

COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 9

DANE COUNTY

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**AFFIDAVIT OF JEFFREY A. SIMMONS  
IN SUPPORT OF MOTION TO CONFIRM AND DECLARE  
THE NATURE OF THESE PROCEEDINGS**

STATE OF WISCONSIN    )  
                                  ) ss.  
COUNTY OF DANE        )

**FILED**

**OCT 10 2016**

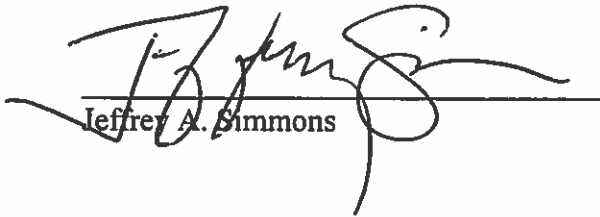
**DANE COUNTY CIRCUIT COURT**

Jeffrey A. Simmons, being first duly sworn on oath, states as follows:

1. I am one of the attorneys representing the Rehabilitator in this insurer rehabilitation proceeding. I make this affidavit based upon my personal knowledge.
2. Attached as **Exhibit A** is a true and correct copy of the Complaint filed in one of the MHPI Cases, *Monterey Bay Military Housing LLC, et al. v. Ambac Assurance Corp.*
3. Attached as **Exhibit B** is a true and correct copy of excerpts from the responses to interrogatories served by the plaintiff in one of the MHPI Cases, *Meade Communities LLC v. Ambac Assurance Corp.*
4. Attached as **Exhibit C** is a true and correct copy of excerpts from the Base Indenture agreement with Hertz Vehicle Financing, LLC.
5. Attached as **Exhibit C** is a true and correct copy of excerpts from the Base Indenture agreement with Dunkin' Donuts Franchised Restaurants LLC.

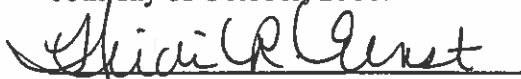
6. Attached as **Exhibit C** is a true and correct copy of excerpts from the Base Indenture agreement with Sonic Capital LLC.

Dated this 10th day of October, 2016.



Jeffrey A. Simmons

Subscribed and sworn to before me this 10th day of October, 2016.



Heidi R. Ernst  
Notary Public, State of Wisconsin  
Commission expires 7/27/2018.

# Exhibit A

**FILED**

DEC 04 2015

TERESA A. RISI  
CLERK OF THE SUPERIOR COURT  
DEPUTY

~~J. W. HANCOCK~~

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CASE MANAGEMENT CONFERENCE  
DATE: 4-5-16  
TIME: 9:00 AM  
PLACE: Courtroom 14, 2<sup>nd</sup> Floor  
1200 Aguajito Rd. Monterey CA 93940

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MONTEREY

11  
12 Monterey Bay Military Housing LLC, and

13 Monterey Bay Land LLC,

14 Plaintiffs,

15 vs.

16 Ambac Assurance Corporation,

17 Defendant.

Case No. 15CV000599

COMPLAINT FOR  
DECLARATORY RELIEF

18 COMPLAINT FOR DECLARATORY RELIEF

19 Plaintiffs Monterey Bay Military Housing LLC and Monterey Bay Land LLC bring this  
20 Complaint for Declaratory Relief against Defendant Ambac Assurance Corporation and alleges the  
21 following:

22 NATURE OF THE CASE

23 1. Monterey Bay Military Housing LLC and Monterey Bay Land LLC (together "the Monterey  
24 Project") are the owner and ground lessor-entities of privatized military housing for soldiers and  
25 their families at the Presidio of Monterey in Monterey County, California. Since 2003, the  
26 Monterey Project has been responsible for the development, construction and maintenance of  
27 more than 2,200 homes at the Presidio of Monterey, a United States Army installation.  
28

- 1 2. In order to finance such large scale construction and development, on or about October 1, 2003,  
2 the Monterey Project secured a loan in the amount of approximately \$355,200,000.00<sup>1</sup>, and, in  
3 connection with that loan, bonds were issued entitling bondholders to a portion of the repayment  
4 of premiums and interest. As part of the transaction, the Monterey Project was required to obtain  
5 bond insurance for the amount of the loan, as well as a surety bond in the amount of more than  
6 \$27,000,000.00, guaranteeing one year of premium and interest payments.
- 7 3. Ambac Assurance Corporation (“Ambac”) has a number of profitable roles in connection with  
8 the Monterey Project’s financing. First, Ambac provides the bond insurance, for which it is paid  
9 approximately 0.45% of the then outstanding loan balance on a monthly basis. Second, the  
10 Monterey Project also purchased the surety bond used to guarantee one year of payments on the  
11 loan from Ambac, and Ambac’s fee for providing the surety bond was \$1,380,876. Finally, on  
12 information and belief, Ambac is itself an investor in some of the underlying bonds of the  
13 Monterey Project.
- 14 4. The loan documents require that the surety bond be issued by an entity with a strong credit rating  
15 (“AA” by S&P or “Aa2” by Moody’s). When the Monterey Project purchased the surety bond,  
16 Ambac had such a satisfactory credit rating. However, in 2008, Ambac experienced near  
17 financial collapse as a result of its overly aggressive investment strategies, and its credit rating  
18 was downgraded by both S&P and Moody’s. As a result, the surety bond purchased from  
19 Ambac by the Monterey Project is considered essentially worthless.
- 20 5. Ambac now seeks to profit from the situation created by its own ratings downgrades. Although  
21 Ambac took no legal action for more than six years to try to enforce its alleged rights, it has  
22 recently taken the position that it is entitled to force the Monterey Project to either replace the  
23 surety bond or to cash fund a debt service reserve account in the amount of more than  
24 \$27,000,000.00.

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<sup>1</sup> The Monterey Project employs a “back-to- back” loan structure in which the bond proceeds were lent to Monterey Bay Land LLC, which in turn lent them to Monterey Bay Military Housing LLC. Both loans are serviced pursuant to separate, but substantially similar, Servicing and Lockbox Agreements.

