SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786-2011

Kapnick, J.

AFFIRMATION OF MATTHEW D. INGBER

MATTHEW D. INGBER, an attorney admitted to practice in the courts of the State of New York, affirms under penalty of perjury as follows:

1. I am a member of the law firm of Mayer Brown LLP, attorneys for Petitioner The Bank of New York Mellon ("Trustee"). I submit this affirmation in support of the Trustee's Memorandum of Law In Opposition To Motion to Convert the Special Proceeding to a Plenary Action, filed on April 13, 2012.

2. Attached hereto as **Exhibit A** is a true and complete copy of the Petition for Construction of Trust and Approval of Settlement Agreement, exclusive of exhibits, filed in *In re IBJ Schroder Bank & Trust Co.*, No. 101530/1998, filed January 28, 1998.

3. Attached hereto as **Exhibit B** is a true and correct copy of the "side letter" to the Settlement Agreement between the Trustee and BAC Home Loans Servicing, LP, dated June 28, 2011.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Guaranty that was attached to the "side letter" as Exhibit 2, dated June 28, 2011.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Order and Judgment in *In re IBJ Schroder Bank & Trust Co.*, No. 101530/1998, filed October 3, 2000.

Dated: April 13, 2012
New York, New York

/s/ Matthew D. Ingber
Matthew D. Ingber

EXHIBIT A

VS

At IAS Part 10 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York, New York, on the __ day of January 1998

Present: Hon. B. Shainswit, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

98101530

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In the Matter of the Application of

IBJ SCHRODER BANK & TRUST COMPANY
(not in its individual capacity but in its capacity as Trustee under a Trust Agreement dated as of December 21, 1985 among Resources Satellite Corp., J. Henry Schroder Bank & Trust Company and the Beneficiaries thereunder),

Petitioner,

for an order, pursuant to CPLR § 7701, For a Construction of an Indenture and Approval of a Proposed Settlement.

Index No. 98/_____

IAS Part 10
(Shainswit, J.)

ORDER TO SHOW CAUSE

FILED

JAN 28 1998

COUNTY CLERK'S OFFICE
NEW YORK

----------x

Upon reading and filing the annexed Verified Petition of Petitioner IBJ SCHRODER BANK & TRUST COMPANY ("IBJ Schroder" or the "Investor Trustee"), dated January 14, 1998 and the exhibits thereto, the Affirmation of John S. Willems, Esq., sworn to January 21, 1998, and the Memorandum of Law submitted in support of the application for an order granting judgment in favor of IBJ Schroder on its Petition, let the Beneficiaries of the Trust Agreement, dated as of December 21, 1985 among Resources Satellite Corp. and J. Henry Schroder Bank & Trust Company, or their attorneys, show cause before this Court, at IAS Part 10 to be held in and for the County of New York, at the Courthouse, 60 Centre Street, room __, New York, New York, on the __ day of _____, 1998, at ____ o'clock in the ___ noon of

that day, or as soon thereafter as counsel can be heard, why an order should not be made, pursuant to CPLR § 7701, granting judgment in favor of IBJ Schroder on its Petition as follows (capitalized terms are as defined in the Petition):

(a) declaring that under the terms of the Investor Trust Agreement, the Investor Trust and Trust Estate have not terminated and that IBJ Schroder, as Investor Trustee, continues to be subject to the Investor Trust Agreement;

(b) declaring that under the terms of the Investor Trust Agreement, IBJ Schroder, as Investor Trustee, had the authority to commence the Satellite Litigation;

(c) declaring that the Investor Trust Agreement does not permit IBJ Schroder to split the Satellite Litigation and assign it to individual Beneficiaries;

(d) declaring that under the terms of the Investor Trust Agreement, IBJ Schroder may not settle the Satellite Litigation absent instructions from the Court;

(e) approving the Proposed Settlement embodied in the Settlement Agreement and directing IBJ Schroder to consummate the Settlement Agreement immediately;

