
In the matter of GSAMP Trust 2007-HE2

Case Type: Trust
File No. 62-TR-CV-19-16

ORDER

This matter came before the undersigned on January 10, 2020, on the petition (the “Petition”) of U.S. Bank National Association (“U.S. Bank”), solely in its capacity as trustee (in such capacity, the “Trustee”) for GSAMP Trust 2007-HE2 (the “Trust”). Attorney Michael McCarthy appeared on behalf of the Trustee; Attorneys John Orenstein and Holley Horrell appeared on behalf of AWC Fund LLC (“AWC”); Attorney Erin Lisle appeared on behalf of Park Royal I LLC (“Park Royal”); and Attorneys Gregg Fishbein, Stephen Ascher and Stephen Brown appeared on behalf LSTAR Securities Financing Vehicle 2019-1, LLC (“LSTAR”).

Based on the files, records and proceedings, including the arguments of counsel, the court hereby finds, directs, and orders as follows:

FINDINGS OF FACT

1. The Trust was created pursuant to a Pooling and Servicing Agreement dated as of March 1, 2007 (the “PSA”), by and among GS Mortgage Securities Corp., as Depositor (the “Depositor”), Avelo Mortgage, L.L.C., as Servicer, U.S. Bank National Association and Deutsche Bank National Trust Company, as Custodians, LaSalle Bank National Association, as the original trustee, and Wells Fargo Bank, N.A., as Master Servicer and Securities Administrator.
2. The Trust is a residential mortgage-backed securities (“RMBS”) trust which was originally backed by approximately 5,000 Mortgage Loans. At or about the Closing Date, the Mortgage Loans had an aggregate principal balance of approximately \$1 billion. Goldman Sachs Mortgage

Company (“GSMC” or the “Sponsor”) purchased or otherwise acquired Mortgage Loans from certain loan originators or sellers pursuant to various agreements, including the “Bulk Purchase Agreements” as defined in the PSA and additional Purchase Agreements that are separately defined and referenced in the Representations and Warranties Agreement (the “RWA”). The Sponsor subsequently sold or assigned the Mortgage Loans to the Depositor pursuant to the Bill of Sale referenced in the RWA. The Prospectus Supplement states that the Depositor “is a wholly-owned subsidiary of the sponsor, GSMC.”

3. The Trustee is a national banking association, has its principal corporate trust office in St. Paul, Minnesota, and performs functions of Trust administration in Minnesota. The Trustee is the plaintiff in an action concerning this Trust which is captioned *U.S. Bank National Association, as Trustee for GSAMP Trust 2007-HE2 v. Goldman Sachs Mortgage Company et al.*, No. 1:19-cv-02307-AJN (S.D.N.Y.) (the “Putback Action”). On May 3, 2019, the Trustee filed the Petition to seek, among other things, instruction from this court with respect to the Putback Action and the use of Trust Fund money in connection with the Putback Action.
4. Three Certificateholders—LSTAR, AWC, and Park Royal (the “Responding Parties”) — appeared in this Proceeding.
5. LSTAR is the Holder of 100% of the Class A-1 Certificates in the Trust. LSF9 Bond Holdings, Ltd., an affiliate of LSTAR, acquired the Class A-1 Certificates from Goldman, Sachs & Co. (“Goldman Sachs”) pursuant to a September 11, 2014 purchase agreement (the “LSTAR Purchase Agreement”). Based on its holdings, LSTAR has approximately 50% of the total Certificate Balance remaining in the Trust and is entitled to approximately 50% of the Voting Rights in the Trust. LSTAR has substantial direct holdings in the Trust.
6. AWC is a Holder of certain [REDACTED] Certificates. [REDACTED]
[REDACTED]
[REDACTED] Based on its holdings, AWC has approximately [REDACTED]% of the total Certificate Balance remaining in the Trust and is entitled to

approximately ■% of the Voting Rights in the Trust. AWC has substantial direct holdings in the Trust, though considerably less direct holdings than LSTAR.