- 1 6. Forcing the Monterey Project to purchase a new surety bond or to cash fund in the amount of  
2 more than \$27,000,000.00 is not feasible because to do so would divert funds from planned  
3 whole-home renovations that are set to occur over the next five years. If these funds are  
4 diverted, the Monterey Project will be unable to complete its planned renovations and  
5 redevelopment, which will negatively impact the occupancy and availability of quality housing  
6 at the Presidio of Monterey for soldiers and their families, and ultimately, negatively impact the  
7 financial stability of the Monterey Project.
- 8 7. The entity that stands to benefit from replacing the surety bond or cash funding the debt service  
9 reserve account is Ambac—whose conduct resulted in the ratings downgrades that it now seeks  
10 to exploit. Ambac has apparently concluded that forcing the Monterey Project to replace or cash  
11 fund the surety (to the detriment of the Project) will reduce its own risk in connection with the  
12 bond insurance it provides and enhance the value of the bonds it holds.
- 13 8. The dispute relating to the alleged requirement to replace or cash fund the surety bond requires  
14 resolution. Ambac (and US Bank, acting at the direction of Ambac) has recently stated it intends  
15 to enforce the terms of the Servicing Agreements, requiring Monterey Project to post more than  
16 \$27,000,000.00 in cash reserves or purchase a new surety bond. Ambac has instituted legal  
17 actions against similarly-situated privatized military housing projects across the country in at  
18 least five different jurisdictions.
- 19 9. The Monterey Project here seeks declaratory relief that Ambac’s asserted “breach” and its  
20 request for “specific performance” of the loan documents are barred by California’s four-year  
21 statute of limitations for written contracts and barred by the doctrine of laches. The Monterey  
22 Project further seeks a declaration that, because an Ambac Default has occurred under the loan  
23 documents, it has no standing to bring such a claim in any event. Lastly, the Monterey Project  
24 seeks a declaration that Section 10.12 of the Loan Agreements which state that the Monterey  
25 Project “will bear all [expenses] ... including but not limited to reasonable out-of-pocket  
26 attorneys’ fees and expenses of counsel” relating to enforcement of the Loan Agreements,  
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1 *regardless of outcome*, is void against California public policy pursuant to California Civil Code  
2 Section 1717.

3 **PARTIES**

4 10. Plaintiff Monterey Bay Military Housing LLC is a Delaware limited liability company with an  
5 address at 4401 Wilson Boulevard, Suite 600, Arlington, VA 22203. Monterey Bay Military  
6 Housing LLC operates out of 4291 Normandy Road, Seaside, CA 93955.

7 11. Plaintiff Monterey Bay Land LLC is a Delaware limited liability company with an address at  
8 4401 Wilson Boulevard, Suite 600, Arlington, VA 22203.

9 12. Defendant Ambac is an insurance corporation formed under the laws of the State of Wisconsin  
10 with its principal place of business at One State Street Plaza, New York, New York 10004.

11 **JURISDICTION AND VENUE**

12 13. This Court has original jurisdiction over the causes of action asserted herein pursuant to the  
13 California Constitution, article VI, section 10.

14 14. This Court has personal jurisdiction over Ambac pursuant to Code of Civil Procedure section  
15 410.10 because Ambac regularly conducts business within the state of California and has thus  
16 purposefully availed itself of the laws of California by selling the surety bond to the Monterey  
17 Project and providing financial guarantee bond insurance for the Monterey Project. Ambac has  
18 further registered to do business in California and maintains a registered agent within the state of  
19 California.

20 15. Venue is appropriate in this Court pursuant to Code of Civil Procedure section 395, subsection  
21 (b), and Code of Civil Procedure section 395.5.

22 **GENERAL ALLEGATIONS**

23 **A. The Presidio of Monterey Project.**

24 16. Congress established the Military Housing Privatization Initiative ("MHPI") in 1996 to help the  
25 military improve the condition of the housing provided to members of the armed forces.

26 According to the United States Department of Defense's website, the MHPI "was designed and  
27 developed to attract private sector financing, expertise and innovation to provide necessary  
28

1 housing faster and more efficiently than traditional Military Construction processes would  
2 allow.” The Office of the Secretary of Defense delegated implementation of the MHPI to the  
3 Military Services and “authorized them to enter into agreements with private developers selected  
4 in a competitive process to own, maintain and operate family housing via a fifty-year lease.”

5 17. The Monterey Project is a legal partnership between entities affiliated with Clark Realty Capital,  
6 L.L.C., a national construction and development firm, and the United States Army. Effective  
7 October 1, 2003, Monterey Bay Military Housing LLC and Monterey Bay Land LLC were  
8 formed. The Army holds a 49% membership interest and is entitled to a majority of all project  
9 income and revenue, and it bears the majority of all project expenses. The Army’s share of the  
10 Monterey Project’s net profits are held in a Reinvestment Account, to be used by the project as  
11 approved by the Army to maintain and improve the housing for soldiers and the families at the  
12 Presidio of Monterey.

13 **B. Financing of the Presidio of Monterey Project.**

14 18. In order to secure financing for the development, construction, and management of the on-base  
15 housing, the Monterey Project secured a \$355,200,000.00 loan from GMAC Mortgage  
16 Corporation. (Ex. 1 & 2, 10/1/2003 Monterey Project Loan Agreements (“Loan Agreements”).)  
17 In connection with the loan, bonds entitling the bondholders to a portion of the repayment of the  
18 principal and interest on the loan were issued. The Monterey Project obtained bond insurance  
19 for the amount of the loan from Ambac. (Ex. 3, 10/1/2003 Financial Guaranty Insurance Policy.)  
20 The Monterey Project pays Ambac approximately 0.45% of the outstanding balance on a  
21 monthly basis, based on the then outstanding principal amount of the loan. Today, the Monterey  
22 Project’s payments to Ambac in connection with this bond insurance are approximately  
23 \$126,000.00 per month.

24 19. In addition to obtaining bond insurance, the Monterey Project was required to obtain a “Reserve  
25 Account Contract,” in the form of a surety bond or other secured financial instrument, to  
26 guarantee repayment of one year of principal and interest on the loan. (Exs. 4 & 5, 10/1/2003  
27 Servicing and Lockbox Agreements (“Servicing Agreements”).) The Monterey Project  
28



1 purchased a surety bond from Ambac in the amount of \$27,617,518.08 to satisfy this obligation.  
2 (Ex. 6, 10/1/2003 Surety Bond.) The Monterey Project paid Ambac a fee of \$1,380,876 for the  
3 surety bond.

