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STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

In the Matter of:

The trusteeship created by Abacus 2006-10 Ltd. And Abacus 2006-10, Inc., relating to the issuance of Notes pursuant to an Indenture dated as of March 21, 2006.

Court File No. 62-TR-CV-18-39

OBJECTION OF GOLDMAN SACHS CAPITAL MARKETS, L.P. TO PETITION OF U.S. BANK NATIONAL ASSOCIATION

For its initial response to the Petition of U.S. Bank National Association (the "Trustee") for an Order Pursuant to Minnesota Statute Section 501C.0201 *et seq.* (the "Petition"), Goldman Sachs Capital Markets, L.P., in its capacity as Protection Buyer (the "Protection Buyer"), files this objection ("Objection") with this Court.[1] Capitalized terms used but not defined in this Objection are used as defined in the Petition or in the Indenture referred to therein. The Protection Buyer states as follows:

PRELIMINARY STATEMENT

1. This case concerns an effort by a distressed debt hedge fund to force the liquidation of a performing transaction in order to pocket a windfall. The transaction in question, the

[1] This Objection sets forth the Protection Buyer's initial response to the Trustee's Petition and certain arguments raised by a purported Noteholder, Astra Asset Management UK Limited ("Astra"), prior to the filing of the Petition. To the extent that the Trustee, Astra or the Court raise any other issues, the Protection Buyer respectfully requests the opportunity to provide a further response. The Protection Buyer also expressly reserves the right to assert additional contract-based and equitable defenses to any arguments raised by Astra, including equitable estoppel and laches.

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ABACUS 2006-10 CDO, has been performing exactly as set forth under the transaction documents for 12 years, and is expected to continue to do so for the foreseeable future. Astra purchased at deeply discounted prices notes issued by the ABACUS 2006-10 CDO, and now has seized on what it claims is a technical breach of an obscure provision in the transaction documents as justification for unwinding the entire transaction.

2. To be clear, there was no breach. Astra's claim is that certain securities held in the trust as collateral for the Protection Buyer did not meet certain investment criteria. Astra has repeatedly refused to provide any evidence supporting its claim, and has refused even to identify ***which securities*** it claims breached ***which criteria***.

3. Further, any alleged breach has been cured. Every single security identified by Astra either (1) repaid in full, with no loss to the Trust, in many cases several years ago; or (2) was voluntarily purchased from the Trust at 100 cents on the dollar, again with no loss to the trust, by an affiliate of the Protection Buyer. There is nothing left to "cure," and Astra's proposed solution would accomplish nothing other than to terminate a properly performing transaction and reward Astra for its litigation-driven distressed debt investment strategy.

4. These points bear repeating: (i) Noteholders have received all payments that they are entitled to receive based on their investment; (ii) Astra does not claim that any Noteholders were misled about the risks inherent in the Notes they purchased; and (iii) Astra does not claim that Noteholders have suffered *any* loss due to the alleged "breaches." Because all of the allegedly breaching collateral securities already have repaid in full or were voluntarily purchased from the Trust at full value (notwithstanding that there was no breach), Astra is left to complain that Noteholders were "exposed to risk" as a result of the alleged breach, even though Noteholders indisputably did not suffer any actual harm. This argument also fails, however, because pursuant

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to the transaction documents an affiliate of the Protection Buyer—not Noteholders—bore the risk that the collateral securities would not perform.

5. Astra has pressed its case through several letters to the Trustee, and has sought (unsuccessfully) to enlist other Noteholders in its efforts. Along the way, Astra has repeatedly mischaracterized the transaction documents, misrepresented the risks assumed by the transaction parties, and, most recently, demanded that the Trustee breach the Indenture by seizing funds properly held in the Trust and distributing those funds to Astra and other Noteholders.

6. In the face of Astra's escalating pressure, the Trustee filed this Petition seeking instructions from the Court as to four issues. The Protection Buyer respectfully submits that the plain language of the Indenture and Credit Default Swap defeat the positions taken by Astra, and that the Court need only apply the transaction documents as written to issue an order instructing the Trustee that:

a) there is no continuing Event of Default under the Credit Default Swap or Indenture;

b) the Trustee cannot terminate the Credit Default Swap unless there are continuing and uncured Events of Default under both the Credit Default Swap and the Indenture;

c) a majority of Noteholders have not instructed the Trustee to declare an Event of Default under the Credit Default Swap and terminate the Credit Default Swap; and

d) any Liquidation Proceeds should be distributed according to the procedures set forth in the Indenture.

The Protection Buyer further submits that the Court's determination that, as a matter of law, (1) there is no continuing Event of Default under the Credit Default Swap or Indenture; and (2) the Trustee cannot terminate the Credit Default Swap unless there are continuing and uncured Events of Default under both the Credit Default Swap and the Indenture, also would resolve the Trustee's

Petition and would relieve the Court of the need to instruct the Trustee as to the other issues raised in the Petition.

FACTUAL BACKGROUND

A. The ABACUS 2006-10 CDO

7. The ABACUS 2006-10 collateralized debt obligation (the "ABACUS 2006-10 CDO") was created in 2006 to allow investors to obtain exposure to a pre-selected portfolio of seventy Commercial Mortgage-Backed Securities ("CMBS") (collectively, the "Reference Portfolio"). To structure the ABACUS 2006-10 CDO, the issuing entities (collectively, the "Issuer") established the Trust and executed the Indenture pursuant to which the Issuer issued notes (the "Notes") that were sold to investors. The performance of the Notes is based directly on the performance of the CMBS in the Reference Portfolio.

8. The ABACUS 2006-10 CDO is a synthetic CDO, which means that the Trust does not actually hold the CMBS in question. Rather, the Trust acquired identical exposure to those CMBS by entering into a contract called a credit default swap (the "Credit Default Swap").[2] A credit default swap operates similar to an insurance contract: One party (here, the Protection Buyer) agrees to make periodic fixed payments to the other party (here, the Trust) in exchange for payments in the event that the referenced securities (here, the CMBS in the Reference Portfolio) experience defaults or other adverse credit events. (Pet. Ex. 2(c), CDS Confirmation §§ 2, 5.)

9. As the Reference Portfolio performs over time, the Protection Buyer makes periodic payments to the Trust as set forth in the Credit Default Swap. (*Id.* § 2.) The Trust then

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[2] As set forth in the Petition, the Credit Default Swap consists of three documents: (1) the ISDA Master Agreement (the "ISDA"); (2) the schedule, which modifies the ISDA's terms (the "CDS Schedule"); and (3) the confirmation, which sets forth the Reference Portfolio and most of the material economic terms of the Credit Default Swap (the "CDS Confirmation"). (Pet. ¶ 12; Pet. Ex. 2(a)-(c).)

