

# **EXHIBIT E**

A X O N I C  
CAPITAL LLC

March 25, 2014

Deutsche Bank National Trust Company  
1761 East St. Andrew Place  
Santa Ana, California 92705  
Attention: GC0609, HarborView Mortgage Loan Trust 2006-9

Re: HarborView Mortgage Loan Trust/Mortgage Loan Pass-Through Certificates, Series 2006-9  
("HarborView 2006-9")

Dear Sir or Madam:

Reference is made to that certain Pooling and Servicing Agreement, dated as of September 1, 2006 (the "PSA"), among Greenwich Capital Acceptance, Inc., as depositor, Greenwich Capital Financial Products, Inc., as seller, and Deutsche Bank National Trust Company, as trustee (in such capacity, the "Trustee"), relating to HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9 (such certificates, the "HV 2006-9 Certificates"), and that certain Prospectus Supplement, dated October 3, 2006 (the "P-Supp") relating to the issuance of approximately U.S.\$2,867,084,000 principal amount of HV 2006-9 Certificates (capitalized terms used herein but not otherwise defined have the meanings set forth in the PSA and, unless otherwise specified, references to "Sections" are reference to sections of the PSA).

We are the investment manager for certain clients that own certain classes of the HV 2006-9 Certificates and are writing to call your attention to, and to object to, the improper and unauthorized payments to the Certificate Insurer (Ambac Assurance Corporation or "Ambac") as reimbursement for payments made by Ambac for the benefit of the Class 2A-1C2 Certificate holders in violation of the payment priorities set forth in the governing documents. The undersigned hereby directs you to immediately cease making distributions to Ambac, to recoup from Ambac or otherwise return to the Trust Fund the amounts improperly paid by you to Ambac, and to take the other actions specified below. Below we describe the improper payments.

As you know, the HarborView 2006-9 Trust Fund consists primarily of adjustable rate residential mortgages. As you also know, various classes of certificates having beneficial interests in the Trust Fund were issued including the "Senior Certificates" and "Subordinate Certificates" described in the P-Supp and the PSA. Each Class of Certificates has its own rights of seniority and/or subordination relating to distributions of proceeds from the Trust Fund in comparison to other Classes and amounts owed to other Persons as more fully described in the PSA and the P-Supp., which priorities are set forth in, among other places, the priority of payments (or "waterfall") provisions of Section 5.01 of the PSA and the section of the P-Supp titled "Description of the Certificates". On each Distribution Date, the Trustee is required to make certain disbursements and transfers out of Available Funds pursuant to Section 5.01. Generally, the PSA creates two "waterfalls" or priorities of payments relating to these

disbursements/transfers: an interest “waterfall” (see Section 5.01(a)(i)); and a principal “waterfall” under either Section 5.01(a)(ii) or Section 5.01(a)(iii) - depending on the losses incurred by the Trust Fund at the time.

*Interest Waterfall.* With respect to the “interest waterfall” of Section 5.01(a)(i) and the P-Supp, the “Interest Remittance Amount” must be applied in the following order of priorities: (1) to deposit the Final Maturity Reserve Amount into the Final Maturity Reserve Account; (2) to pay the Interest Distributable Amount and Unpaid Interest Shortfall Amount owed to the holders of the Senior Certificates, pro rata; (3) to Ambac for “reimbursement [of] amounts owed to the Certificate Insurer with respect to draws made under the Policy with respect to interest” (emphasis added);<sup>1</sup> (4) to the holders of Subordinate Certificates (in order of priority); and (5), lastly, to the “excess cash” waterfall of Section 5.01(a)(iv).

*Principal Waterfall.* With respect to principal proceeds from the Trust Fund assets, Sections 5.01(a)(ii) and 5.01(a)(iii) require that principal proceeds be applied in the following priorities:<sup>2</sup> (1) (A) principal proceeds from the Loan Group 1 assets are used to repay principal owed to the holders of the Class 1A-1A Certificates and (B) principal proceeds from the Loan Group 2 assets are used to repay principal owed to the holders of the Senior Certificates (other than the Class 1A-1A Certificates); and from the remaining principal proceeds from both Loan Groups, as follows; (2) to pay the *Certificate Insurer Reimbursement Amount* (emphasis added) to Ambac; (3) to repay principal amounts owed to holders of the Subordinate Certificates (in order of priority); and (4), lastly, to the “excess cash” waterfall of Section 5.01(a)(iv).

In connection with the issuance of the Senior Certificates and Subordinate Certificates, Ambac insured the Class 2A-1C2 Certificates (a/k/a the Insured Class) (but did not insure other Classes of Certificates), which together with the Class 2A-1C1 Certificates are the most junior Class of Group 2 Certificates. Pursuant to the Certificate Insurance Policy (or the “Policy”), Ambac is required to pay for the benefit of the holders of the Insured Class (1) on each Distribution Date, the Monthly Interest Distributable Amount on such certificates to the extent there are insufficient Available Funds to pay such amounts (each, an “Insured Interest Payment”), (2) on each Distribution Date, the amount equal to the Realized Losses allocated to the Insured Certificates (each, a “Realized Loss Insured Payment”) and (3) on the Final Distribution Date, the outstanding aggregate principal balance of the Insured Certificates after application of the payments under the Section 5.01 waterfalls.<sup>3</sup>

Ambac is entitled to reimbursement only to the extent it is subrogated to the certificates it insures, *i.e.* from cash that would otherwise have been payable to the Insured Certificates, or as expressly provided

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<sup>1</sup> See our discussion below regarding the text of the PSA.