4 20. Pursuant to the Servicing Agreements, the issuer of the Reserve Account Contract or surety  
5 bond—here Ambac—is required to maintain an “AA” credit rating by S&P or an “Aa2” rating  
6 by Moody’s.

7 21. The Servicing Agreements state that “[i]f at any time any issuer of a Reserve Account Contract  
8 shall no longer have such required debt rating, the Borrower [the Monterey Project] shall, *at its*  
9 *option*, within 10 Business Days after notice from the Lender or the Servicer, either cause a  
10 replacement Reserve Account Contract to be issued by an issuer ... which has such required debt  
11 rating or replace such Reserve Account Contract with immediate available funds in the requisite  
12 amount (*provided that the failure to do either of such acts shall not, in and of itself, constitute*  
13 *an Event of Default*).” (Exs. 4 & 5, Servicing Agreements § 4.17 (emphasis added).)

14 **C. Ambac’s Collapse and the Resultant Ratings Downgrades.**

15 22. In the event of a ratings downgrade, the Monterey Project has the option to either replace the  
16 surety bond or to cash fund the debt reserve account. In 2008—through no fault of the Monterey  
17 Project—Ambac’s overly aggressive investment strategies led to its near financial collapse. As a  
18 result of Ambac’s financial deterioration, its ratings were downgraded in approximately June,  
19 2008 by Moody’s and in approximately November, 2008 by S&P.

20 23. As of November 19, 2008, Ambac’s self-inflicted ratings downgrades resulted in the Monterey  
21 Project’s Reserve Account Contract no longer satisfying the ratings requirement of the Servicing  
22 Agreements.

23 **D. Ambac Enters Rehabilitation Proceedings.**

24 24. Ambac’s financial condition continued to worsen and, on March 24, 2010, pursuant to court  
25 order, Ambac entered into rehabilitation proceedings in Wisconsin. As part of the rehabilitation  
26 action, Ambac agreed to establish a “Segregated Account” containing certain of its most  
27 problematic investments and liabilities. The Wisconsin Insurance Commissioner took over  
28 management of the Segregated Account, which is secured in part by Ambac’s other assets.

1 25. The March 24, 2010 Order was affirmed by the Wisconsin Court of Appeals on March 17, 2013,  
2 and the Wisconsin Supreme Court denied review on March 17, 2014. This final and non-  
3 appealable order has resulted in an Ambac Default under the terms of the Grantor Trust  
4 Agreement and has eliminated Ambac's standing to enforce the Servicing Agreement.

5 26. The underlying loan documents include a Grantor Trust Agreement, which specifically defines  
6 an Ambac Default to mean:

7 the occurrence of any of the following events: (a) Ambac fails to make a payment  
8 required under the Ambac Insurance Policy in accordance with its terms and such  
9 failure remains remedied for two Business Days following the delivery of written  
10 notice of such failure to Ambac; (b) Ambac (i) files any petition or commences any  
11 case or proceeding under any provisions of any federal or state law relating to  
12 insolvency, bankruptcy, rehabilitation, or liquidation or reorganization, (ii) makes a  
13 general assignment for the benefit of its creditors or (iii) has an order for relief  
14 entered against it under any federal or state law relating to insolvency, bankruptcy,  
15 rehabilitation, liquidation or reorganization that is final and nonappealable; or (c) a  
16 court of competent jurisdiction or another competent regulatory authority enters a  
17 final and nonappealable order, judgment or decree (i) appointing a custodian, trustee,  
18 agent or receiver for Ambac or for all or any material portion of its property or  
19 (ii) authorizing the taking of possession by a custodian, trustee, agent or receiver of  
20 Ambac (or taking of possession of all or any material portion of Ambac's property)

21 (Ex. 7, 10/1/2003 Grantor Trust Agreement at § 1.01.)

22 27. According to the most recent Annual Report on the Rehabilitation of the Segregated Account of  
23 Ambac Assurance Corporation, "the liabilities of the Segregated Account are supported by the  
24 Secured Note and the Aggregate Excess of Loss Reinsurance Agreement." The Annual Report  
25 further clarifies that "[p]ursuant to the Secured Note, the Segregated Account has the ability to  
26 demand payment from AAC [Ambac] from time to time to pay claims and other liabilities."  
27 Thus, the "Secured Note together with the Reinsurance Agreement effectively render all of the  
28 claims paying resources of AAC's General Account available to pay all claim liabilities of the  
Segregated Account" and greatly decreases Ambac's ability to insure the Monterey Project.

29 28. Ambac's rehabilitation proceedings have resulted in an Ambac Default under the terms of the  
30 Grantor Trust Agreement. Among other things, the March, 2010 Order of the Wisconsin Court  
31 [as affirmed] is a "final and nonappealable order, judgment or decree (i) appointing a custodian,  
32 trustee, agent or receiver for Ambac or for all or any material portion of its property or  
33 (ii) authorizing the taking of possession by a custodian, trustee, agent or receiver of Ambac (or

1 taking of possession of all or any material portion of Ambac's property)." In addition, as a result  
2 of the March, 2010 Order, Ambac has had "an order for relief entered against it under any  
3 federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or  
4 reorganization that is final and nonappealable."

5 29. As a result of the occurrence of an Ambac Default, Ambac has lost standing to assert rights as a  
6 third-party beneficiary under the Servicing Agreements or any other loan documents or to  
7 enforce the Lender's rights under the Servicing Agreements, including but not limited to, any  
8 right to enforce Section 4.17 of the Servicing Agreements.

9 **E. Ambac's Assertion that It is Entitled to Enforce Section 4.17 of the Servicing**  
10 **Agreements.**

11 30. The parties' disagreement regarding the rights and obligations of the Monterey Project and  
12 Ambac under the Servicing Agreements, the Grantor Trust Agreement, and other loan documents  
13 are not hypothetical and are not the result of a mere difference of opinion. Indeed, Ambac has  
14 very recently instituted legal actions against similarly-situated privatized military housing  
15 projects across the country in at least five different jurisdictions.