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distributes those payments to Noteholders as set forth in the Indenture. (Pet. Ex. 1, Indenture § 7.1.) To the extent that the Reference Portfolio suffers writedowns, the Notes can suffer writedowns as well. The payment mechanics and procedures are spelled out in detail in the Indenture, and Noteholders receive monthly reports from the Trustee that include, among other things, extensive information regarding all payments received and made by the Trust and the performance of the CMBS in the Reference Portfolio. (*See id*. §§ 10.4, 10.5.)

10. When the Noteholders purchased the Notes from the Trust in the initial offering in 2006, the Issuer used the proceeds from those sales to purchase securities to be held in the Trust as collateral (the "Collateral Securities"). (*Id*. § 3.5.) The Collateral Securities are distinct from the Reference Portfolio—whereas the Reference Portfolio is designed to include the CMBS that Noteholders obtained exposure to, the Collateral Securities are held as collateral to secure the Issuer's obligations to the Protection Buyer and Noteholders. As noted above, if the CMBS in the Reference Portfolio fail to repay principal or suffer writedowns, the Credit Default Swap requires the Trust to make payments to the Protection Buyer. (Pet. Ex. 2(c), CDS Confirmation § 2.) To make those payments, the Trust sells Collateral Securities (as necessary). (*Id*. § 5; Pet. Ex. 1, Indenture § 12.1.)

11. The performance of the Collateral Securities thus is extremely important to the Protection Buyer, as the Collateral Securities represent the primary source of the Protection Buyer's repayment under the terms of the Credit Default Swap. As part of the ABACUS 2006-10 CDO transaction, the Issuer entered into another contract (the "Collateral Put Agreement"), pursuant to which a highly rated affiliate of the Protection Buyer (the "Collateral Put Provider") assumed the default risk of the Collateral Securities by agreeing to purchase the Collateral Securities at par value under certain circumstances.

12. Under the terms of the Credit Default Swap, the Protection Buyer has significant discretion over the management of the Collateral Securities. (*See* Pet. Ex. 2(c), CDS Confirmation § 5.) For example, as the Collateral Securities repay principal, the Protection Buyer can direct the Issuer to use those funds to purchase additional Collateral Securities (the "Supplemental Collateral Securities"). (*Id.*) The Supplemental Collateral Securities are selected by the Protection Buyer and generally must comply with certain criteria (the "Collateral Security Eligibility Criteria") at the time the Issuer purchases them. (*Id.*) The Trustee's monthly reports to Noteholders include extensive detail regarding the Collateral Securities, including all payments received on the Collateral Securities and all purchases or sales of Collateral Securities. (Pet. Ex. 1, Indenture § 10.4.) If any Noteholder at any time objects to any of the Collateral Securities for any reason, the Indenture sets forth a procedure whereby the Noteholder can request that another security be substituted for a Collateral Security. (*Id.* § 12.2.)[3]

13. The Indenture and Credit Default Swap set forth the rights and obligations of the parties to those documents, as well as procedures to address any breaches of those obligations. Section 5 of the Indenture lists certain events of default (each an "Event of Default" under the Indenture). As relevant here, Section 5.1(d) of the Indenture provides that an Event of Default under the Indenture occurs where there is "a default in the performance, in a material respect, or breach, in a material respect, of any covenant, representation, warranty or other agreement of the Issuers in this Indenture . . . and the continuance of such default or breach for a period of 30 days after written notice thereof shall have been given to the Issuers" by the Trustee or by Noteholders

[3] Despite Astra's awareness of the composition of the Collateral Securities since the time of its alleged purchase (if not earlier), Astra has never submitted a substitution request.

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representing 25% of the outstanding Notes.[4] The Indenture also provides that Noteholders representing a majority of the outstanding Notes can in certain circumstances instruct the Trustee (or Issuer) to take certain actions with respect to, among other things, the Credit Default Swap. (*See* Pet. Ex. 1, Indenture §§ 5.19, 15.1; *see also* Section II, *infra*.)

14. Section 5 of the ISDA lists certain events of default under the Credit Default Swap (each an "Event of Default" under the Credit Default Swap). As relevant here, Section 5(a)(ii) of the ISDA states that a party's failure to "comply with or perform any agreement or obligation . . . to be complied with or performed by the party in accordance with this Agreement" constitutes an Event of Default under the Credit Default Swap "if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party." Under Section 6(a) of the ISDA, if an Event of Default with respect to one of the parties to the Credit Default Swap "has occurred and is then continuing," the non-defaulting party to the Credit Default Swap may in certain circumstances provide "notice to the [defaulting party] specifying the relevant Event of Default," and thereafter seek to terminate the Credit Default Swap. Thus, only the parties to the Credit Default Swap (the Protection Buyer and the Issuer) or their assignees can declare an Event of Default under the Credit Default Swap and seek to terminate the Credit Default Swap. (Pet. Ex. 2(a), ISDA §§ 5(a)(ii), 6(a).)

15. As relevant here, the termination of the Credit Default Swap would, under Section 9.5 of the Indenture, result in a mandatory redemption of the Notes (a "Mandatory Redemption") pursuant to procedures set forth in the Indenture. (Pet. Ex. 1, Indenture §§ 9.5, 11.1(a)(B).)

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[4] The Indenture also sets forth the method for calculating the outstanding amount of the Notes. (*See, e.g*., Pet. Ex. 1, Indenture at 4 (defining the "Aggregate USD Equivalent Outstanding Amount" of the Notes).)

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16. For more than 12 years, the ABACUS 2006-10 CDO has performed as set forth in the Indenture and Credit Default Swap. Noteholders have continued to receive principal and interest payments (as well as realize writedowns) based on the performance of the CMBS in the Reference Portfolio. The Protection Buyer has continued to make periodic payments to the Trust, and the Trust has continued to make payments to the Protection Buyer when the CMBS in the Reference Portfolio suffer credit events. Each of the transaction participants has received exactly what it bargained for.

B. Astra's purchase and letters

17. Astra claims to hold $45.7 million of Notes.[5] As a result of the past and projected performance of the CMBS in the Reference Portfolio, the outstanding Notes have realized writedowns and are expected to realize further writedowns over the next several years. Given these actual and projected writedowns, the Notes have for several years traded in the secondary market at significant discounts to their face value. Although Astra has not disclosed its purchase date or the price paid for its Notes, the Protection Buyer believes that Astra likely purchased its Notes long after issuance at a heavily discounted price.

