Amounts do not distinguish between interest and principal claims paid by the Group I Certificate Insurer, and the CIRA Subrogation Amounts do not distinguish between interest and principal on the related Insured Certificates owed to the Group I Certificate Insurer. Rather, the CIRA Reimbursement Amounts and the CIRA Subrogation Amounts include both interest and principal.

64. The CIRA Definitions appear in numerous points in the “waterfall” provisions.⁵² There are six points in the PSA waterfalls at which the CIRA Definitions appear (the “Waterfall CIRA Provisions”):

| Section 4.02 – Group I Certificate Waterfall CIRA Provisions | |
|---|--|
| § 4.02(a)(5) | After paying all interest to the Group I Senior Certificates but before paying interest to the Group I Mezzanine 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 I Principal Distribution Amount to the Group 1 Senior Certificates and before paying principal to the Group 1 Mezzanine 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 Loan Principal Distribution Amount to the Group 1 Senior Certificates and before paying principal to the Group 1 Mezzanine Certificates |
| § 4.02(c)(5) and (6) | From the Group 1 Net Monthly Excess Cashflow |

⁵¹ See MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *9 (concluding in respect of the similar 2007-3 Trust, “[i]n sum, the definition of ‘Group I 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.”).

⁵² 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).

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

| Additional Occurrences of CIRA Definitions | |
|--|--------------------------------|
| § 4.09(a)(6) and (7) | From the Group I Cap 2 Account |
| § 4.10(a)(8) and (9) | From the Group I Swap Account |

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

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

65. The Group I 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 the Class I-2A2 and Class I-2A4 Certificates shall be payable to the Group I Certificate Insurer.” (the “CISR Provision”).⁵³ That is, Subsequent Recovery cash that would be payable to the Insured Certificates may, instead, be payable to the Group I Certificate Insurer if it had covered the related Realized Loss under the Policy. The Group I 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 Group I Certificate Insurer Under the Group I Write Up Provision

66. 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 Group I Write Up Provision in Section 4.02(f). The purpose of the

⁵³ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added); *see also* footnote 31 for the entire Group I Certificate Principal Balance definition. “CISR” is an acronym for Certificate Insurer Subsequent Recovery.

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.

67. The Group I Write Up Provision could be interpreted to imply that the Group I 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:

Application of Subsequent Recoveries. On each Distribution Date, the Trust Administrator shall allocate the amount of the Subsequent Recoveries, if any, on Group I Mortgage Loans, to increase the Class Principal Balance of the Classes of Group I Certificates to which Applied Realized Loss Amounts have been allocated, sequentially, (I) first, concurrently, pro rata based on the Applied Realized Loss Amounts previously allocated to the Subgroup I-1 and Subgroup I-2 Certificates, (a) to the Class I-1A Certificates, by not more than the amount of the Unpaid Realized Loss Amount for such Class and (b) sequentially, (i) first, concurrently (pro rata, with respect to subclause (x) below based on the aggregate Unpaid Realized Loss Amounts with respect to the Class I-2A1 **and Class I-2A2 Certificates**, and with respect to subclause (y) below based on the aggregate Unpaid Realized Loss Amounts with respect to the Class I-2A3 Certificates) (x) **sequentially, to the Class I-2A1 and Class I-2A2 Certificates, in that order, in each case, by not more than the amount of the Unpaid Realized Loss Amount for such Class** and (y) to the Class I-2A3 Certificates, by not more than the amount of the Unpaid Realized Loss Amount for such Class and (ii) **second, to the Class I-2A4 Certificates, by not more than the amount of the Unpaid Realized Loss Amount for such Class** and (II) *second*, sequentially, to the Class I-M1, Class I-M2, Class I-M3, Class I-M4, Class I-M5, Class I-M6 and Class I-M7 Certificates, in that order, in each case by not more than the amount of the Unpaid Realized Loss Amount of such Class...⁵⁴

The emphasized language in Section 4.02(f) excerpted above is referred to herein as the “CIWU Provision.”⁵⁵

⁵⁴ PSA § 4.02(f) (emphasis added).

⁵⁵ The 2007-3 Trust has similar language regarding the application of Subsequent Recoveries. See 2007-3 PSA §§ 4.02(f) and 4.03(f). The 2007-3 PSA CIWU Provisions, however, include language indicating that Subsequent Recovery cash allocable to the 2007-3 Trust’s insured certificates should be directed to the certificate insurer. While a number of issues exist with the implementation of the 2007-3 Trust’s CIWU Provisions (see the Trust Administrator’s petition filed in this Court), it is notable that the Trust’s CIWU Provision does not contain such language. “CIWU” is an acronym for Certificate Insurer Write Up.