16 31. In addition, Ambac has sent letters to and made similar claims against other privatized military  
17 housing projects across the country demanding that those military projects to either replace their  
18 Reserve Account Contract or cash-fund.

19 32. The filing of these complaints against multiple military housing projects in federal court based  
20 on analogous loan documents, and Ambac's assertions of similarly stale rights at the Monterey  
21 Project, demonstrates that a ripe controversy exists relating to the parties' rights and obligations.

22 **F. Ambac Sat on its Rights for More Than Six Years, Which Serves to Bar Its**  
23 **Asserted Claims.**

24 33. Ambac has known of its ratings downgrades and the implications of those downgrades under the  
25 Servicing Agreements and related loan documents since at least November, 2008.

26 34. On April 10, 2014, Ambac wrote to the Monterey Project that the Monterey Project was "not in  
27 compliance with the requirement under Section 4.17 of the Servicing Agreements" but that  
28 "Ambac is not now exercising its option as Lender to notify the Borrower of such circumstance"

1 and that “Ambac continues to consider its options with regard to this issue.” (Ex. 8, 4/10/2014  
2 Ambac Ltr. to F. Coen.)

3 35. On October 6, 2015, Ambac again asserted its purported rights under Section 4.17 of the  
4 Servicing Agreements. It instructed the Grantor Trustee, US Bank, to provide notice to the  
5 Monterey Project that it “must, within 10 Business Days” either replace the Reserve Account  
6 Contract or cash fund in the amount of \$27,618,000.00. (Ex. 9, 10/6/2015 US Bank Ltr. to  
7 F. Coen.)

8 36. After years of inaction, Ambac now seeks to purportedly enforce its stale rights (if any) under  
9 Section 4.17 of the Servicing Agreements.

10 37. During the more than six year period that Ambac sat on its rights, the Monterey Project has not  
11 missed a single loan payment or bond insurance payment, and it has and continues to operate at a  
12 net positive cash flow position. Furthermore, it currently has a three-month average Debt  
13 Service Coverage Ratio of 1.34.

14 **G. Ambac’s Delay in Enforcing Its Rights Has Caused The Monterey Project**  
15 **Prejudice.**

16 38. The Monterey Project substantially completed its Initial Development Plan (IDP) as of August  
17 2013, with the Army certifying completion in November, 2014. But construction and  
18 renovations at the Monterey Project continue, so as to ensure a steady supply of quality housing  
19 for military families residing at the Presidio of Monterey. Currently planned are whole-home  
20 renovations of 100 housing units earmarked for junior enlisted soldiers, and repainting and roof-  
21 replacements on 725 other homes, along with other capital improvements at a total cost of  
22 \$46,000,000.00.

23 39. If the Monterey Project is forced to fund the debt service reserve account—as Ambac has  
24 demanded—it will be unable to continue to pay for planned whole-home renovations of the  
25 housing at the Presidio of Monterey set to occur over the next five years. The United States  
26 Army opposes spending funds specifically earmarked to improve and maintain housing for its  
27 soldiers and their families, for any other purposes, including funding of the debt service reserve  
28 account.

1 40. If the Monterey Project is forced to use these earmarked renovation funds to fund the debt  
2 service account—as Ambac has demanded—it will be unable to complete the planned  
3 renovations. Failure to go forward with this planned construction and redevelopment will  
4 decrease the availability of quality, renovated housing for soldiers and their families, negatively  
5 impact project-owned housing occupancy and likely result in financial instability for the project.

6 **FIRST CAUSE OF ACTION**

7 **Claim for Declaratory Relief that Ambac Has No Standing**  
8 **to Assert a Breach of the Servicing Agreements**

- 9 41. Plaintiffs reallege, as if fully set forth here, the allegations set forth in the preceding paragraphs  
10 of this complaint.
- 11 42. The sole source of Ambac’s standing to bring a claim on behalf of the Lender for an alleged  
12 breach of Section 4.17 of the Servicing Agreements is found in Section 7.20 of the related  
13 Grantor Trust Agreement.
- 14 43. Section 7.20 of the Grantor Trust Agreement provides that Ambac has rights as a third party  
15 beneficiary under the Servicing Agreements (and other Loan Documents) and that it may enforce  
16 the rights of the Lender or the Grantor Trustee under the Servicing Agreements (and other Loan  
17 Documents), but only “[s]o long as ....(ii) there is no Ambac Default.”
- 18 44. As described above, an Ambac Default has occurred as a result of the Wisconsin rehabilitation  
19 proceeding and the March 24, 2010 rehabilitation order. Thus, under the express terms of the  
20 Grantor Trust Agreement, Ambac has (and has had since at least November, 2008) no standing  
21 to assert rights under, let alone bring claims under, Section 4.17 of the Servicing Agreements.
- 22 45. The parties are, therefore, in a position of uncertainty with respect to whether Ambac has  
23 standing to enforce the Servicing Agreements.
- 24 46. This represents an actual controversy appropriate for declaratory relief pursuant to Code of Civil  
25 Procedure section 1060.  
26  
27  
28

1 **SECOND CAUSE OF ACTION**

2 **Claim for Declaratory Relief that Any Claim by Ambac for Breach of Contract or Specific**  
3 **Performance is Barred by the California Statute of Limitations**

4 47. Plaintiffs reallege, as if fully set forth here, the allegations set forth in the preceding paragraphs  
5 of this complaint.

6 48. Ambac has asserted its intention to enforce Section 4.17 of the Servicing Agreements as a result  
7 of the surety bond the Monterey Project purchased from Ambac no longer maintaining an  
8 adequate credit rating as a result of Ambac's own credit downgrade in 2008.

9 49. Ambac has known the surety bond the Monterey Project purchased from Ambac has not had an  
10 adequate credit rating since 2008.

11 50. The parties are, therefore, in a position of uncertainty with respect to whether any claim by  
12 Ambac for breach of contract or specific performance of Section 4.17 of the Servicing  
13 Agreements is barred by California's four-year statute of limitations for written contracts.

14 51. This represents an actual controversy appropriate for declaratory relief pursuant to Code of Civil  
15 Procedure section 1060.