7. Park Royal is a Holder of certain Class M-2 and Class M-3 Certificates. Park Royal acquired its Certificates on November 19, 2015 and November 29, 2016. Based on its holdings, Park Royal has 0% of the total Certificate Balance remaining in the Trust and 0% of the Voting Rights in the Trust.
8. In the RWA, the Sponsor made various representations and warranties regarding the Mortgage Loans (the “R&Ws”) and agreed that in the event of a breach of the R&Ws that materially and adversely affects the value of a Mortgage Loan, it would cure any such breach or repurchase breaching Mortgage Loans from the Trust subject to the terms and conditions of the PSA.
9. Pursuant to the PSA, the Depositor conveyed and assigned to the Trustee for the benefit of the Certificateholders all right, title and interest of the Depositor in and to the Trust Fund including, without limitation, the Mortgage Loans. The Trust Fund constitutes the corpus of the Trust created pursuant to the PSA. The Depositor assigned and conveyed to the Trustee certain rights with respect to the Mortgage Loans, including the right to enforce the R&Ws made by the Sponsor in the RWA.
10. At or about the Closing Date, the Trust issued Certificates, which had varying priorities in a waterfall structure set forth in the PSA. In general, the Class A Certificates, including Class A-1 and Classes A-2A through A-2D, have the highest priority, followed by Classes M-1 through M-9 in sequential order. Under the PSA, each Class has a Certificate Balance, representing “the maximum dollar amount of principal to which the Holder thereof is then entitled.”
11. Under the PSA, monthly collections on Mortgage Loans and associated collateral pay down the Certificate Balance of each Class, consistent with the PSA waterfall priorities. Collateral losses also are applied to “write down” Certificates, starting with the Classes with the lowest priority. Subsequent Recoveries received with respect to the Mortgage Loans “write up” Certificate Balances, so that a Certificate Balance that has been reduced due to collateral losses may be

written up to a new “maximum dollar amount of principal to which the Holder ... is then entitled ...”

12. As a result, the distributions of principal and interest are made on a priority basis to the Holders of more senior Certificates.
13. Several PSA provisions give rights to Holders with “not less than 25% of the Voting Rights” in the Trust. Voting Rights are expressed as a percentage and generally are calculated based on the remaining Certificate Balance of a Holder’s Certificates relative to the total Certificate Balance of all Certificates. Because Voting Rights are based on the remaining Certificate Balance of a Holder’s Certificates, Voting Rights represent a Holder’s remaining economic interest in the borrowers’ payments of principal and interest.
14. There are several PSA provisions which govern the Trustee’s actions and the rights of Certificateholders with respect to the initiation of litigation. Each provision provides a separate path by which litigation may be instituted.
15. Under Section 8.02(i), a Certificateholder may provide a direction to the Trustee “to institute...any litigation” if the Certificateholder provides “reasonable security or indemnity” to the Trustee. PSA § 8.02(i). This provision states:

[T]he Trustee shall be under no obligation to exercise any of the trusts, rights or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Certificateholders, pursuant to this Agreement, unless such Certificateholders shall have offered to the Trustee reasonable security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby ...
16. Unlike other provisions of the PSA that permit Holders to direct the Trustee to take certain actions only if such Holders have “not less than 25% of the Voting Rights,” Section 8.02(i) does not include any Voting Rights threshold. Thus, any Holder—even a Holder of Certificates with no Voting Rights and no Certificate Balance—may be able to provide a direction to the Trustee to institute litigation if it provides the required indemnity.
17. Under Section 12.08, Certificateholders can bring a suit in their own name if an Event of

Default has occurred, Certificateholders with “not less than 25% of the Voting Rights . . . have offered to the Trustee . . . reasonable indemnity,” and the Trustee refuses to act. In part, this clause states:

No Certificateholder shall have any right by virtue or by availing itself of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless such Holder previously shall have given to the Trustee a written notice of an Event of Default and of the continuance thereof, as herein provided, and unless the Holders of Certificates evidencing not less than 25% of the Voting Rights evidenced by the Certificates shall also have made written request to the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity shall have neglected or refused to institute any such action, suit or proceeding

18. Under Section 2.07, when one of the “parties” to the PSA “discover[s]” a breach of the Sponsor’s representations and warranties, the party is to provide notice to the other parties and the Sponsor. The Trustee, after discovering a breach or receiving notice from another party to the PSA, “shall take such action, with the Depositor’s consent, . . . as may be necessary or appropriate to enforce the rights of the Trust.”