<sup>2</sup> Sections 5.01(a)(ii) and 5.01(a)(iii) differ slightly in ways not relevant to the issues raised in this letter, including the application of Principal Distribution Amount versus Senior Principal Amount and clause “(C)” of each sub-clause.

<sup>3</sup> See the definition of “Deficiency Amount” in the P-Supp. For ease of presentation, we have summarized the coverage of the Policy but have not fully described its terms or coverage.

in the Section 5.01 waterfalls (which only apply when all amounts due to the holders of the Insured Certificates and those with claims *pari passu* with and/or senior to such certificates have been paid in full). Despite the absence of any funds available to reimburse Ambac as provided in the PSA and P-Supp, the Trustee has authorized the payment of and paid a total of approximately \$15 million to Ambac in violation of the express terms of the PSA and P-Supp.

Although it appears that the Trustee is applying excess interest receipts to reimburse Ambac for losses to principal, it is absolutely clear from Section 5.01(a)(i)(C) that excess interest receipts can only be used to reimburse Ambac for Insured Interest Payments made by Ambac under the Policy (the "Ambac Interest Payment Reimbursement Provision"). It follows that Section 5.01(a)(i)(C) cash flows may not be used to reimburse Ambac for any other Certificate Insurer Reimbursement Amounts owed to it.

The Ambac Interest Payment Reimbursement Provision should not be confused with Sections 5.01(a)(ii)(B) and 5.01(a)(iii)(B) (in the "principal" waterfall provisions) or Section 5.01(a)(iv)(D) (in the excess cash flow waterfall provisions) (collectively, the "General Ambac Reimbursement Provisions"), which are intentionally drafted more broadly and specifically allow Ambac to obtain reimbursement for Certificate Insurer Reimbursement Amounts that relate either to Insured Interest Payments or other types of Certificate Insurer Reimbursement Amounts owed to Ambac. The text of the PSA supports this position in a number of ways.

First, the General Ambac Reimbursement Provisions use the broader, defined term "Certificate Insurer Reimbursement Amount", while Section 5.01(a)(i)(C) does not. Section 5.01(a)(i)(C) does not use the term "Certificate Insurer Reimbursement Amount" because it was specifically intended not to be as broad as the General Ambac Reimbursement Provisions. That intent is demonstrated by the text of Section 5.01(a)(i)(C), which exactly matches page S-96 of the P-Supp with the exception of twelve italicized words contained in the P-Supp: "from the remaining Interest Remittance Amounts for both [l]oan [g]roups, reimbursement amounts owed to the Certificate Insurer *with respect to draws made under the Policy WITH RESPECT TO INTEREST*" (emphasis added).

Second, to allow Ambac to obtain reimbursement for its Realized Loss Insured Payments pursuant to Section 5.01(a)(i)(C) undermines the fundamental tenet of structured finance that provides that junior claimholders cannot recover interest or principal payments when there are insufficient funds available to repay more senior claimholders. Realized Losses are allocable to the Class 2A-IC1 and Class 2A-IC2 Certificates before such losses may be allocated to the Class 2A-IB1 and Class 2A-IB2 Certificates. The current principal balance of the 2A-IC1 and 2A-IC2 Classes has been reduced to zero. The Class 2A-IB1 and 2A-IB2 Certificates have also been allocated substantial Realized Losses. By permitting Ambac to receive any reimbursement for Realized Loss Insured Payments when more senior certificateholders have suffered principal losses is to fundamentally alter the critical bargained for rights and benefits that the more senior certificate holders are entitled to. We also note that allowing Ambac to receive reimbursement for Realized Loss Insured Payments that are not shared pro rata with the Class 2A-IC1 Certificates also undermines the fundamental principle of the HarborView 2006-9 transaction that the Class 2A-IC1 and 2A-IC2 Certificates are to be treated *pari passu*. In sum, your erroneous interpretation of the PSA effectively allows Ambac, as a subrogee of the interests of the holders of Class 2A-IC2 Certificates to leap frog over not only the principal claims of the holders of the Class 2A-

IC1 Certificates but also the claims of more senior classes —i.e., the Class 2A-IB1 and Class 2A-IB2 Certificates.

Because there have been no funds available for distribution under any of clauses (a)(i)(C), (a)(ii)(B), (a)(iii)(B) or (a)(iv)(D) of Section 5.01 (such clauses, collectively, the “Ambac Reimbursement Sections”) to pay any amounts due to Ambac, whether for Insured Interest Payments or other Certificate Insurer Reimbursement Amounts, the Trustee must (w) immediately recover from Ambac or otherwise restore to the Trust Fund the amounts improperly paid by the Trustee to Ambac under Section 5.01 (the “Improper Payments”), (x) immediately distribute the Improper Payments to the Persons entitled thereto as provided in Section 5.01, (y) cease making payments to Ambac until the criteria set forth in the applicable Ambac Reimbursement Sections are satisfied (if at all) and (z) setoff from payments otherwise owed to Ambac, whether relating to the Class 2A-1C2 Premium Amount, amounts owed to the Certificate Insurer under an Ambac Reimbursement Section or otherwise, until the Trust Fund has fully recovered the Improper Payments.

We hope to resolve this issue without the necessity of litigation, but we reserve all rights against all parties and request your immediate attention to this important matter. As you consider your response, we direct your attention to *Wells Fargo Bank, N.A. v. ESM Fund I, LP*, 785 F. Supp. 2d 188 (S.D.N.Y. 2011), *aff’d*, 504 F. App’x 38 (2d Cir. 2012) (copy enclosed).

Very truly yours,



Clayton DeGiacinto  
Chief Investment Officer  
Axonic Capital LLC