(f) declaring that the Beneficiaries be bound by the Settlement Agreement and that IBJ Schroder will not, by virtue of continued service as Investor Trustee under the Investor Trust Agreement or of actions taken in seeking or pursuant to the order in this proceeding, (i) be subject to claims for damages or otherwise based on alleged breaches of the Investor Trust Agreement or its duties to the Beneficiaries thereunder or (ii) impair the rights it has under the Investor Trust Agreement to be compensated for the fees and expenses it incurs in discharging its duties as Investor Trustee;

(g) retaining the jurisdiction of the Court with respect to the Investor Trust and the final disposition of its assets;

(h) for such other and further relief as this Court deems just and proper;

Objections or answering affidavits, if any, shall be served upon Petitioner's counsel, White & Case LLP, 1155 Avenue of the Americas, New York, New York, 10036 (Attn: Hyon Kim, Esq.), on or before the __ day of _____, 1998;

Reply papers and affidavits, if any, shall be served by Petitioner upon any party submitting objections or answering affidavits on or before the __ day of _____, 1998;

Service of a copy of this order and the papers upon which it is based, be made on or before the __ day of _____, 1998 by personally serving copies thereof on the Beneficiaries, and that said service be deemed good and sufficient service thereof.

ENTER:

_____

J.S.C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

98101530

In the Matter of the Application of	Index No. 98/_____
IBJ SCHRODER BANK & TRUST COMPANY (not in its individual capacity but in its capacity as Trustee under a Trust Agreement dated as of December 21, 1985 among Resources Satellite Corp., J. Henry Schroder Bank & Trust Company and the Beneficiaries thereunder), Petitioner,	IAS Part __ (_____, J.) VERIFIED PETITION FOR CONSTRUCTION OF TRUST AND APPROVAL OF PROPOSED SETTLEMENT
for an order, pursuant to CPLR § 7701, For a Construction of an Indenture and Approval of a Proposed Settlement.	

Petitioner, IBJ SCHRODER BANK & TRUST COMPANY ("IBJ Schroder" or the "Investor Trustee"), solely in its capacity as successor trustee under a Trust Agreement dated as of December 23, 1985 among Resources Satellite Corp., J. Henry Schroder Bank & Trust Company (the predecessor-in-interest of IBJ Schroder) (the "Investor Trust"), by its attorneys White & Case LLP, for its verified petition, pursuant to CPLR § 7701, alleges as follows upon information and belief:

The Nature of this Proceeding

1. This proceeding has been commenced by IBJ Schroder for the purpose of seeking judicial instructions with respect to a Trust Agreement, dated December 23, 1985 (the "Investor Trust Agreement"), under which IBJ Schroder is the sole trustee (the "Investor Trustee") of the Investor Trust.

2. IBJ Schroder is a banking corporation incorporated under the laws of the State of New York, with offices at One State Street, New York, New York 10004. IBJ Schroder brings this proceeding solely in its capacity as a successor trustee of the Investor Trust.

3. The Investor Trust Agreement at Section 13.11 provides that the Investor Trust had been created in New York and that it and the Investor Trust Agreement

> "shall in all respects be governed by and construed in accordance with, the internal law of the State of New York including all matters of construction, validity and performance, without giving effect to the principles of conflict of laws thereof."

A copy of the Investor Trust Agreement is attached hereto as Exhibit A.

4. As set forth below, the Investor Trust was created to allow the beneficiaries of the Investor Trust to invest in tax shelters associated with a communications satellite that operated from 1985 through 1994. As a result of a dispute over claimed liquidated damages relating to the satellite's operation, IBJ Schroder requires instructions from the Court concerning how it should discharge its duties to the holders of beneficial interests in the Investor Trust.

5. In this proceeding IBJ Schroder seeks, among other things, construction of the Investor Trust Agreement as to its right to consummate, on behalf of the beneficiaries of the Investor Trust, a proposed settlement of an action pending in this Court, captioned IBJ Schroder Bank & Trust Company, et al. v. GE Capital Spacenet Services, Inc., et al.,Index No. 601228/96 (Shainswit, J.) (the "Satellite Litigation"), which action involves the assets of the Investor Trust.

