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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**AFFIDAVIT OF DAVID BARRANCO**

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STATE OF NEW YORK            )  
                                          ) ss.  
COUNTY OF NEW YORK        )

David Barranco, being first duly sworn on oath deposes and states as follows:

1. I am employed as a Managing Director of Ambac Assurance Corporation ("Ambac"), where I have worked for more than eleven years. I currently serve as the head of Ambac's restructuring and commutations group. Prior to that, and among other things, I was responsible for managing Ambac's surveillance of, and risk management for, residential mortgage-backed securities. I am one of three Ambac managing directors who meet weekly with OCI's Deputy Commissioner, Kimberly Shaul, and OCI's Director of the Bureau of Financial Analysis and Examinations, Roger Peterson, to report on Ambac's provision of management services for the Segregated Account, pursuant to the Management Services Agreement between the Segregated Account and Ambac. My reports to OCI at those meetings have included discussions and analyses of the issues addressed in the Global Settlement Agreement with Lehman Brothers entities that is currently before the Court. The statements in this affidavit are based on my personal knowledge and a review of the business records of Ambac.



2. On October 14, 2010, Ambac Assurance Corporation (“Ambac”), the Segregated Account of Ambac Assurance Corporation (the “Segregated Account”), and Ambac Credit Products, LLC (Ambac Credit Products”), and Ambac Financial Services, LLC (“Ambac Financial Services”), entered into a Global Settlement Agreement (“Settlement Agreement”) with Lehman Brothers Holdings Inc. (“Lehman Holdings”), Lehman Brothers Special Financing Inc. (“Lehman Special Financing”), and Lehman Brothers Derivative Products Inc. (“Lehman Derivative Products”). The following other Ambac-related and Lehman Brothers-related entities are also parties to the Settlement Agreement:

**Ambac-Related Parties**

- Ambac Financial Group, Inc.
- Everspan Financial Guarantee Corp.
- Ambac Private Holdings, LLC
- Ambac Capital Services, LLC
- Ambac Capital Corporation
- Ambac Capital Funding, Inc.
- Ambac Investments, Inc.
- Ambac All Corp.
- Connie Lee Holdings, Inc.

**Lehman Brothers-Related Parties**

- Lehman Brothers Commercial Corporation
- Lehman Brothers Commodity Services Inc.
- Lehman Brothers OTC Derivatives Inc.
- Lehman Brothers Financial Products Inc.
- Lehman Commercial Paper Inc.
- Lehman Scottish Finance L.P.

- BNC Mortgage LLC
- CES Aviation LLC
- CES Aviation V LLC
- CES Aviation IX LLC
- LB 2080 Kalakauna Owners LLC
- LB 745 LLC
- LB Preferred Somerset LLC
- LB Rose Ranch LLC
- LB Somerset LLC
- Luxembourg Residential Properties Loan Finance S.A.R.L.
- Merit LLC
- PAMI Statler Arms LLC
- Structured Asset Securities Corporation

Hereafter, the Ambac-related entities that are parties to the Settlement Agreement shall be referred to as the "Ambac Parties" and the Lehman Brothers-related entities that are parties to the Settlement Agreement shall be referred to as the "Lehman Parties".

3. Under the Settlement Agreement, the Lehman Parties and the Ambac Parties grant each other and their affiliates general releases of all present and future legal claims arising from transactions, actions, or omissions occurring on or before the effective date. The Settlement Agreement also contains provisions designed to preserve the rights of the Segregated Account and the other Ambac Parties to pursue related claims against third parties that are not Lehman Parties. In particular, the provisions are designed to ensure that Ambac retains its right to pursue claims against third parties who were involved in residential mortgage-backed securities transactions with Lehman Brothers-related entities.

4. Although the releases are general, each side has certain known legal claims that would be released by the Settlement Agreement. The claims released by the Lehman Parties are known as the "Belle Haven CDS Claim," the "FIP CDS Claim," the "CDS Set-Off Claim," and the "Premium Clawback Claim." The claims released by the Ambac Parties are known as the "RMBS Claims" and the "CAPCO Subrogation Claim."

5. **Belle Haven CDS Claim:** The Belle Haven CDS Claim relates to a credit default swap transaction that Ambac insured. In May 2006, Lehman Special Financing and Ambac Credit Products entered into a credit default swap agreement in which Lehman Special Financing bought protection from Ambac Credit Products against the risk of default on securities issued as part of the transaction identified as the Belle Haven ABS CDO 2006-1. Ambac issued a financial guaranty insurance policy guaranteeing Ambac Credit Products' obligations under the agreement. That policy (No. SF0812BE) is allocated to the Segregated Account.

6. In September 2008, Ambac Credit Products terminated the Belle Haven CDS Agreement as a result of Lehman Holdings filing for bankruptcy protection. Ambac Credit Products believes that the termination was proper under the terms of the CDS Agreement and Ambac Credit Products does not owe the Lehman Parties any additional payments. The Lehman Parties claim that Ambac owes approximately \$160 million as a mark-to-market payment.