19. In full, Section 2.07 states:

Upon discovery by any of the parties hereto of a breach of a representation or warranty made by the Sponsor pursuant to the Representations and Warranties Agreement, the party discovering such breach shall give prompt written notice thereof to the other parties to this Agreement and the Sponsor, as applicable. The Trustee shall take such action, with the Depositor’s consent, with respect to such breach under the Representations and Warranties Agreement, as applicable, as may be necessary or appropriate to enforce the rights of the Trust with respect thereto. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Trustee shall be entitled to be reimbursed therefor out of the Collection Account.

20. 71.91% of the Mortgage Loans in the Trust were originated by NC Capital Corporation, a subsidiary of New Century Financial Corporation, which had filed for bankruptcy shortly before the Closing Date. Losses in the Trust have been large, reaching \$419,854,169 as of approximately the time of the Petition and continuing. The losses have been applied sequentially in reverse order to reduce the Certificate Balances of Classes M-9 through M-2 to zero, and the

Certificate Balance of Class M-1 from \$42,961,000 to \$8,079,370.

21. On January 18, 2019, AWC provided a written notice (the “Breach Notice”) to the Trustee indicating, among other things, that AWC had identified breaches of one or more of the R&Ws made by the Sponsor in the RWA with respect to certain Mortgage Loans and that further investigation would reveal substantial additional evidence of breaches in the Trust’s mortgage pool.
22. On January 23, 2019 the Trustee sent a letter (the “Demand Letter”) to the Sponsor, the Depositor, and other parties, in which the Trustee demanded that the Sponsor cure breaches or repurchase the affected Mortgage Loans from the Trust. The Sponsor has not cured breaches or repurchased any Mortgage Loans in response to the Demand Letter.
23. On January 28, 2019, the Trustee sent a notice to all Certificateholders which summarized the Breach Notice and Demand Letter. This notice stated: “Please note that unless directed and indemnified by Certificateholders in accordance with the terms of the PSA, the Trustee is not required to take further action, and does not presently intend to take any further action with respect to the Identified Loans or Alleged Breaches listed in the [Breach Notice].conduct any investigation without appropriate direction and indemnity, and neither Holder Counsel nor any other Certificateholders have directed the Trustee to conduct any further investigation.” It also indicated that: “[u]nder Section 2.07, indemnity from the Trust Fund for enforcement actions may only be available if the Depositor consents to the action. Further, Section 8.02(i) of the PSA provides that the Trustee has no obligation to exercise any of the trusts, rights or powers vested in it by the PSA or to institute or conduct any litigation under the PSA or in relation thereto at the request or direction of the Certificateholders pursuant to the PSA unless the Certificateholders offer satisfactory security or indemnity to the Trustee against the costs, expenses and liabilities that may be incurred by the Trustee in connection with such action.”
24. On February 19, 2019, AWC provided a limited direction and indemnity to the Trustee (the “Limited D&I”) under “Sections 8.01and 8.02(i)” to, among other things, file the Summons with

Notice (“SWN”) to institute the Putback Action. An SWN is a pleading under New York procedure which requires, in addition to the summons, “a notice stating the nature of the action and the relief sought...” N.Y.C.P.L.R. 305(b). It is not required to be served for 120 days after filing. *Id.* at 306(b). The Limited D&I required AWC to advance the Trustee’s fees and expenses associated with the direction. The Limited D&I also included a provision that allowed AWC to recoup its advances if the Putback Action was successful. The Limited D&I did not extend to the continued prosecution of the Putback Action.

25. In the Limited D&I, AWC acknowledged “that the Trustee has reasonably conditioned its willingness to proceed with this D&I upon the agreement of [AWC] to advance its own funds in the first instance to pay for the fees and expenses in furtherance of the Directions...”