18. On May 24, 2018, Astra sent the Trustee a letter claiming that an Event of Default had occurred under the Credit Default Swap and Indenture based on the assertion that certain of the Supplemental Collateral Securities purchased between 2006 and 2015 did not comply with all of the Collateral Security Eligibility Criteria. (Pet. Ex. 3, May 24 Letter at 2.) Astra's letter appended a list of supposedly "Ineligible Securities," but did not identify, for even a single security, the Collateral Security Eligibility Criteria that each of the securities supposedly did not

[5] To date, the Protection Buyer is not aware of any evidence establishing that Astra in fact holds even the 47% of outstanding Notes that Astra claims to hold.

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satisfy. (*Id*. at Schedule A.) Notwithstanding this omission, Astra claimed that the Protection Buyer had breached its obligations under the Credit Default Swap by directing the Issuer to purchase the "Ineligible Securities," and that this breach constituted an Event of Default under Section 5(a)(ii) of the Credit Default Swap. (*Id*. at 2.) Astra also claimed that the Issuer's purchase of "Ineligible Securities" at the direction of the Protection Buyer was an Event of Default under Section 5.1(d) of the Indenture, but Astra did not (1) identify any alleged breach by the Issuer; or (2) explain how the Issuer's purchase of supposedly "Ineligible Securities" at the direction of the Protection Buyer could constitute an Event of Default under Section 5.1(d) of the Indenture. (*See id*.) Astra then demanded that the Trustee "immediately" terminate the Credit Default Swap and proceed with a Mandatory Redemption of the Notes, which would result in Astra's Notes being paid off at 100 cents on the dollar. (*Id*. at 2.) Astra's proposed Mandatory Redemption would be contrary to the procedures set forth in the Indenture and would result in a massive windfall for Astra.

19. At the time of Astra's May 24 letter, a substantial majority of the supposedly "Ineligible Securities" already had *repaid in full, with no loss to the Trust*.[6] Many of those securities had repaid in full several years prior to Astra's letter, and likely long before Astra (allegedly) purchased its Notes.

20. On June 1, 2018, notwithstanding that there was no breach, an affiliate of the Protection Buyer voluntarily purchased all remaining Supplemental Collateral Securities held by

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[6] Astra's May 24 letter also misleadingly argued that that the Protection Buyer could not seek to cure the alleged Event of Default because "many of the securities comprising the Ineligible [Securities] are no longer outstanding." (Pet. Ex. 3, May 24 Letter at 2.) Astra's letter omitted that the reason why those securities were "no longer outstanding" was because they already had repaid in full.

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the Trust at par value to avoid the burden and expense of continuing to respond to Astra's arguments.[7] As a result, the Trust currently holds only cash and cash equivalents in lieu of other forms of Collateral Securities.

21. On June 15, 2018, the Protection Buyer sent the Trustee a letter responding to Astra's May 24 letter. (Pet. Ex. 4, June 15 Letter). The Protection Buyer explained that Astra's letter did not constitute a notice of default under either the Indenture or the Credit Default Swap because, among other reasons, Astra failed to supply even the most basic information regarding the alleged breach, such as the Collateral Security Eligibility Criteria that the asserted "Ineligible Securities" supposedly failed to meet. (*Id.* at 2.) The Protection Buyer also explained that contrary to Astra's unsupported assertions, the "Ineligible Securities" in fact satisfied the Collateral Security Eligibility Criteria, and that any alleged breach had been cured as a result of the "Ineligible Securities" repaying in full or being purchased from the Trust at par value, with no losses to the Trust. (*Id.* at 2.)

22. On June 29, 2018, Astra sent the Trustee a letter stating that it stood by its May 24 letter. (Pet. Ex. 5, June 29 Letter.) Astra reiterated its assertion that there had been unspecified "violations" of the Collateral Security Eligibility Criteria, but once again did not identify a single "violation" attributable to a particular Supplemental Collateral Security. (*Id.* at 1.) Notwithstanding that Astra had just weeks earlier claimed that the remaining Supplemental Collateral Securities represented an ongoing breach causing harm to Noteholders, Astra's June 29 letter also claimed that the June 1, 2018 purchase of those securities at par value by an affiliate of

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[7] The Protection Buyer's affiliate also reimbursed the Trust for a $153,300 writedown associated with one Supplemental Collateral Security that the Issuer had purchased in 2008. (Pet. Ex. 4, June 15 Letter at 4.) This represents the only writedown recorded in connection with any Supplemental Collateral Security held by the Trust during the more than 12 years since the Trust was formed. (*Id.*)

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the Protection Buyer "confer[red] no meaningful benefit upon the Noteholders." (*Id*. at 2.) Astra also claimed that "the Collateral Security Eligibility Criteria is fundamental to the contractual bargain struck by the Noteholders, who bear the default risk of Supplemental Collateral Securities," and that "Goldman Sachs bears no such risk." (*Id*. at 2.) Astra omitted that an affiliate of the Protection Buyer serves as Collateral Put Provider pursuant to the Collateral Put Agreement, and thus bore the default risk of the Collateral Securities. Astra also claimed for the first time that the Trustee should not only terminate the Credit Default Swap and proceed with a Mandatory Redemption of the Notes, but that the Trustee also should seize $70 million of "unlawful gains" from the Trust and place those funds in an escrow account for distribution to Astra and other Noteholders. (*Id*.) Astra did not identify any provision of the Indenture, the Credit Default Swap or any other document that would permit the Trustee to create the escrow account demanded by Astra or to disregard the distribution provisions set forth in the Indenture.

23. On August 13, 2018, the Protection Buyer responded to Astra's June 29 letter, noting that, among other things, Astra had (1) again failed to identify any alleged breaches; (2) again ignored that any alleged breaches had been cured; (3) misrepresented the risks borne by the Noteholders; and (4) improperly demanded that the Trustee breach the Indenture by seizing funds held in the Trust. (Pet. Ex. 6, August 13 Letter at 1-3.)