7. **FIP CDS Claim:** The FIP CDS Claim grows out of a August 2006 credit default swap agreement between Lehman Special Financing and Ambac Credit Products relating to a commercial mortgage-backed securities transaction involving an Italian entity named Fondo Immobili Pubblici ("FIP"). Ambac issued a financial guaranty insurance policy to guarantee Ambac Credit Products' obligations under the agreement. That policy (No. SF0835BE) is

allocated to the Segregated Account. The Lehman Parties contend that they have the right to terminate the FIP CDS Agreement and that, if they do terminate, they are entitled to a \$15 million mark-to-market payment from the Ambac Parties. The Ambac Parties contest the Lehman Parties' right to terminate and the amount of the claimed payment.

8. **CDS Set-Off Claim:** The CDS Set-Off Claim relates to a financial guaranty insurance policy guaranteeing Ambac Financial Services' obligations in a September 2003 master swap agreement ("AFS Swap Agreement") with Lehman Special Financing. The policy (No. SWLP0189BE) is allocated to the Segregated Account. In September 2008, Ambac Financial Services terminated the AFS Swap Agreement because Lehman Holdings filed for bankruptcy. In December 2008, Lehman Special Financing owed Ambac premium for the FIP and Belle Haven transactions described above. Ambac Financial Services set off approximately \$100,000 of the unpaid premium against amounts Ambac Financial Services owed Lehman Special Financing as a result of the termination of the AFS Swap Agreement. The Ambac Parties believe the set-off is permissible under the AFS Swap Agreement. The Lehman Parties claim that the set-off is unenforceable.

9. **Premium Clawback Claim:** The Premium Clawback Claim relates to a financial guaranty insurance policy that Ambac issued with respect to certain obligations of Lehman Brothers Derivative Products. Ambac and Lehman Brothers Derivative Products later mutually terminated the policy. In July 2008, Lehman Brothers Derivative Products made two premium payments totaling approximately \$300,000. Lehman Brothers Derivative Products subsequently filed for bankruptcy. The Lehman Parties now claim that those premium payments were impermissible preferences and must be returned. The Ambac Parties dispute that claim.


10. **RMBS Claims:** On September 21 and 22, 2009, Ambac filed 60 proofs of claim against some of the Lehman Parties in the Bankruptcy Court. Many of those proofs of claim are duplicative, because for certain individual transactions Ambac was required to file separate proofs of claim against multiple Lehman Brothers entities in order to fully protect its rights. The proofs of claim relate to, among other things, alleged breaches of contract in connection with financial guaranty insurance policies that Ambac issued for various residential mortgage-backed securities ("RMBS") transactions. All of the policies are allocated to the Segregated Account. A list of the relevant policies is attached to this affidavit as **Exhibit A**.

11. The current incurred and expected losses on the RMBS policies that are the subject of the proofs of claim are approximately \$350 million. The Ambac Parties estimate that they would recover only approximately 10% to 15% of their total losses attributable to the Lehman Parties under a chapter 11 reorganization plan. As a result, the Ambac Parties estimate that they would recover no more than \$35 million to \$52.5 million if they are successful on all of their proofs of claim. If they prevail on only a portion of those claims, the recovery would be less.

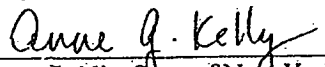
12. **CAPCO Subrogation Claim:** The CAPCO subrogation claim is a contingent claim that currently has no identifiable value. The CAPCO Subrogation Claim relates to a reinsurance agreement between Ambac and Customer Asset Protection Company ("CAPCO") providing approximately \$137 million of reinsurance coverage. The reinsurance agreement is allocated to the Segregated Account. None of the Lehman Parties are parties to the reinsurance agreement. Any claim the Ambac Parties might have against the Lehman Parties would be as a subrogee to CAPCO's direct claims against the Lehman Parties. To date, Ambac has not

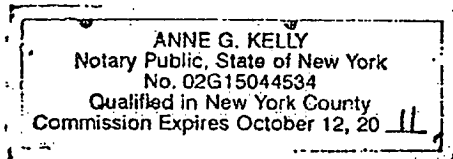
suffered any losses under the reinsurance agreement. No claims have been submitted to CAPCO for which CAPCO can seek reinsurance payments from Ambac or the Segregated Account. However, in order to protect its interests, Ambac filed a proof of claim against certain of the Lehman Parties in the Bankruptcy Court. CAPCO has also filed a proof of claim in the Bankruptcy Court and appears willing to pursue its claims against the Lehman Parties.

Dated this 19<sup>th</sup> day of October, 2010.

  
David Barranco

Subscribed and sworn to before me  
this 19<sup>th</sup> day of October, 2010.

  
Notary Public, State of New York.  
My Commission: \_\_\_\_\_



**EXHIBIT A**

**List of Ambac Financial Guaranty Policies Related to RMBS Proofs of Claim**

AB0488BE  
AB0574BE  
AB0734BE  
AB0741BE  
AB0758BE  
AB0791BE  
AB0808BE  
AB0839BE  
AB0856BE  
AB0860BE  
AB0861BE  
AB0870BE  
AB0892BE  
AB0931BE  
AB0947BE  
AB0967BE  
AB0970BE  
AB1079BE  
AB1081BE  
AB1094BE  
AB1103BE  
AB1105BE  
AB1113BE