16 **THIRD CAUSE OF ACTION**

17 **Claim for Declaratory Relief that Any Claim by Ambac for Breach of Contract or Specific**  
18 **Performance is Barred by the Doctrine of Laches**

19 52. Plaintiffs reallege, as if fully set forth here, the allegations set forth in the preceding paragraphs  
20 of this complaint.

21 53. Ambac has asserted its intention to enforce Section 4.17 of the Servicing Agreements as a result  
22 of the surety bond the Monterey Project purchased from Ambac no longer maintaining an  
23 adequate crediting rating as a result of Ambac's credit downgrade in 2008.

24 54. Ambac has inexcusably and unreasonably delayed enforcement of its contractual rights relating  
25 to the Debt Reserve Contract for a period of many years.

26 55. Ambac's delay in enforcement of its alleged contractual rights relating to the Debt Reserve  
27 Contract has prejudiced the Monterey Project.  
28

1 56. The parties are, therefore, in a position of uncertainty with respect to whether any claim by  
2 Ambac for breach of contract or specific performance of Section 4.17 of the Servicing  
3 Agreements is barred by the doctrine of laches.

4 57. This represents an actual controversy appropriate for declaratory relief pursuant to Code of Civil  
5 Procedure section 1060.

6 **FOURTH CAUSE OF ACTION**

7 **Claim for Declaratory Relief that Ambac May Not Obtain Specific Performance of**  
8 **Section 4.17 of the Servicing Agreements**

9 58. Plaintiffs reallege, as if fully set forth here, the allegations set forth in the preceding paragraphs  
10 of this complaint.

11 59. Section 4.17 of the Servicing Agreements expressly states that failure to replace the Debt  
12 Reserve Contract shall not be an Event of Default.

13 60. Under Article VIII of the Servicing Agreements, no party is entitled to specific performance  
14 absent an Event of Default, which has not occurred. This is consistent with the parties' intent,  
15 which was to preclude specific performance for failure to replace or cash fund unless there was  
16 also an Event of Default.

17 61. The parties are, therefore, in a position of uncertainty with respect to whether the Monterey  
18 Project should be required to replace the Debt Reserve Contract or to immediately cash fund an  
19 amount equal to the Debt Reserve Contract of \$27,618,000.00.

20 62. This represents an actual controversy appropriate for declaratory relief pursuant to Code of Civil  
21 Procedure section 1060.

22 **FIFTH CAUSE OF ACTION**

23 **Claim for Declaratory Relief that Section 10.12 of the Loan Agreements Cannot Require**  
24 **Payment of Ambac's Attorneys' Fees Under California Law**

25 63. Plaintiffs reallege, as if fully set forth here, the allegations set forth in the preceding paragraphs  
26 of this complaint.  
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- 1 64. Under Section 10.12 of the Loan Agreements, the Monterey Project is required to pay all  
2 “reasonable out-of-pocket fees and expenses incurred by [Ambac] (including but not limited to,  
3 reasonable out-of-pocket attorneys’ fees and expenses of counsel for [Ambac]) in connection  
4 with . . . enforcement of the Loan Documents[.]”
- 5 65. The Monterey Project contends this provision is contrary to California law and unenforceable  
6 pursuant to Code of Civil Procedure section 1717.
- 7 66. The parties are, therefore, in a position of uncertainty with respect to whether the Monterey  
8 Project should be required to pay “all costs,” including attorneys’ fees of Ambac’s in connection  
9 with enforcement of the Monterey Project’s rights under the Loan Documents, regardless of  
10 which party prevails in the enforcement action.
- 11 67. This represents an actual controversy appropriate for declaratory relief pursuant to Code of Civil  
12 Procedure section 1060.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs Monterey Bay Military Housing LLC and Monterey Bay Land  
15 LLC requests that this Court:

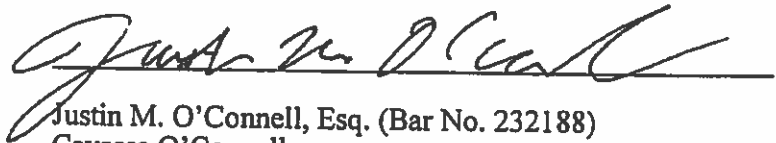
- 16 A. Declare that an Ambac Default, as it is defined in the Grantor Trust  
17 Agreement, has occurred and that consequently Defendant Ambac Assurance  
18 Corporation lacks standing to assert rights or bring claims under Section 4.17  
19 of the Servicing Agreements;
- 20 B. Declare that any claim by Defendant Ambac Assurance Corporation that  
21 Monterey Bay Military Housing, LLC or Monterey Bay Land LLC has  
22 breached Section 4.17 of the Servicing Agreements is barred by the statute of  
23 limitations;
- 24 C. Declare that any claim by Defendant Ambac Assurance Corporation that  
25 Monterey Bay Military Housing LLC or Monterey Bay Land LLC has  
26 breached Section 4.17 of the Servicing Agreements is barred by the doctrine  
27 of laches;  
28



- 1 D. Declare that Defendant Ambac Assurance Corporation is not entitled specific  
2 performance of replacement or cash funding under Section 4.17 of the  
3 Servicing Agreements because there has been no Event of Default;  
4 E. Declare that Section 10.12 of the Loan Agreements is contrary to California  
5 Code of Civil Procedure section 1717 and an unenforceable unilateral  
6 attorney's fee provision;  
7 F. Award Plaintiffs Monterey Bay Military Housing LLC and Monterey Bay  
8 Land LLC attorneys' fees pursuant to Section 10.12 of the Loan Agreements  
9 and California Code of Civil Procedure section 1717; and  
10 G. Grant such other and further relief as the Court may deem just and proper.

11 DATED: December 4, 2015

Respectfully submitted,

12  
13 

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*Attorneys for Plaintiffs Monterey Bay Military Housing LLC  
and Monterey Bay Land LLC*

# Exhibit B

**IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND**  
**Civil Division**

MEADE COMMUNITIES LLC,

Plaintiff/Counterclaim-Defendant,

v.

AMBAC ASSURANCE CORPORATION,

Defendant/Counterclaim-Plaintiff.