C. The Trustee's Petition

24. On August 15, 2018, the Trustee filed the Petition asking the Court for instructions as to four issues:

a) whether an Event of Default under the Credit Default Swap has occurred and is continuing by the Protection Buyer and/or the Issuer, and whether an Event of Default under the Indenture has occurred and is continuing by the Issuer;

b) whether the Trustee may terminate the Credit Default Swap following an Event of Default under the Credit Default Swap and a request from a

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Majority of Holders if there has been no Event of Default under the Indenture;

c) confirmation that a Majority of Holders have not instructed the Trustee to terminate the Credit Default Swap; and

d) whether Noteholders are entitled to the Liquidation Proceeds otherwise payable to the Protection Buyer under Section 11.1(a)(B)(ix) of the Indenture.

25. For the reasons set forth below, the Court should issue an order instructing the Trustee that:

a) there is no continuing Event of Default under the Credit Default Swap or Indenture;

b) the Trustee cannot terminate the Credit Default Swap unless there are continuing and uncured Events of Default under both the Credit Default Swap and the Indenture;

c) a majority of Noteholders have not instructed the Trustee to declare an Event of Default under the Credit Default Swap or to seek to terminate the Credit Default Swap; and

d) any Liquidation Proceeds should be distributed according to the procedures set forth in the Indenture.

ARGUMENT

I. There Is No Continuing Event of Default Under the Credit Default Swap or Indenture.

A. Neither party to the Credit Default Swap has declared an Event of Default under the Credit Default Swap.

26. As the Petition notes, Noteholders cannot declare an Event of Default under the Credit Default Swap. (Pet. ¶ 30.). Only the parties to the Credit Default Swap (or their assignees) can declare an Event of Default under the Credit Default Swap. (Pet. Ex. 1, Indenture § 5.19; Pet. Ex. 2(a), ISDA § 6(a).) Neither party has done so.

27. Unless and until the Issuer (or the Trustee on the Issuer's behalf) properly notifies the Protection Buyer of an event constituting an Event of Default under the Credit Default Swap

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(and any cure period has passed), there cannot be a continuing Event of Default under the Credit Default Swap.

B. There has not been an Event of Default under the Credit Default Swap or Indenture because there has not been a breach.

28. Despite having every opportunity to do so, Astra has not offered any evidence to support its claim that certain of the Supplemental Collateral Securities did not comply with all of the Collateral Security Eligibility Criteria. As noted above, Astra included in its May 24 letter a list of "Ineligible Securities," but did not identify, for even a single security, the Collateral Security Eligibility Criteria that each of the securities supposedly did not satisfy. (Pet. Ex. 3, May 24 Letter at Schedule A.). The only supposed breach mentioned in Astra's May 24 letter was that certain unspecified Supplemental Collateral Securities allegedly "were not the senior most class with respect to the allocation of losses to section (ii) of the Collateral Security Eligibility Criteria." (*Id.* at 2.) Astra has not offered any evidence to support this claim or even attempted to identify which of the "Ineligible Securities" supposedly did not satisfy this criteria.[8] Astra's refusal to provide this basic information highlights that Astra has not and cannot establish that there has been a breach.

29. Despite Astra's unsupported claims to the contrary, the Protection Buyer at all times complied with its obligations under the Credit Default Swap, and each of the Supplemental Collateral Securities complied with all of the Collateral Security Eligibility Criteria.

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[8] Astra's claim that certain unspecified "Ineligible Securities" supposedly did not satisfy this criteria is based on Astra's interpretation of public information that was available to all Noteholders (as well as to the Issuer and Trustee) at the time the Issuer purchased the Supplemental Collateral Securities. If Astra (or any Noteholder) had any objection to the Issuer's purchase of any of the Supplemental Collateral Securities at any time between 2006 and today, the Indenture provides a procedure to address those concerns. (Pet. Ex. 1, Indenture § 12.2.) Astra declined to pursue that option.

C. Any alleged breaches have been cured.

30. Even if certain of the Supplemental Collateral Securities had violated certain of the Collateral Security Eligibility Criteria—and they did not—any such breaches have been cured. All of the "Ineligible Securities" identified by Astra had previously repaid in full or have now been purchased from the Trust at par value.

31. The vast majority of the purportedly "Ineligible Securities" ***repaid in full years before Astra's May 24 letter***, with no losses to the Trust. Astra has claimed that because these bonds already had repaid in full, the alleged breaches cannot be cured. (Pet. Ex. 3, May 24 Letter at 2.) This is nonsense—the remedy for any alleged breach of the Collateral Security Eligibility Criteria would be to repurchase the non-qualifying Supplemental Collateral Security, and a repayment in full is effectively the same thing as a repurchase. Securities that already have repaid in full cannot possibly represent outstanding breaches. *See, e.g.*, *LaSalle Bank Nat. Ass'n* v. *Merrill Lynch Mortg. Lending, Inc*., 2007 WL 2324052, at *13 (S.D.N.Y. Aug. 13, 2007)[9] (finding that borrower's breaches of loan payment terms "were cured when payment was received in full some time thereafter [at which point] those breaches were no longer existing"); *see also In re Taddeo*, 685 F.2d 24, 26–27 (2d Cir. 1982) (explaining that, in the bankruptcy context, "[c]uring a default commonly means taking care of the triggering event and returning to pre-default

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[9] The Indenture is governed by New York law. (Pet. Ex. 1, Indenture § 14.9.) This Court must therefore apply New York law when analyzing the terms of the Indenture. *See Milliken & Co.* v. *Eagle Packaging Co.*, 295 N.W.2d 377, 380 n.1 (Minn. 1980) ("This court is 'committed to the rule' that parties may agree that the law of another state shall govern their agreement and will interpret and apply the law of another state where such an agreement is made.") (quoting *Combined Ins. Co. of Am.* v. *Bode*, 77 N.W.2d 533, 536 (Minn. 1956)); *see also U.S. Bank Nat. Ass'n* v. *Angeion Corp*., 615 N.W.2d 425, 429 (Minn. Ct. App. 2000) ("Because the indenture contains a choice-of-law clause providing that New York law governs, we apply New York contract law to this dispute.").

conditions [such that the] consequences [of default] are thus nullified"). Here, even if a breach had occurred—which it did not—the repayment of the securities in full would have "nullified" and thus cured the breach.

32. Further, even though there was no breach, in an effort to avoid further dispute, an affiliate of the Protection Buyer voluntarily purchased all remaining Supplemental Collateral Securities held by the Trust at par value.[10] These repurchases are exactly what would cure any alleged breach of the Collateral Security Eligibility Criteria.