6. IBJ Schroder believes that the proposed settlement is reasonable and prudent in light of the substantial defenses and uncertainties associated with the Satellite Litigation, including serious issues of New York law relating to the enforceability of liquidated

damage clauses and complex fact issues relating to the mechanical operation and fuel usage of an aging communications satellite. Absent the proposed settlement, the Satellite Litigation would likely continue for several years and require the Investor Trust to expend substantial assets with no reasonable assurance of a substantial recovery in the Satellite Litigation.

7. IBJ Schroder has received communications from one beneficiary of the Investor Trust who purports to speak for other beneficiaries and who has asserted various objections to the proposed settlement, including that:

(a) IBJ Schroder lacked the authority to participate in or settle the Satellite Litigation because the Investor Trust has terminated;

(b) any beneficiaries who desire to proceed with their "share" of the Satellite Litigation should be permitted by IBJ Schroder to do so pursuant to a "distribution" of interests in that Litigation by IBJ Schroder; and

(c) the proposed settlement provides inadequate amounts to the Investor Trust.

8. Under these circumstances, IBJ Schroder has been placed in an untenable position. Absent instructions from the Court, the Investor Trustee could be subject to conflicting claims by beneficiaries of the Investor Trust now or in the future as to the prudence of its actions relating to the Satellite Litigation and the proposed settlement.

Jurisdiction and Venue

9. This Court has jurisdiction over this action to entertain a special proceeding to determine matters relating to an express trust pursuant to CPLR Articles 77 and 4. Venue is proper in this Court as a proceeding related to the Satellite Litigation.

The Satellite Transaction

10. The Investor Trust and the Satellite Litigation relate to a series of sale-leaseback transactions entered into in 1985 (the "Satellite Transaction"). At that time, a satellite

(the "Satellite") was launched into orbit above the Earth. The Satellite carried 24 transponders. The transponders were devices used to transmit electronic signals (i.e., for radio, television, etc.) from one point on Earth to another. Broadcasters and other businesses that transmit electronic signals leased the transponders for set periods of time. As such, each transponder represented a stream of potential rental revenue to the owner of the Satellite (the "Satellite Owner").

11. In late 1985, the Satellite Owner sold 14 of the Satellite's 24 transponders (the "Transponders") to Integrated Equipment Leasing Corporation ("IELC") for approximately $124,000,000, about 85% of which was borrowed from bank lenders. IELC simultaneously leased the Transponders back to the Satellite Owner, who was to operate the Satellite and the Transponders. For tax purposes, IELC's ownership interests and lessor rights were placed in a trust (the "IELC Trust"). The Satellite Owner was to use the rental income produced by the Transponders to pay rent to the IELC Trust, which rent would be used by the IELC Trust to repay the bank lenders. The lease between the IELC Trust and the Satellite Owner was referred to as the "Original Lease."

12. IELC then entered into another sale-leaseback transaction in which all the assets of the IELC Trust were sold to Resources Satellite Corporation ("RSC") which, in turn, would sell beneficial interests in the Transponders to the public. RSC placed all these assets into the Investor Trust and then leased back to the IELC Trust all interests in the Satellite and the Transponders. Under a lease dated December 23, 1985, between RSC and the IELC Trust (the "Master Lease"), the IELC Trust was to pay rent to the Investor Trust for the use of the Transponders. Under another agreement (the "Master Collateral Assignment Agreement"), the IELC Trust assigned to RSC all its right, title and interest in the Original Lease.