Civil No. 02-cv-003745

---

**PLAINTIFF/COUNTERCLAIM-DEFENDANT'S RESPONSE TO**  
**DEFENDANT/COUNTERCLAIM-PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Maryland Rule of Civil Procedure 2-421, Plaintiff/Counterclaim-Defendant MEADE COMMUNITIES LLC, ("Meade") responds to Defendant/Counterclaim-Plaintiff AMBAC ASSURANCE CORPORATION's ("Ambac") First Set of Interrogatories ("Interrogatories") as follows:

**GENERAL OBJECTIONS**

Meade incorporates the following objections into its Responses to each of Ambac's Interrogatories. Meade's Responses to these Interrogatories are based upon Meade's current knowledge and reasonable belief. Meade expressly reserves the right to modify and/or supplement any Response, and to assert additional objections to these Interrogatories as necessary and/or appropriate. Nothing in these Responses shall be deemed an admission by Meade regarding the existence of any information, the relevance or admissibility of any information, for any purpose, or the truth or accuracy of any statement or characterization contained in any Interrogatory. The assertion of a specific objection should not be construed as a waiver of these General Objections.

These Responses are made without in any way waiving or intending to waive: (a) any objection as to the competency, relevancy, materiality, privilege, or admissibility as evidence of

information in any proceeding in this litigation or in any other litigation; (b) the right to object on any ground at any time to the use of information in this litigation or in any other litigation; or (c) the right to object on any ground at any time to a demand for further responses to the Interrogatories. Meade objects to the Interrogatories to the extent they seek information that is protected by the attorney-client privilege, the work product doctrine, or any other immunity, privilege, or exemption from discovery recognized by any applicable law or rule.

Meade further objects to the Interrogatories as overbroad and unduly burdensome as it is unreasonable to request that Meade “[s]tate all facts” in support of a contention and “identify all documents” where, as here, a voluminous number of records may be responsive. *Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445, 447 (D. Kan. 2000) (“The Court, therefore, denies defendant’s motion to compel plaintiff to answer interrogatories 2 and 3 to the extent the interrogatories are overly broad and unduly burdensome in seeking identification of “every fact and document” upon which plaintiff bases his contentions.”).<sup>1</sup> Meade objects to the Interrogatories as seeking identification of “all . . . witnesses supporting” a contention prior to any witnesses having testified.

### **RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:** State all facts and identify all documents and witnesses supporting your contention that Ambac lacks standing to seek enforcement of the Servicing Agreement as a result of the Wisconsin Proceeding, as alleged in paragraphs 9, 29, and 43 of your Complaint.

**RESPONSE TO INTERROGATORY NO. 1:** Subject to and without waiving Meade’s General Objections, Meade states that Section 10.26 of the Fort Meade Loan Agreement and the definition of “Ambac Default” found in the Fort Meade Grantor Trust Agreement support the

---

<sup>1</sup> Maryland courts look to federal decision in determining whether interrogatories are excessively broad, overly burdensome, or vague. *Blades v. Woods*, 107 Md. App. 178, 183-84 (“[S]parse is the Maryland case law regarding when interrogatories are excessively broad, burdensome, or vague. We therefore turn to federal decisions for guidance.”).

contention that Ambac lacks standing to seek enforcement of the Servicing Agreement as Ambac is in default under several separate provisions of the definition of “Ambac Default.” Meade further states that the Wisconsin Commissioner of Insurance was appointed as a custodian, trustee, agent, or receiver for Ambac and/or for all or a material portion of Ambac’s assets, and the Wisconsin Commissioner of Insurance was authorized to take possession of Ambac and/or all or a material portion of Ambac’s assets. Meade further states that, as Rehabilitator, the Wisconsin Commissioner of Insurance is authorized to take a material portion of Ambac property, including but not limited to the \$2 billion Secured Note and the Excess-of-Loss Reinsurance Agreement from the General Account, “both of which can be drawn upon on demand to cover permitted Segregated Account claims,” and which “provide[] a permanent funding mechanism that adequately capitalized the Segregated Account,” and that “[s]ubstantially all of the assets that would be available to all policyholders prior to the establishment of the Segregated Account are, in fact, available to the Segregated Account through the Secured Note and Reinsurance Agreement.” (1/24/11 Decision and Final Order Confirm. Rehabilitator’s Plan of Rehabilitation at ¶¶ 71-72.)

Further, Meade states that with the exception of a \$100 million dollar excess, “all assets of the General Account are available to pay Segregated Account claims under” the Rehabilitation Plan. (*Id.* at ¶¶ 74-75.) Even the \$100 million dollar excess is not a fixed amount. The Rehabilitator may “take other regulatory action in regard to the General Account” if it finds “the financial condition of the General Account would deteriorate to a point where that minimum surplus requirement was threatened.” (*Id.* at ¶ 141.) The Rehabilitator has also “retained its authority to take additional regulatory action if policies or other potential liabilities of the General Account threaten the fair and equitable treatment of Segregated Account policyholders

# Exhibit C

**HERTZ VEHICLE FINANCING LLC,**

**as Issuer**

**and**

**BNY MIDWEST TRUST COMPANY,**

**as Trustee and Securities Intermediary**

---

**SERIES 2005-2 SUPPLEMENT**

dated as of December 21, 2005

to

**AMENDED AND RESTATED**

**BASE INDENTURE**

dated as of December 21, 2005

---

\$225,000,00 Series 2005-2 Floating Rate Rental Car Asset Backed Notes, Class A-1  
\$200,000,000 Series 2005-2 4.93% Rental Car Asset Backed Notes, Class A-2  
\$275,000,000 Series 2005-2 Floating Rate Rental Car Asset Backed Notes, Class A-3  
\$100,000,000 Series 2005-2 5.01% Rental Car Asset Backed Notes, Class A-4  
\$1,125,000 Series 2005-2 Floating Rate Rental Car Asset Backed Notes, Class A-5  
\$225,000,000 Series 2005-2 5.08% Rental Car Asset Backed Notes, Class A-6  
Series 2005-2 Floating Rate Rental Car Asset Backed Notes, Class B-1  
Series 2005-2 Fixed Rate Rental Car Asset Backed Notes, Class B-2  
Series 2005-2 Floating Rate Rental Car Asset Backed Notes, Class B-3  
Series 2005-2 Fixed Rate Rental Car Asset Backed Notes, Class B-4  
Series 2005-2 Floating Rate Rental Car Asset Backed Notes, Class B-5  
Series 2005-2 Fixed Rate Rental Car Asset Backed Notes, Class B-6