26. The Limited D&I also directed the Trustee to send a letter to the Depositor requesting that the Depositor consent to filing the SWN. Upon this direction from AWC, the Trustee sent a letter to the Depositor requesting consent on February 20, 2019. The letter gave the Depositor until noon the following day to “confirm its consent” and indicated that unless Depositor responded by that deadline, the Trustee would “deem such silence to constitute a confirmation of its consent to the Trustee’s filing of a Summons with Notice.” The Depositor did not respond to the letter in a timely fashion. Three months later, the Depositor indicated “unequivocally, that it does not consent to the use of Collection Account funds to prosecute the Putback Actions.” The Depositor has not entered an appearance in this matter.

27. Pursuant to the Limited D&I, AWC deposited funds into an indemnity account established and held by the Trustee.

28. On February 21, 2019, pursuant to the Limited D&I, the Trustee filed the SWN and named the Sponsor and the Depositor as defendants. *U.S. Bank National Association, as Trustee for GSAMP Trust 2007-HE2 v. Goldman Sachs Mortgage Company and GS Mortgage Securities Corp.*, Index No. 651097/2019.

29. The SWN alleges that at least 1,041 of the approximately 5,000 Mortgage Loans in the Trust

are in breach of the applicable R&Ws. The SWN further alleges that Mortgage Loans in breach of the R&Ws are likely pervasive throughout the Trust. The SWN seeks specific performance of Sponsor's and Depositor's contractual obligations to repurchase all defective Mortgage Loans at the Repurchase Price, or damages in the alternative, and other relief.

30. On March 14, 2019, the Depositor and the Sponsor removed the Putback Action to the United States District Court for the Southern District of New York (Case No. 1:19-cv-02307-AJN).
31. After the Trustee filed the SWN, AWC refused "to fund the prosecution of the Putback Action any further." The Trustee then sent another notice to all Certificateholders regarding AWC's position on March 22, 2019. In that notice, the Trustee confirmed that it was not required to pursue the Putback Action, stating that it "might not proceed with the filing of a complaint and the prosecution of the Putback Action unless it is directed and indemnified to do so by Certificateholders in accordance with the terms of the PSA." Thereafter, no other Certificateholder provided the Trustee with a D&I to continue prosecuting the Putback Action.
32. AWC and Park Royal have both represented that they have the ability to fund the Putback Action.
33. The Trustee filed its Petition in this matter on May 3, 2019. In the Petition, the Trustee noted that it had not reached an agreement with AWC, which was identified in the Petition as the "Directing Holder," concerning a further D&I. The Trustee filed the Petition to seek, among other things, "instruction whether the Trustee should continue to prosecute the Asserted Claims and the Putback Action. If the Court directs the Trustee to continue prosecuting the Putback Action, the Trustee is also seeking specific instruction to use the moneys from the Trust Fund...for payment any fees, cost, expenses, or liabilities incurred by the Trustee in connection therewith. In the alternative, if the Court does not instruct the Trustee to continue prosecuting the Putback Action and to use Trust funds to do so, the Trustee then requests that the Court instruct the Trustee to dismiss the Putback Action."
34. The Petition further sought "instruction...under these circumstances," where "the Depositor's