33. Notwithstanding that neither the Trust nor the Noteholders suffered any loss due to the Supplemental Collateral Securities, and notwithstanding that all of the Supplemental Collateral Securities have repaid in full or been repurchased from the Trust at par value, Astra nevertheless claims that there is a continuing and incurable breach because Noteholders were exposed to risk due to the Supplemental Collateral Securities. (Pet. Ex. 5, June 29 Letter at 2.) Astra is wrong.

34. Noteholders got exactly the risk that they bargained for—exposure to the CMBS in the Reference Portfolio—and the Notes have performed exactly as set forth in the Indenture. Any writedowns on the Notes resulted from the performance of the CMBS in the Reference Portfolio, and have nothing to do with any alleged breaches of the Collateral Security Eligibility Criteria or the performance of the Collateral Securities.[11] Further, Astra's claim that Noteholders bore the

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[10] The Protection Buyer's affiliate completed this purchase just eight days after Astra's May 24 letter. (Pet. Ex. 4, June 15 Letter at 4.) The Protection Buyer's affiliate also reimbursed the Trust for a $153,300 writedown on one Supplemental Collateral Security that the Issuer had purchased in 2008, which had represented the only writedown recorded in connection with any Collateral Security ever held by the Trust. (*Id.*)

[11] Astra's May 24 letter misleadingly claimed that "Notwithstanding its violations, Goldman Sachs has collected protection payments under the Credit Default Swap, and the Notes have continued to be written down, thus causing significant harm to Noteholders, including Astra."

risks associated with the Supplemental Collateral Securities is false. To the contrary, an affiliate of the Protection Buyer serves as Collateral Put Provider pursuant to the Collateral Put Agreement, and thus bore the default risk of the Supplemental Collateral Securities. (*See, e.g*., Pet. Ex. 1, Indenture § 12.6.)[12]

D. The Issuer's purchase of Supplemental Collateral Securities at the direction of the Protection Buyer cannot constitute an Event of Default under the Indenture.

35. Astra has alleged that "the Issuer's purchase of [the Ineligible Securities] is an Event of Default under Section 5.1(d) of the Indenture." (Pet. Ex. 3, May 24 Letter at 2.) Astra is simply wrong.

36. Section 5.1(d) of the Indenture states in relevant part that an Event of Default under the Indenture occurs where there is "a default in the performance, in a material respect, or breach, in a material respect, of any covenant, representation, warranty or other agreement *of the Issuers* in this Indenture. . . ." (emphasis added). As the Petition correctly notes, an Event of Default under Section 5.1(d) of the Indenture necessarily requires a breach *by the Issuer*. (Pet. ¶ 36.) An Event of Default under Section 5.1(d) of the Indenture thus cannot be premised on an alleged breach of the Credit Default Swap by the Protection Buyer.

37. The Credit Default Swap states that "[the Protection Buyer] shall direct the [Issuer] to purchase a Supplemental Collateral Security only if it satisfies the [Collateral Security

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(Pet. Ex. 3, May 24 Letter at 2.) The alleged "violations" indisputably had no impact on the writedowns on the Notes, and in no way have harmed Noteholders.

[12] Although the Collateral Put Provider has the option to terminate the Collateral Put Agreement if a "Collateral Default" has occurred under the Collateral Put Agreement and is ongoing, none of the purportedly "Ineligible Securities" identified in Astra's May 24 letter suffered a "Collateral Default." Further, Astra has not alleged that it was even possible for any of the "Ineligible Securities" to have suffered a "Collateral Default" according to the terms of the governing documents for those securities. (Pet. Ex. 6, August 13 Letter at 3 n.4.)

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Eligibility Criteria] at the time of purchase." (Pet. Ex. 2(c), CDS Confirmation § 5.) Even if the Protection Buyer in fact directed the Issuer to purchase non-qualifying Supplemental Collateral Securities—which it did not—that would represent, at most, a breach of the Credit Default Swap *by the Protection Buyer*, not by the Issuer. Nothing in the Credit Default Swap provides that *the Issuer* would breach the Credit Default Swap simply by complying with a direction from the Protection Buyer to purchase Supplemental Collateral Securities that ultimately were determined not to satisfy the Collateral Security Eligibility Criteria. Similarly, nothing in the Indenture creates an independent obligation for the Issuer to comply with the Collateral Security Eligibility Criteria. Any purchases by the Issuer of ineligible Supplemental Collateral Securities at the direction of the Protection Buyer thus would not constitute a breach *by the Issuer* of either the Credit Default Swap or the Indenture, and thus could not constitute a breach of Section 5.1(d) of the Indenture.[13]

E. There has not been an Event of Default under the Indenture because any alleged breach was not material.

38. For a breach to constitute an Event of Default under Section 5.1(d) of the Indenture, it must be "a default in the performance, *in a material respect*, or breach, *in a material respect*, of any covenant, representation, warranty or other agreement of the Issuers in this Indenture . . . ." (emphasis added). Astra's June 29 letter claims that the alleged violations of the Collateral

[13] This analysis is further supported by the structure of the Indenture and simple logic: If the Protection Buyer breached the Credit Default Swap by directing the Issuer to purchase non-qualifying Supplemental Collateral Securities, it would make no sense to treat the Issuer's purchase of those securities as a breach of the Credit Default Swap by the Issuer. Under the Credit Default Swap and the Indenture, the identity of the breaching party affects not only the procedures for declaring an Event of Default and seeking to terminate the Credit Default Swap, but also the priority of payments upon termination of the Credit Default Swap. (*See* Pet. Ex. 1, Indenture §§ 9.5, 10.6.) It would defy common sense and the language of the deal documents to permit the Protection Buyer to direct the Issuer to breach the Credit Default Swap and then have that action treated as a breach by both parties, which could in turn benefit the Protection Buyer in the event of a termination.

Security Eligibility Criteria "are material, as they constitute a black letter default that gives rise to the right to terminate the Credit Default Swap." (Pet. Ex. 5, June 29 Letter at 1.) Although Astra appears to suggest that the alleged violations were material *because* they allegedly represented a "black letter default," materiality is an independent standard that must be satisfied in order for a breach to constitute a "material" breach and thus trigger an Event of Default under the Indenture, which is not the case here.