Three-Year Notes, Four-Year Notes and Five-Year Notes  
Insurer of Class A Notes: Ambac Assurance Corporation

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such Payment Date (after giving effect to the distribution of the Monthly Total Principal Allocation for the Related Month) over (b) the sum on such Payment Date of (i) the Class A Asset Amount, (ii) the Class A Available Reserve Account Amount, (iii) the Class A Letter of Credit Amount, (iv) the Class B Available Reserve Account Amount, (v) the Class B Letter of Credit Amount, (vi) the amount of cash and Permitted Investments on deposit in the Series 2005-2 Excess Collection Account and (vii) the amount on deposit in the Series 2005-2 Distribution Account and allocated to effect a redemption of the Class A Notes of any Class.

"Insurer" means Ambac Assurance Corporation, a Wisconsin stock insurance corporation. The Insurer shall constitute an "Enhancement Provider" with respect to the Class A Notes for all purposes under the Indenture and the other Related Documents.

"Insurer Default" means (i) any failure by the Insurer to pay a demand for payment made in accordance with the requirements of the Insurance Policy and such failure shall not have been cured or (ii) the occurrence of an Insurer Insolvency Event with respect to the Insurer.

"Insurer Fee" has the meaning set forth in the Insurance Agreement.

"Insurer Insolvency Event" shall be deemed to have occurred with respect to the Insurer if:

(a) a rehabilitation or liquidation proceeding shall be commenced against the Insurer, without the consent of the Insurer, seeking the rehabilitation or liquidation of the Insurer, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for the Insurer or all or any substantial part of its assets, or any similar action with respect to the Insurer under any law relating to rehabilitation, liquidation, insolvency, reorganization, winding up or composition or adjustment of debts, and such proceeding shall continue undismissed, or unstayed and in effect, for a period of 60 consecutive days; or

(b) the Insurer shall commence a voluntary proceeding under any applicable rehabilitation, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for the Insurer or for any substantial part of its property, or shall make any general assignment for the benefit of creditors; or

(c) the board of directors of the Insurer shall vote to implement any of the actions set forth in clause (b) above.

"Insurer Reimbursement Amounts" means, as of any date of determination, (i) an amount equal to the aggregate of any amounts due as of such date to the Insurer pursuant to the Insurance Agreement in respect of unreimbursed draws under

# Exhibit D

**Execution Copy**

---

**DB MASTER FINANCE LLC,  
DUNKIN' DONUTS FRANCHISED RESTAURANTS LLC,  
BASKIN-ROBBINS FRANCHISED SHOPS LLC,  
TOGO'S FRANCHISED EATERIES LLC,  
DD IP HOLDER LLC and  
BR IP HOLDER LLC,  
each as Co-Issuer**

**and**

**CITIBANK, N.A.,  
as Trustee and Securities Intermediary**

---

**BASE INDENTURE**

**Dated as of May 26, 2006**

---

**Asset Backed Notes  
(Issuable in Series)**

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goods or services (including but not limited to fees and expenses of environmental professionals and legal counsel but excluding any amount payable to any Affiliate) contracted for in connection with conducting any environmental remediation procedures with respect to any environmental condition requiring remediation, which environmental condition would have given rise to a claim under any Pre-Securitization Contribution Agreement or the BRINT Contribution Agreement but for the exclusion of the Material Environmental Amount under Section 4.1(j) of such Contribution Agreement, as set forth in the Monthly Servicer Report.

"Environmental Remediation Reserve Account" has the meaning set forth in Section 5.11 of the Base Indenture.

"Equity Interests" means (i) any ownership, management or membership interests in any limited liability company or unlimited liability company, (ii) any general or limited partnership interest in any partnership, (iii) any common, preferred or other stock interest in any corporation, (iv) any share, participation, unit or other interest in the property or enterprise of an issuer that evidences ownership rights therein, (v) any ownership or beneficial interest in any trust or (vi) any option, warrant or other right to convert into or otherwise receive any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"Estimated Monthly Real Estate Obligation" means, with respect to the first Weekly Allocation Date and the second Weekly Allocation Date during any Monthly Collection Period, the aggregate amount of U.S. Real Estate Obligations payable during such Monthly Collection Period, as estimated by the Master Servicer and set forth in each applicable Weekly Servicer's Certificate.

"Estimated U.K. Product Sourcing Obligation" means, with respect to any Monthly Collection Period, the aggregate amount of the U.K. Product Sourcing Obligation payable during such Monthly Collection Period, as estimated by the Master Servicer and set forth in each applicable Weekly Servicer's Certificate.

"Euroclear" means Euroclear Bank, S.A./N.V., or any successor thereto, as operator of the Euroclear System.

"Event of Bankruptcy" shall be deemed to have occurred with respect to a Person if:

- (a) a case or other proceeding shall be commenced, without the application or consent of such Person, in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or any substantial part of its assets, or any similar action with respect to such Person under any law relating to

bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days; or an order for relief in respect of such Person shall be entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect; or

(b) such Person shall commence a voluntary case or other proceeding under any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of its property, or shall make any general assignment for the benefit of creditors; or

(c) the board of directors or board of managers (or similar body) of such Person shall vote to implement any of the actions set forth in clause (b) above.

"Event of Default" means any of the events set forth in Section 9.2 of the Base Indenture.

"Excess Class A-1 Senior Notes Administrative Expenses Amount" means, for each Weekly Allocation Date, an amount equal to the amount by which (a) the Class A-1 Senior Notes Administrative Expenses that have become due and payable prior to such Weekly Allocation Date and have not been previously paid exceeds (b) the Capped Class A-1 Senior Notes Administrative Expenses Amount for such Weekly Allocation Date.