4. PSA References to Subrogation

68. 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.”⁵⁶ The PSA discusses subrogation in several places.

69. Section 13.04(f) states “. . . to the extent the Group I Certificate Insurer makes payments, directly or indirectly, on account of principal of or interest on any Insured Certificates, **the Group I 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 . . .**”⁵⁷

70. Section 13.05 states “. . . (i) to the extent the Group I 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 Group I 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 Group I 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.**”⁵⁸

71. The definition of Certificate Principal Balance states “. . . that solely for purposes of determining the . . . **Group I 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

⁵⁶ Black’s Law Dictionary (10th ed. 2014).

⁵⁷ PSA § 13.04(f) (emphasis added).

⁵⁸ PSA § 13.05 (emphasis added).

Group I Certificate Insurer under the Certificate Insurance Policy, unless such amounts have been reimbursed to the Group I Certificate Insurer pursuant to Section 4.02, 4.09 or 4.10”⁵⁹

72. Finally, Section 12.04(f) further states that “solely for purposes of determining the Premium Distribution Amount payable to the Group I Certificate Insurer and the Group I 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.”⁶⁰

73. 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 Group I Certificate Insurer and remaining unpaid for such Distribution Date”)⁶¹ does not use the word “subrogation,” the court in the MARM 2007-3 Interpleader Order construed identical language as referring to subrogation.⁶²

74. 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.

⁵⁹ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added).

⁶⁰ PSA § 12.04(f) (emphasis added).

⁶¹ See the CIRA Definitions in Section 1.01.

⁶² MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *9.

B. Issues with the Relevant CI Provisions

75. 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 Provision (collectively, the “Relevant CI Provisions”). The Relevant CI Provisions raise a number of questions concerning the points in the waterfalls at which the Group I 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 Group I Certificate Insurer’s rights. The resolution of these issues and the detailed items for instruction below will substantially affect the distribution of the Group I Trust Settlement Payment and may result in significant distributions to the Group I Certificate Insurer (or any of its successors-in-interest or assigns).

1. Issues with the CIRA Provisions

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

77. The court in the MARM 2007-3 Interpleader Order determined that one reasonable reading of the 2007-3 PSA was that Assured, as certificate insurer (the “2007-3 Certificate Insurer”), possessed both subrogation rights and a separate right of reimbursement.⁶³ That determination appears to have been based primarily on the court’s reading of the various Certificate Insurer Reimbursement Amount definitions in the 2007-3 PSA and certain other provisions related to subrogation.⁶⁴ The various 2007-3 PSA Certificate Insurer Reimbursement Amount definitions are virtually identical to the CIRA Definitions in the PSA, and the subrogation provisions the court

⁶³ MARM 2007-3 Interpleader Order, 2016 WL 5719761, at *11-12.

⁶⁴ *Id.*

considered in the MARM 2007-3 Interpleader Order are virtually identical to the PSA Subrogation Provisions.

78. Because the court in the MARM 2007-3 Interpleader Action dismissed the case before fully resolving the issue, the court never resolved whether the points in the 2007-3 PSA waterfall at which the various Certificate Insurer Reimbursement Amount terms were used represented the **only** points at which the 2007-3 Certificate Insurer could be paid the subrogation amounts referred to in such definitions. In other words, the court never resolved whether the multiple points in the 2007-3 PSA waterfalls at which the Certificate Insurer Reimbursement Amount definitions are used represent the **only** points at which the 2007-3 Certificate Insurer could be paid any subrogation amounts with respect to the related insured certificates owing to the 2007-3 Certificate Insurer and remaining unpaid for any distribution date. Like the subrogation provisions in the 2007-3 PSA, the PSA Subrogation Provisions suggest that the Group I 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, like with the 2007-3 PSA, it remains unclear and unresolved at which points in the PSA waterfalls the Group I Certificate Insurer should be paid CIRA Subrogation Amounts.

2. Issues with the CISR Provision

79. As discussed in Section V.A.2 above, the Group I Certificate Insurer may be entitled to certain Subsequent Recoveries allocable to the Insured Certificates if the Group I Certificate Insurer covered the related Applied Realized Loss Amount. This potential right is set forth in the CISR Provision in the portion of the Certificate Principal Balance definition relevant to the Group I Certificates, 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 Group I Certificate Insurer.”⁶⁵ The CISR Provision presents several issues.