39. In determining the materiality of a breach, courts consider, among other factors, "the extent to which the injured party will be deprived of the benefit which he reasonably expected [and] the extent to which the injured party can be adequately compensated . . . ." Restatement (Second) of Contracts § 241 (1981); *BOB Acres, LLC* v. *Schumacher Farms, LLC*, 797 N.W.2d 723, 728–29 (Minn. Ct. App. 2011) ("The [Minnesota] supreme court has held that even when express conditions of the contract are violated, the breach is not necessarily material."). Under New York law, "[a] breach is material if it 'go[es] to the root of the agreement between the parties [and] is so substantial that it defeats the object of the parties in making the contract.'" *VFS Fin., Inc.* v. *Falcon Fifty LLC*, 17 F. Supp. 3d 372, 379–80 (S.D.N.Y. 2014) (quoting *Frank Felix Assocs., Ltd*. v. *Austin Drugs, Inc*., 111 F.3d 284, 289 (2d Cir.1997)).

40. Noteholders have neither been deprived of a benefit to which they are entitled nor suffered any harm. Rather, Noteholders were exposed only to the risks that they expressly agreed to face. Given that the Collateral Put Provider—not Noteholders—bore the default risk of the Supplemental Collateral Securities, Noteholders were neither injured nor entitled to compensation for having been "exposed to risk." Even if certain Supplemental Collateral Securities had not satisfied every single technical standard in the Collateral Security Eligibility Criteria, any "risk" faced by Noteholders as a result would be *de minimis* and had no effect whatsoever on the

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performance of the Notes. In short, even if certain of the Supplemental Collateral Securities did not comply with certain of the Collateral Security Eligibility Criteria, that breach was not material and thus could not trigger an Event of Default under the Indenture.

II. The Trustee Cannot Terminate the Credit Default Swap Unless There Are Continuing and Uncured Events of Default Under Both the Credit Default Swap and the Indenture.

41. Astra has implied that if a majority of Noteholders instruct the Trustee to terminate the Credit Default Swap, the Trustee is obligated to do so. Astra is wrong.

42. *First*, regardless of any direction from Noteholders to the contrary, the Trustee cannot terminate the Credit Default Swap unless there is an Event of Default under the Credit Default Swap. As relevant here, this requires that (1) the Protection Buyer has breached the Credit Default Swap; (2) the Trustee, on behalf of the Issuer, has issued a notice of default to the Protection Buyer and requested that the Protection Buyer cure the breach; and (3) the Protection Buyer has not cured the breach before the end of the 30-day cure period. (Pet. Ex. 2(a), ISDA § 6(a).)

43. As discussed in Sections I.A-I.C above, (1) the Protection Buyer has not breached the Credit Default Swap; (2) the Trustee has never issued a notice of default under the Credit Default Swap (and thus obviously there has not been a continuing breach for 30 days); and (3) even if there had been a breach of the Credit Default Swap, any such breach has been cured. Neither the Trustee nor the Issuer has the right to terminate the Credit Default Swap in the absence of an Event of Default under the Credit Default Swap, and no instruction from Noteholders to the contrary can change that fact.

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44. This is consistent with Section 5.19(a) of the Indenture. Section 5.19(a) sets forth a procedure whereby a majority of Noteholders can direct the Trustee to take action to:

> "compel or secure the ***performance and observance by the Protection Buyer . . . of its obligations to the Issuer*** under or in connection with the Credit Default Swap . . . ***in accordance with the terms thereof***, and to exercise any and all rights, remedies, powers and privileges ***lawfully available to the Issuer under or in connection with the Credit Default Swap*** . . . to the extent and in the manner directed by a [majority of Noteholders], including the transmission of notices of default on the part of the Protection Buyer . . . thereunder and the institution of legal or administrative actions or proceedings to compel or secure ***performance by the Protection Buyer . . . of its obligations under the Credit Default Swap***" (emphasis added).

45. The Noteholders' ability to direct the Trustee under Section 5.19(a) thus is not unlimited—in particular, Noteholders can direct the Trustee only to take actions that the Trustee otherwise is permitted to take under the relevant documents (*e.g.*, to exercise the Issuer's rights under the Credit Default Swap). If the Trustee does not itself have the right to declare an Event of Default under the Credit Default Swap and terminate the Credit Default Swap (for example, because there has been no breach of the Credit Default Swap), then the Trustee does not suddenly gain that right because 51% of Noteholders believe that it should.

46. This also is consistent with Sections 5.19(b) and 5.19(c) of the Indenture. Section 5.19(b) sets forth a procedure whereby a majority of Noteholders can direct the Trustee to terminate the Credit Default Swap, but Section 5.19(b) applies only where the Trustee "becom[es] aware of the occurrence of any event that gives rise to the right of the Issuer to terminate the Credit Default Swap." As with Section 5.19(a), if the Protection Buyer has not breached the Credit Default Swap, a majority of Noteholders cannot direct the Trustee to terminate the Credit Default Swap under Section 5.19(b). Similarly, under Section 5.19(c) of the Indenture, a majority of Noteholders cannot direct the Trustee to terminate the Credit Default Swap if there is no continuing

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breach of the Credit Default Swap by the Protection Buyer. Section 5.19(c) is further limited in its applicability to situations in which there also is an Event of Default under the Indenture.

47. This also is consistent with Section 15.1(a) of the Indenture, which states that the Trustee has the right to act on behalf of the Issuer with respect to the Credit Default Swap in certain circumstances, including "the right to give all notices of termination and to take any legal action ***upon the breach of an obligation of a party*** (other than the Issuer)" under the Credit Default Swap and certain other agreements (emphasis added). The Issuer obviously cannot assign to the Trustee rights under the Credit Default Swap that are broader than the Issuer's rights under the Credit Default Swap.

48. *Second*, regardless of any direction from Noteholders to the contrary, the Trustee cannot terminate the Credit Default Swap unless there also is an Event of Default under the Indenture. Section 15.1(a) of the Indenture states that notwithstanding anything in the Indenture to the contrary, "the Trustee shall not have the authority to execute any of the rights" enumerated in Section 15.1(a) or otherwise arising from the assignment to the Trustee of the Issuer's rights under the Credit Default Swap "until the occurrence of an Event of Default [under the Indenture,] and such authority shall terminate at such time, if any, as such Event of Default is cured or waived." The Trustee thus cannot seek to terminate the Credit Default Swap unless and until there is a continuing and uncured Event of Default under the Indenture that has not been waived. Because there is no continuing and uncured Event of Default under the Indenture, *see supra* Sections I.B-I.E, the Trustee cannot terminate the Credit Default Swap regardless of whether a majority of Noteholders instruct the Trustee to do so.

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49. The Court should instruct the Trustee that it cannot terminate the Credit Default Swap unless there are continuing and uncured Events of Default under both the Credit Default Swap and the Indenture.