"Excess Real Estate Assets Proceeds Amount" means (a) with respect to the fiscal year of the Co-Issuers in which the Initial Closing Date occurs, the excess, if any, of (i) the amount of Real Estate Asset Disposition Proceeds in such fiscal year, over (ii) the product of (A) \$5,000,000 multiplied by (B) a fraction (1) the numerator of which equals the amount of days remaining in such fiscal year as of the Initial Closing Date and (2) the denominator of which equals 365 and (b) with respect to each subsequent fiscal year of the Co-Issuers, the excess, if any, of (i) the amount of Real Estate Asset Disposition Proceeds in such fiscal year, over (ii) \$5,000,000.

"Excess Securitization Entities Operating Expenses Amount" means, for each Weekly Allocation Date, an amount equal to the amount by which (a) the Securitization Entities Operating Expenses that have become due and payable prior to such Weekly Allocation Date and have not been previously paid exceeds (b) the Capped Securitization Entities Operating Expense Amount for such Weekly Allocation Date.

"Excess U.K. Concentration Account Amounts" means, as of any date of determination in respect of a Weekly Collection Period, the positive difference between (a) the sum of (i) all amounts deposited in the U.K. Concentration Account during such Weekly Collection Period plus (ii) any Actual U.K. Product Sourcing Obligations for any Monthly Collection Period ended prior to such Weekly Collection Period to the extent that such amounts have not been withdrawn and paid from the U.K. Concentration

# Exhibit E



SONIC CAPITAL LLC,  
SONIC INDUSTRIES FRANCHISING LLC,  
AMERICA'S DRIVE-IN HOLDING INC.,  
AMERICA'S DRIVE-IN BRAND PROPERTIES LLC  
AMERICA'S DRIVE-IN RESTAURANTS LLC,  
SRI REAL ESTATE HOLDING LLC and  
SRI REAL ESTATE PROPERTIES LLC,  
each as Co-Issuer

and

CITIBANK, N.A.,  
as Trustee and Securities Intermediary

---

**BASE INDENTURE**

Dated as of December 20, 2006

---

Asset Backed Notes  
(Issuable in Series)

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terminate such Plan in a standard termination described in Section 4041(b) of ERISA or a distress termination described in Section 4041(c) of ERISA; (d) the complete or partial withdrawal by any Securitization Entity, or any member of the same Controlled Group as any Securitization Entity, from any Plan with two or more contributing sponsors or the termination of any such Plan, in each case, which results in liability pursuant to Section 4063 or 4064 of ERISA; (e) formal written notice from the PBGC of its intent to commence proceedings to terminate any Plan; (f) the imposition of liability on any Securitization Entity or any member of the same Controlled Group as any Securitization Entity, pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the assertion of a material claim (other than routine claims for benefits) against such Plan or the assets thereof, or against any Securitization Entity or any member of the same Controlled Group as any Securitization Entity, in connection with such Plan; (h) receipt from the Internal Revenue Service of notice of the failure of such Plan to qualify under Section 401(a) of the Code or the failure of any trust forming part of such Plan to qualify for exemption from taxation under Section 501(a) of the Code; (i) the imposition of a lien in favor of the PBGC, or a Plan pursuant to Section 401(a)(29) or Section 412(n) of the Code or pursuant to ERISA; or (j) the complete or partial withdrawal by any Securitization Entity or any member of the same Controlled Group as any Securitization Entity from any Multiemployer Plan that has resulted or could reasonably be expected to result in material liability under ERISA.

**"Estimated Gross Sales"** means, with respect to the Monthly Collection Period ending immediately prior to any Payment Date, as calculated on the Accounting Date immediately preceding such Payment Date, an amount equal to the product of (a) the quotient of (i) the aggregate amount of Gross Sales with respect to each Franchise Drive-In for which the Servicer has received a Monthly P/L Statement with respect to such Monthly Collection Period on or before such Accounting Date divided by (ii) the number of Franchise Drive-Ins for which such Monthly P/L Statement has been so received by the Servicer and (b) the number of Open Franchise Drive-Ins as of the last day of such Monthly Collection Period.

**"Euroclear"** means Euroclear Bank, S.A./N.V., or any successor thereto, as operator of the Euroclear System.

**"Event of Bankruptcy"** shall be deemed to have occurred with respect to a Person if:

(a) a case or other proceeding shall be commenced, without the application or consent of such Person, in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or any substantial part of its assets, or any similar action with respect to such Person under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days; or an order for relief in respect of such Person

shall be entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect; or

(b) such Person shall commence a voluntary case or other proceeding under any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of its property, or shall make any general assignment for the benefit of creditors; or

(c) the board of directors or board of managers (or similar body) of such Person shall vote to implement any of the actions set forth in clause (b) above.

"Event of Default" means any of the events set forth in Section 9.2 of the Base Indenture.

"Excess Class A-1 Senior Notes Administrative Expenses Amount" means, for each Interim Allocation Date, an amount equal to the amount by which (a) the Class A-1 Senior Notes Administrative Expenses that have become due and payable prior to such Interim Allocation Date and have not been previously paid exceed (b) the Capped Class A-1 Senior Notes Administrative Expenses Amount for such Interim Allocation Date.

"Excess Securitization Operating Expenses Amount" means, for each Interim Allocation Date, an amount equal to the amount by which (a) the Securitization Operating Expenses that have become due and payable prior to such Interim Allocation Date and have not been previously paid exceed (b) the Capped Securitization Operating Expense Amount for such Interim Allocation Date.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Amounts" means, collectively, any Advertising Fees, Advertising Co-Op Fees, Technology Fees, System Marketing Fees, Third-Party Vendor Agreement Fees, Existing Franchise Drive-In Lease Payments, Sonic Sign Lease Payments, Sonic Partnership Gross Sales and any other amounts deposited into the Lock-Box Account, the Concentration Account, any Excluded Amounts Lock-Box Account or any Excluded Amounts Concentration Account that are not required to be deposited into the Collection Account pursuant to Section 5.9 of the Base Indenture; provided that all amounts due under or in connection with any Franchise Arrangement, any Partner Drive-In Master Lease or any New Franchise Drive-In Lease and all Kansas Sonic Partnership Distributions shall under no circumstance be deemed to be or be characterized as Excluded Amounts.

"Excluded Amounts Concentration Account" means any concentration or other account established for the purpose of depositing Collections constituting Excluded Amounts therein, including, without limitation, any Securitization Entity Excluded