- consent was required pursuant to Section 2.07 of the PSA,” and that the Depositor had not responded to the Trustee’s February 20, 2019 letter regarding consent.
35. On May 8, 2019, this court set a hearing on the Petition for June 17, 2019. The Order for the hearing indicated that any parties in interest could appear to object to the Petition or any of the relief sought therein.
 36. The Trustee timely provided notice to Certificateholders of this proceeding, with a copy of the Order for the hearing and the Petition.
 37. On May 22, 2019, by stipulation of the parties, the court in the Putback Action ordered the Trustee to serve a Complaint by June 28 or five business days after the resolution of this proceeding, whichever was later. Stipulated Order, *U.S. Bank Nat. Assoc., as Trustee for GSAMP Trust 2007-HE2 v. Goldman Sachs Mortgage Company and GS Mortgage Securities Corp.*, No. 1:19-cv-02307-AJN (S.D.N.Y. May 22, 2019), ECF No. 15. The court in the Putback Action later amended the deadline for filing a complaint in that action until within one week of a decision by this Court. *Id.*, Memo Endorsement (July 25, 2019), ECF No. 19.
 38. On June 12, 2019, LSTAR issued a direction (the “LSTAR Direction”) in which LSTAR directed the Trustee to ask this court “for authorization and instruction to dismiss the Putback Action unless [AWC] indemnifies the Trustee and pays for the costs and expenses incurred by the Trustee in prosecuting the Putback Action.” LSTAR did not seek to have the Putback Action dismissed outright.
 39. The court held a hearing on in this matter on June 17, 2019. The Trustee, LSTAR, AWC and Park Royal all appeared. This court issued an Order on July 18, 2019, which approved the actions of the Trustee to date and authorized the Trustee to take certain interim actions “as may be necessary to preserve the Asserted Claims and the Putback Action,” which were characterized as “Preservation Actions.” It also authorized the Trustee to use money from the Trust Fund to pay for such Preservation Actions, with some limitations.
 40. The parties participated in discovery and engaged in motion practice concerning that discovery.

On August 28, 2019, this court issued an Order which addressed LSTAR's and AWC's competing motions for the entry of a protective order, and LSTAR's motion to compel discovery.

41. After extensive briefing, this court held a hearing to resolve the Petition on January 10, 2020. The court directed the parties to submit a proposed Findings of Fact, Conclusions of Law and Order. The court took the matter under advisement on February 21, 2020.
42. Broadly, AWC contends that this court should focus solely on Section 2.07 of the PSA and find that since the Putback Action is necessary and appropriate, the "legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund."
43. AWC further contends that LSTAR is conflicted in its opposition to the use of Trust Funds for the Putback Action because of its affiliation with Goldman Sachs. Goldman Sachs sold LSTAR its Class A-1 Certificates and continues to provide LSTAR with financing for this purchase. The purchase includes provisions which prevent LSTAR from benefiting from repurchase claims against Goldman Sachs affiliates, such as the Sponsor and Depositor, including lawsuits by the Trustee to enforce breaches of the R&Ws. In fact, according to AWC, LSTAR would be required to forfeit certain portions of any recovery from the Putback Action to Goldman Sachs. AWC also contends that LSTAR's purchase agreement obligates it to take direction from Goldman Sachs with regard to, for example, putback actions. Accordingly, AWC maintains that since "LSTAR loses if the Trust wins," LSTAR is not acting in the interests of the Certificateholders and its objection to the use of Trust Funds for the Putback Action should be overruled.
44. AWC and Park Royal suggest that putback actions involving RMBS have resulted in significant recoveries. While they acknowledge that the costs of such putback actions are typically substantial, they maintain that the potential benefits of putback actions and this Putback Action in particular, will significantly outweigh the litigation costs to the Trust. They maintain that

such benefits have the potential to flow broadly among Certificateholders, and are reasonably likely to occur.

45. Moreover, AWC contends that the brunt of the costs of litigation under the estimates discussed by the parties, even if Trust Funds were used to pay for the Putback Action, would reduce cash flows to Class M-1 Certificates in a substantial amount before reducing cash flows from Class A Certificates, including Class A-1 Certificates.

46. LSTAR contends that this court should focus instead on Section 8.02(i) of the PSA, which mandates that AWC must provide the Trustee with an additional D&I for the Putback Action which AWC initiated “against the costs, expenses and liabilities which may be incurred therein or thereby.” LSTAR also contends that even if Section 2.07 of the PSA applies to a putback action which has been requested by a Certificateholder without the depositor’s consent, it is not “necessary or appropriate” to use trust funds to finance litigation if the Certificateholder has the ability to finance the litigation itself.

47. [REDACTED]

[REDACTED] LSTAR argues that AWC’s acquisitions were champertous and void as against public policy. As a result, LSTAR contends that AWC should not be permitted to cause the Trustee to prosecute the Putback Action using Trust Fund money.