III. A Majority of Noteholders Have Not Instructed the Trustee To Declare an Event of Default Under the Credit Default Swap and Terminate the Credit Default Swap.

50. As discussed above, the Indenture provides that in certain circumstances, a majority of Noteholders can instruct the Trustee to take certain actions. This requires that Noteholders seeking to direct the Trustee (1) establish that they represent a majority of outstanding Noteholders; and (2) provide the Trustee with an acceptable form of instruction and indemnity. Astra has failed on both counts.

51. Astra does not claim that it holds a majority of the Notes. Rather, Astra argues that even though it holds only 47% of the Notes, another 43% of the Notes are held by an unrelated trust (the "Hout Bay CDO"), and that based on Astra's interpretation of the documents governing the Hout Bay CDO, the trustee for the Hout Bay CDO "must" vote in support of any consent solicitation that Astra submits to Noteholders. Astra further claims that because the Hout Bay CDO ultimately "must" vote in support of any such solicitation, Astra already should be treated as if it represents a majority of Noteholders. Astra is wrong.

52. As the Trustee correctly notes, regardless of Astra's arguments about what other Noteholders "must" do in certain circumstances, the fact remains that to date, a majority of Noteholders have not instructed the Trustee to declare an Event of Default under the Credit Default Swap and terminate the Credit Default Swap. (Pet. ¶¶ 65-67.)[14] Astra's claims regarding the Hout

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[14] To date, the Protection Buyer has not seen evidence establishing even that Astra holds the Notes it claims to hold, much less evidence establishing the holdings of other entities, or that any group of entities would in fact collectively represent a majority of outstanding Notes, as that term is defined in the Indenture.

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Bay CDO's purported ownership of certain Notes or the obligations of the Hout Bay CDO's trustee are irrelevant to the question of whether a majority of Noteholders ***have*** instructed the Trustee to terminate the Credit Default Swap. They have not.

53. On August 24, 2018, subsequent to the Trustee's filing of the Petition, Astra sought to address this obvious flaw in its case by sending the Trustee a consent solicitation to be distributed to Noteholders. (Obj. Ex. 1, August 24 Letter.) Astra's solicitation fails for at least three reasons.

54. *First*, Astra's solicitation does not address the Trustee's conclusion that a majority of Noteholders have not instructed the Trustee to act. Astra's solicitation asks Noteholders only whether they wish to vote "in favor of or against declaring an Event of Default under the Credit Default Swap and in favor of or against terminating the Credit Default Swap." (*Id.*, August 24 Letter at Schedule A.) Because nothing in Astra's solicitation ***instructs the Trustee*** to take any action, this solicitation, regardless of any responses, cannot trigger any obligations of the Trustee.

55. Further, as the Trustee stated in its August 28, 2018 Noteholder Communication Notice enclosing Astra's August 24 letter, Section 6.3 of the Indenture provides that the Trustee's obligation to act in certain circumstances at the instruction of Noteholders is subject to the Trustee's right to require that Noteholders provide reasonable security or indemnity against all costs, expenses and liabilities which the Trustee might reasonably incur in complying with such instructions. (Obj. Ex. 2, August 28 Notice at 2.) Astra is well aware of this requirement: the Petition notes that the Trustee previously had attempted to negotiate an acceptable form of direction and indemnity with Astra, but that Astra had refused. (Pet. at 24 n.7.) Despite (or perhaps because of) Astra's unwillingness to provide the required indemnity to the Trustee, Astra's solicitation ignores this issue entirely. Whatever Astra's motivations, this omission renders

Astra's solicitation invalid. Even if a Noteholder were to respond to Astra's solicitation by voting "in favor of" declaring an Event of Default and terminating the Credit Default Swap, that would not represent an instruction to the Trustee to act, much less a commitment by the Noteholder to provide the Trustee with the indemnity that the Trustee is entitled to require before acting on any instruction.

56. *Second*, Astra's solicitation is invalid because it does not specify the supposed Event of Default. The Credit Default Swap lists several events that can in certain circumstances constitute an Event of Default under the Credit Default Swap, and the procedures for declaring an Event of Default and seeking to terminate the Credit Default Swap differ depending on the underlying event. For example, some of these events require that the allegedly breaching party be notified and given the opportunity to cure before the events can constitute an Event of Default under the Credit Default Swap, whereas other events may have limited or no cure periods. (*See, e.g.*, Pet. Ex. 2(a), ISDA §§ 5(a)(ii), 5(a)(vii).) Further, Section 6(a) of the ISDA states that a party seeking to terminate the Credit Default Swap must provide "notice to the Defaulting Party ***specifying the relevant Event of Default***" (emphasis added). Even if Astra's solicitation could be construed as an instruction to the Trustee, the solicitation would be invalid because it does not provide information necessary for the Trustee to take action.

57. *Third*, Astra's solicitation also is invalid because the Trustee cannot declare an Event of Default under Section 5(a)(ii) and seek to terminate the Credit Default Swap in the absence of an uncured breach. As discussed in Section II above, the Indenture provides that the Trustee can exercise the Issuer's rights under the Credit Default Swap in certain circumstances, including by potentially declaring an Event of Default under Section 5(a)(ii) of the Credit Default Swap in the event of a breach, and by seeking to terminate the Credit Default Swap if the breach

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remains outstanding after the cure period. (*See, e.g*., Pet. Ex. 1, Indenture § 15.1.) The Trustee cannot, however, declare an Event of Default under Section 5(a)(ii) and terminate the Credit Default Swap if there has been no breach under the Credit Default Swap, or if any breach has been cured. (*See* Pet. Ex. 2(a), ISDA §§ 5(a)(ii), 6(a).) Further, as discussed in Section II above, the Trustee cannot declare an Event of Default under the Credit Default Swap or seek to terminate the Credit Default Swap unless and until there is a continuing and uncured Event of Default under the Indenture that has not been waived. (*See* Pet. Ex. 1, Indenture § 15.1(a).) No instruction from Noteholders to the contrary can change these facts.

58. The Court should confirm the Trustee's conclusion that a majority of Noteholders have not instructed the Trustee to declare an Event of Default under the Credit Default Swap and terminate the Credit Default Swap.