80. *First*, the phrase “payable to the Insured Certificates” in the CISR Provision is unclear in the context of directing Subsequent Recovery cash to the Group I Certificate Insurer. Currently, both Classes of Insured Certificates have paid off and have a Certificate Principal Balance of zero. Those Classes of Certificates were paid off by a combination of collections on the Mortgage Loans and payments by the Group I 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.⁶⁶ 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.

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

82. The PSA’s definition of Certificate Principal Balance with respect to Group I Certificates states in the proviso before the CISR Provision “that solely for purposes of determining . . . the Group I 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

⁶⁵ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added); *see also* footnote 31 for the Group I Certificate Principal Balance definition.

⁶⁶ *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”).

reduced by any principal amounts paid to the Holder thereof from payments made by the Group I Certificate Insurer under the Certificate Insurance Policy.”⁶⁷ There are other PSA Subrogation Provisions that echo that general concept.⁶⁸ 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.⁶⁹

83. 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 Group I 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

⁶⁷ PSA § 1.01, definition of “Certificate Principal Balance” (emphasis added).

⁶⁸ *See, e.g.*, PSA § 13.04(f) (“Anything herein to the contrary notwithstanding, solely for purposes of determining the Premium Distribution Amount payable to the Group I Certificate Insurer and the Group I 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.”).

⁶⁹ *See* PSA § 10.01(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). *See also* PSA § 10.01 (“The Trust Administrator shall undertake to perform such duties and only such duties **as are specifically set forth in this Agreement**”) (emphasis added).

Policy. The PSA nowhere identifies the specific rights that the Group I Certificate Insurer has as a subrogee which would be subject to such proviso. Although the PSA Subrogation Provisions suggest that the Group I Certificate Insurer has general subrogation rights, nowhere does the PSA distinguish the Group I Certificate Insurer's specific rights to subrogation from its rights to reimbursement.

84. This question is important for directing Subsequent Recoveries to the Group I Certificate Insurer. For purposes of the Group I 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 Group I 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.

85. *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 Group I 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 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 Group I Certificate Insurer or also includes outstanding interest claims paid by the Group I Certificate Insurer.
- iii. Whether the Related CIRA Balance also includes the accrued interest on

such outstanding principal and/or interest claim.⁷⁰

- 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 Group I Certificate Insurer under the Policy for the purpose of determining such Certificates' allocable share of such Subsequent Recoveries.

86. *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 Group I Certificate Insurer. If that were the proper interpretation, the question of whether Subsequent Recovery cash would be payable to the Group I Certificate Insurer under the second prong of the CIRA Definitions and thus from the CIRA Provisions in the principal waterfall, or payable to the Group I Certificate Insurer at the same point in the principal waterfalls at which the Insured Certificates receive principal arises.

87. In addition, there is no reference to the Group I Certificate Insurer receiving Subsequent Recovery cash in any of the defined terms relating to the distribution of principal (*e.g.*,

⁷⁰ The CIRA Definitions refer to accrued interest on amounts owed to the Group I Certificate Insurer.

Group I Principal Remittance Amount, Group I Loan Principal Funds, Group I Loan Principal Distribution Amount, *etc.*) or in the principal waterfalls. The only reference to the Group I Certificate Insurer receiving Subsequent Recovery cash is in the definition of a balance-related term.

88. *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 Group I Certificate Insurer. The Class I-2A2 and I-2A4 Insured Certificates each have a current balance of zero. Accordingly, the Group I Certificate Insurer will pay no further claims on those Classes. If the Group I Certificate Insurer is entitled to receive any portion of the Group I 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 Insured Certificates because they have a zero balance.

89. *Fifth*, the PSA does not address how payments to the Group I Certificate Insurer via subrogation impact the accounting of outstanding unreimbursed claims to which the Group I 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 Group I Certificate Insurer under the CISR Provision should reduce, dollar for dollar, unreimbursed claim amounts that are eligible for reimbursement to the Group I Certificate Insurer, whether by reimbursement, subrogation, or both. The Relevant CI Provisions imply that such reduction is necessary, for among other reasons to avoid double recovery by the Group I 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.⁷¹

3. Issues with the CIWU Provision

90. As explained above, one possible interpretation of the CIWU Provision is that it provides that an increased balance of an Insured Certificate should be maintained for the Group I Certificate Insurer in the amount of Subsequent Recoveries allocated to that Insured Certificate. Such Subsequent Recovery subrogation balance is referred to herein as an “SRS Balance.” There are numerous issues with implementing and administering this interpretation.