48. LSTAR maintains that putback actions are complicated, protracted, expensive and risky. It also contends that a successful outcome in the Putback Action is not a foregone conclusion. LSTAR maintains that since AWC has the wherewithal to fund the Putback Action, especially since it stands to benefit significantly from the litigation if successful, AWC should do so.

49. Last, LSTAR contends that there is no precedent for the relief sought by AWC and Park Royal.

It maintains that similar requests by Holders with small holdings who refused to provide a D&I have been routinely rejected by this court. It also maintains that the few cases where a court has ordered a trustee to pursue a putback action using trust funds are distinguishable from this case.

CONCLUSIONS OF LAW

50. This court has *in rem* jurisdiction over the Petition pursuant to Minn. Stat. §§ 501C.0202(1) and (24) because the Trustee is seeking instruction from this court confirming the actions taken by the Trustee and instructing the Trustee regarding the administration of the Trust and discharge of the Trustee's duties under the agreement(s) governing the Trust and approving payment of the fees and expenses incurred by the Trustee in connection with the Putback Action from the Trust Fund.
51. This Petition is properly venued in this court pursuant to Minn. Stat. § 501C.0207(a)(2)(i) because the Trustee has a corporate trust office in St. Paul, Minnesota.
52. The following Sections of the PSA are salient for the purpose of this court's analysis and its conclusions regarding the Petition.
 - a. Section 2.01 (viii) of the PSA provides: "The Depositor shall use reasonable efforts to assist the Trustee in enforcing the obligations of the Sponsor under the Representations and Warranties Agreement."
 - b. Section 2.07 of the PSA provides:

Upon discovery by any of the parties hereto of a breach of a representation or warranty made by the Sponsor pursuant to the Representations and Warranties Agreement, the party discovering such breach shall give prompt written notice thereof to the other parties to this Agreement and the Sponsor, as applicable. The Trustee shall take such action, with the Depositor's consent, with respect to such breach under the Representations and Warranties Agreement, as applicable, as may be necessary or appropriate to enforce the rights of the Trust with respect thereto. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Trustee shall be entitled to be reimbursed therefor out of the Collection Account.
 - c. Section 8.02(i) of the PSA provides:

58. While this court does not express a view on the merits of the claims made in the Putback Action, it does have sufficient information to draw the conclusion that the risk-benefit analysis, as well as the best interests of the Certificateholders, favors directing the Trustee to continue the Putback Action.
59. The continuation of the Putback Action by the Trustee is “necessary” and “appropriate” to “enforce the rights of the Trust” under Section 2.07 with respect to breach of the RWA by the Sponsor. While both AWC and Park Royal have indicated that they have the financial wherewithal to fund the Putback Action, if the Putback Action is successful, its success would be for the common benefit of all Certificateholders, save any agreements those Certificateholders have with third-parties which might reduce or erase such benefit.
60. As such, “the legal expenses and costs” of the Putback Action “and any liability therefrom” under that same provision are properly “expenses, costs and liabilities of the Trust Fund,” and Trustee is “entitled to be reimbursed” “out of the Collection Account.”
61. As it declined to do in *In the matter of GSAMP Trust 2007-HE1*, this court does not express a view as to the applicability of the Depositor consent provision contained in PSA Section 2.07 as a pre-condition to the commencement or prosecution of the Putback Action. It is the court’s understanding, based upon the representations of the parties that the Depositor consent issue will be decided in due course in the putback action relating to the HE1 Trust, or the Putback Action for this Trust.
62. This court has carefully reviewed the prior decisions that it has made and those which have been made by other judges in Ramsey County regarding the requests of Certificateholders to compel a trustee to commence a putback action and fund it with trust money. In some circumstances, the court has determined that the use of trust funds to prosecute a putback action would not be appropriate and in some others, the court has determined that it would be appropriate to use trust funds to prosecute such an action. In each case, the court has attempted to appropriately weigh the interests of the Directing Holder, objecting

Certificateholders and the Certificateholders as a whole. In this matter, the court has similarly weighed the various interests and has attempted to reach a decision which would be for the common benefit of the Certificateholders. In other words, the court has reached its decision by considering the interests of the parties in this litigation, balancing them against each other and the Certificateholders, and evaluating them in the context of the facts in this record.