IV. Any Liquidation Proceeds Should Be Distributed According to the Procedures Set Forth in the Indenture.

59. The Indenture sets forth in detail (spanning eleven pages) the way in which amounts held and received by the Trust are to be allocated in various scenarios. (Pet. Ex. 1, Indenture §§ 9.5, 10.6, 11.1.) This includes a detailed discussion of the exact procedures for distributing funds held by the Trust in the event of the exact circumstances that Astra (wrongly) claims should take place: a Mandatory Redemption of Notes resulting from the termination of the Credit Default Swap due to a breach by the Protection Buyer. (*Id*. § 9.5(c).) Nevertheless, Astra claims that the Trustee should disregard the detailed procedures clearly disclosed in the Indenture, seize tens of millions of dollars properly held within the Trust, and craft an entirely new process found nowhere in the transaction documents that would reallocate those funds to Astra and other Noteholders. Astra's argument is absurd.

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60. To be clear, as set forth in detail above, (1) there has not been a breach of the Credit Default Swap, and any alleged breach has been cured; (2) there has not been an Event of Default under the Credit Default Swap or Indenture; and (3) there is no basis for the Trustee to seek to terminate the Credit Default Swap or pursue a Mandatory Redemption of the Notes. But even if Astra were correct on all counts, and the Trustee were to terminate the Credit Default Swap and pursue a Mandatory Redemption of the Notes, the Trustee should not follow Astra's improper demand to disregard the specific terms of the Indenture and seize Trust assets. The Indenture already spells out exactly how the Trustee must act in connection with a Mandatory Redemption and does not give the Trustee the authority to deviate from that specific procedure.

61. Section 9.5(c) of the Indenture sets out the procedures the Trustee must follow "[i]n the case of a Mandatory Redemption of the Notes caused by a . . . termination of the Credit Default Swap pursuant to which the Protection Buyer is the defaulting party." As relevant here, Section 9.5(c) provides that the Trustee would liquidate the Collateral Securities and "apply such liquidation proceeds in accordance with Section 11.1(a)(B)." Section 11.1(a)(B) of the Indenture sets forth the priority of payments for the proceeds of those sales (the "Liquidation Proceeds") in that scenario. As relevant here, that priority of payments provides that the Liquidation Proceeds (and certain other funds held by the Trust) would be allocated first to several categories of obligations (including repayment of the Notes), and that any remaining Liquidation Proceeds "will be distributed to the Protection Buyer." (Pet. Ex. 1, Indenture § 11.1(a)(B)(i)-(ix).)

62. In the event of a Mandatory Redemption, Sections 9.5(c) and 11.1(a)(B) of the Indenture thus explicitly direct the Trustee to pay the Liquidation Proceeds to the Protection Buyer, even when, and in fact *specifically when*, the Mandatory Redemption is caused by the termination of the Credit Default Swap due to a breach of the Credit Default Swap by the Protection Buyer.

Sections 9.5(c) and 11.1(a)(B) are not ambiguous and do not leave any room for the Trustee to deviate from the specific protocol set out in the Indenture. *See, e.g.*, *Elliott Assocs*. v. *J. Henry Schroder Bank & Tr. Co*., 838 F.2d 66, 71 (2d Cir. 1988) ("It is . . . well-established under [New York] state common law that the duties of an indenture trustee are strictly defined and limited to the terms of the indenture.") Where a contract is unambiguous, its proper construction is a question of law. *Metro. Life Ins. Co.* v. *RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990) ("Contract language is unambiguous if it has a definite and precise meaning, unattended by danger of misconception in the purport of the contract itself, and concerning which there is no reasonable basis for a difference of opinion." (internal brackets, quotation marks, and citation omitted).) Here, Sections 9.5(c) and 11.1(a)(B) of the Indenture are clear and definite, and there is no danger that by applying their terms the Trustee will misconstrue the contract.

63. Astra's disagreement with the priority of payments set forth in Sections 9.5(c) and 11.1(a)(B) is not grounds for rewriting the unambiguous language of the Indenture to redistribute the Liquidation Proceeds based on Astra's desires. Under New York law, a court must adhere to a contract's unambiguous terms. "[I]f the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect personal notions of fairness and equity." *Greenfield* v. *Philles Records, Inc.*, 98 N.Y.2d 562, 569-70 (N.Y. 2002). Language that is clear and unambiguous is not rendered ambiguous merely because one party urges a different interpretation. *Id.*; *Law Debenture Trust Co.* v. *Maverick Tube Corp.*, 595 F.3d 458, 467 (2d Cir. 2010). In contrast, an ambiguous contract is one that is "reasonably susceptible" to more than one interpretation. *Steiner* v. *Lewmar, Inc.*, 816 F.3d 26, 32 (2d Cir. 2016); *see also Davis by Davis* v. *Outboard Marine Corp.*, 415 N.W.2d 719, 723 (Minn. 1988). The statement in Section 11.1(a)(B)

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of the Indenture that "the balance of Principal Proceeds (if any) will be distributed to the Protection Buyer" is not susceptible—reasonably or otherwise—to more than one interpretation.

64. The Court should instruct the Trustee that in the event of a Mandatory Redemption, the Liquidation Proceeds should be distributed in accordance with Section 11.1(a)(B) of the Indenture.

CONCLUSION

65. For the above reasons, the Court should issue an order instructing the Trustee that:

a) there is no continuing Event of Default under the Credit Default Swap or Indenture;

b) the Trustee cannot terminate the Credit Default Swap unless there are continuing and uncured Events of Default under both the Credit Default Swap and the Indenture;

c) a majority of Noteholders have not instructed the Trustee to declare an Event of Default under the Credit Default Swap and terminate the Credit Default Swap; and

d) any Liquidation Proceeds should be distributed according to the procedures set forth in the Indenture.

66. The Protection Buyer reserves all rights to assert additional objections, make dispositive motions and seek discovery based upon any arguments or evidence put forth by any other interested party, pursuant to a schedule established by the Court.

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BALLARD SPAHR LLP

By /s/Kirstin D. Kanski
William P. Wassweiler (#0232348)
wassweilerw@ballardspahr.com
Kirstin D. Kanski (#0346676)
kanskik@ballardspahr.com
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2119
(612) 371-3211
(612) 371-3207 (facsimile)

and

Richard H. Klapper (*pro hac vice* pending)
Jacob M. Croke (*pro hac vice* pending)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Attorneys for Goldman Sachs Capital Markets, L.P.

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**ACKNOWLEDGEMENT REQUIRED BY
MINN. STAT. § 549.211, SUB. 1**

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.211, Subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

Dated: September 17, 2018

/s/ Kirstin D. Kanski
Kirstin D. Kanski (#0346676)