91. 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.

92. In contrast, the PSA is silent about the rights and risks that would accompany an SRS Balance created under the CIWU Provision for the Group I 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:

⁷¹ See PSA § 10.01(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).

- 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 Group I 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 Group I 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 Group I Certificate Insurer could double recover.
- vii. Whether interest payments on the SRS Balance can be netted against other claims paid by the Group I Certificate Insurer on any Distribution Date.
- viii. Whether the monthly statement to Certificateholders should report the accrued interest on the SRS Balance.⁷²

93. 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 Group I Certificate Insurer's payments of principal to 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

⁷² 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.

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 Group I 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 Group I Certificate Insurer could double recover.
 - vi. Whether principal payments on the SRS Balance can be netted against other claims paid by the Group I Certificate Insurer on any Distribution Date.
 - vii. Whether the monthly statement to Certificateholders should report the principal paid on the SRS Balance anywhere.
94. The concept of an SRS Balance leads to other issues as well. For example:
- i. Whether the Group I 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 Group I 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.

95. Again, the PSA establishes that the Trust Administrator has no duty to effectuate anything outside of the express provisions of the PSA.⁷³ Because of the issues presented by the

⁷³ See PSA § 10.01(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).

CIWU Provision 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 Provision or maintain an SRS Balance. Thus, if the Court gives effect to the CIWU Provision 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

96. 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 Group I Certificate Insurer's rights with respect to Subsequent Recoveries, including the Group I Trust Settlement Payment.

1. Request for Instruction Regarding CIRA Provisions

97. The Trust Administrator seeks instruction from the Court regarding the points in the waterfall at which the Group I Certificate Insurer should be paid any CIRA Subrogation Amounts, including the Group I 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 Group I Certificate Insurer should be paid any CIRA Subrogation Amounts, or whether the Group I 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 Group I Certificate Insurer.

2. Request for Instruction Regarding CISR Provision

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

99. *First*, the Trust Administrator seeks instruction from the Court regarding whether under the CISR Provision Subsequent Recoveries, including the Group I Trust Settlement

Payment, are considered “payable to” the Insured Certificates given that such Certificates have Certificate Principal Balances of zero, for the purpose of directing such Subsequent Recoveries, including the Group I Trust Settlement Payment, to the Group I Certificate Insurer (to the extent the Group I Certificate Insurer covered the Realized Loss associated with such Subsequent Recoveries).

100. *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 Group I Trust Settlement Payment, and directing such cash to the Group I Certificate Insurer per the CISR Provision. If so, the Trust Administrator seeks instruction from the Court regarding how to calculate the Related CIRA Balance and seeks further instruction as to the issues listed in paragraph 85.

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

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

Payment or whether such portion should be reduced to account for the fact that that the Group I Certificate Insurer will pay not further claims on the Insured Certificates because they have a zero balance.

103. *Fifth*, with respect to Subsequent Recoveries (including the Group I Trust Settlement Payment to extent that the Court determines that the Group I Certificate Insurer is entitled to any portion of the Group I Trust Settlement Payment under the CISR Provision), the Trust Administrator seeks instruction from the Court regarding whether funds paid to the Group I Certificate Insurer under the CISR Provision should reduce, dollar for dollar, unreimbursed claim amounts that are eligible for repayment to the Group I Certificate Insurer.

3. Request for Instruction Regarding CIWU Provision

104. The Trust Administrator seeks instruction from the Court regarding whether the CIWU Provision requires it to maintain an SRS Balance for the Group I 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 92 through 94.

BASIS FOR RELIEF

105. 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).

106. 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 and 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 Group I 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 Group I Trust Settlement Payment and further determining that the Trust Administrator should distribute any Recovery to the Trust, including the Group II Trust Settlement Payment, in accordance with Section 5.03(e) without paying down the Certificate Principal Balance of the Group II Certificates as required by Section 5.03(e).
 - iii. determining whether, given the Assured 2013 Letter, any of the Group I Trust Settlement Payment should be distributed to the Group I 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 Group I Trust Settlement Payment and any future Subsequent Recovery payable to the Group I 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 and Recoveries, including the Settlement Agreement, and the processing and distribution of Subsequent Recoveries and 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 and 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 Group I 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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