63. In particular, the court found the conflicted position of LSTAR troubling. It is difficult to reckon LSTAR's objection to the use of Trust Funds in the Putback Action, with its obligations under Section 12.08. The court has not completely disregarded LSTAR's objections; it has concluded that the position advocated by AWC and Park Royal better reflects what direction would be in the best interests of all Certificateholders.

ORDER FOR JUDGMENT

1. The court makes the following specific Orders:
 - a. The Trustee is hereby directed and authorized to continue prosecution of the Putback Action and the Asserted Claims and is directed and authorized to use moneys from the Trust Fund (including, without limitation, funds deposited from time to time in the Collection Account, the Excess Reserve Fund Account, or the Distribution Account) for payment or reimbursement of all fees, expenses, advances, disbursements or other liabilities incurred by the Trustee (including, without limitation, attorney's fees) in connection therewith pursuant to the terms of the PSA including, without limitation, Sections 2.07, 3.11, and 8.05 thereof. The Trustee is not required to expend its own funds or otherwise incur financial liability pursuing legal claims on behalf of the Trust. To the extent Trust assets become insufficient to fund the prosecution of the Putback Action as directed in this Order, the Trustee may seek further instructions from the court.
 - b. The court further authorizes and directs the Trustee to take the steps necessary to seek reimbursement from the Trust Fund (including, without limitation, the

Collection Account, the Excess Reserve Fund Account, or the Distribution Account) for Holder Paid Expenses (as defined in the Petition), which amounts may be re-deposited into the indemnity account pursuant to the terms of the D&I.

- c. The Trustee's compliance with this Order, shall be deemed to be in good faith and will not subject U.S. Bank, individually or as Trustee, to any liability whatsoever, and U.S. Bank, individually and as Trustee, shall be exculpated from liability in connection with any actions taken in accordance with this Order.
- d. Any actions taken (or not taken) by the Trustee pursuant to this Order have been, are and shall be deemed to be in good faith and comply with all applicable standards of care and duties of the Trustee under the PSA and other Governing Documents, and are fully authorized and protected by the PSA and other Governing Documents including, without limitation, Section 8.01(c) of the PSA and applicable law, and shall not subject U.S. Bank, individually or as Trustee, to any liability, and U.S. Bank, individually and as Trustee, shall be exculpated from liability in connection with any actions taken in accordance with this Order.
- e. All actions taken (or not taken) by the Trustee, directly or indirectly through its counsel (including Litigation Counsel) to prosecute the Putback Action, and specifically the use of the moneys available from the Trust Fund (including, without limitation, the Collection Account, the Excess Reserve Fund Account, or the Distribution Account) for payment or reimbursement of any fees, expenses, advances, disbursements or other liabilities incurred by the Trustee in connection with such actions, are hereby approved.
- f. This Order is final and binding upon the Trust, the Trustee, the Depositor, all parties to the Governing Documents and any other parties involved in the administration of the Trust, including the Securities Administrator, the Master

Servicer, the Servicer and any subservicer, 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 or assigns, as well as any other parties-in-interest, if any.

- g. This Order is not applicable to any other trust, indenture, or other securitization.
- h. The Trustee may provide periodic updates to Certificateholders regarding the Putback Action by issuing notices with respect to developments in the litigation and may (but shall not be obligated to) seek further instruction from the court and/or from Certificateholders, as deemed necessary or appropriate by the Trustee, as the Putback Action progresses toward resolution.
- i. On and after the date hereof, the Trust shall be terminated from this court's jurisdiction and the Trust and the Trustee shall not be subject to the continuing supervision of the court for the purposes of Minn. Stat. §§ 501C.0201(c)(2), 501C.0205(b), or General Rule of Practice 417.02.

Originally Issued: May 21, 2020

BY THE COURT:

Thomas A. Gilligan, Jr.
Judge of District Court