13. Under the Investor Trust Agreement, RSC was the grantor of the Investor Trust. Units representing beneficial interests of the Investor Trust were sold as tax shelters to 408 trust beneficiaries (the "Beneficiaries"), in exchange for $60,000 and a note payable to the Investor Trust of $313,000 (the "Beneficiary Notes") from each such Beneficiary. A diagram of the Satellite Transaction is attached hereto as Exhibit B. Pursuant to Section 4.01 of the Investor Trust Agreement, each Beneficiary agreed that the Investor Trustee would repay the Beneficiary Notes from the proceeds of the Trust Estate, including, inter alia, the rent received on the Master Lease, before other proceeds, if any, were paid to the Beneficiaries. Pursuant to Section 4.01, all other distributions to the Beneficiaries by the Investor Trustee were subject to priorities, including reimbursement of the Investor Trustee for the costs of administration of the Trust, including accountants' and attorneys' fees.

14. Pursuant to Section 1.01 of the Investor Trust Agreement, the "Beneficial Interest" of each Beneficiary "shall mean a percentage undivided interest in the Trust Estate." Investor Trust Agreement, Ex. A, Section 1.01, at 2. As such, under Section 4.01 of the Investor Trust Agreement, any distribution of monies or payments of any kind to the Beneficiaries from the Trust Estate are to be "in proportion to their respective percentages of Beneficial Interest." Those percentage Beneficial Interests were represented by Trust Certificates issued to each Beneficiary pursuant to Article 3 of the Investor Trust Agreement. Under Section 11.04 of the Investor Trust Agreement, the Beneficiaries have no legal title to the Trust Estate beyond their percentage Beneficial Interests.

The Satellite Litigation

15. The appraised value of the Transponders in the 1985 Satellite Transaction was based on their expected usable life and the likely rents that could be charged for their use.

This appraised value was used in setting the purchase price of the Transponders, which, in turn, dictated the rents that would be due under the Original Lease and the Master Lease. Both Leases refer to an appraisal (the "Appraisal") issued as of December 23, 1985. The Appraisal stated that "[t]he useful economic life of each Transponder is expected to be at least 8.5 years, beginning on December 23, 1985," or, as stated in an Offering Memorandum received by each Beneficiary, the Transponders were expected to last until June 10, 1994.

16. Under the Original Lease, Basic Rent was due in thirteen payments to be made twice a year until March 11, 1992. Under the Master Lease, Fixed Rent was due in annual installments from 1985 through 1991 and a final partial year installment due September 11, 1992. All Basic Rent and Fixed Rent have been paid.

17. As noted, the Transponders were expected to be available until mid-1994, i.e., beyond the terms of the Original and Master Leases. As such, both the IELC Trust and the Investor Trust contemplated some period of time after the Original Lease was over when the Transponders could be remarketed, that is leased or sold to other parties for additional income. In the Original and Master Leases, the IELC Trust, RSC and the Investor Trust took steps to protect their expectation that income could be earned from the Transponders after the end of the Original Lease through the use of liquidated damage clauses which focused on the amount of fuel remaining on the Satellite as of certain dates.

18. The amount of fuel on the Satellite was important because in order to receive and transmit Transponder signals the Satellite must be properly positioned over the Earth. The commercial life of the Transponders was therefore dependent on the ability to position the Satellite in its designated orbit, despite gravitational and other forces that would cause it to stray from its proper position. The Satellite used rockets powered by hydrazine fuel to correct for the

pull of gravity. Thus, the amount of fuel on board the Satellite necessarily determined the usable life of the Transponders, since without fuel for the rockets the Satellite (and the Transponders) could not be positioned to receive and transmit signals and would be worthless.

19. Under Section 9 of the Original Lease, if at the end of the Original Lease term (March 11, 1992) the fuel on the Satellite was less than 54 pounds (the "First Fuel Amount"), then the Satellite Owner had to make certain fuel shortfall payments calculated under the Original Lease. In addition, if at the end of a renewal term under the Original Lease (September 11, 1992) the fuel on the Satellite was less than 42 pounds (the "Second Fuel Amount"), then fuel shortfall payments were due as to any Transponders for which the Satellite Owner had renewed the Original Lease.

20. If the fuel shortfall exceeded 10% of the First Fuel Amount (i.e., if it was more than 5.4 pounds below 54 pounds, or 48.6 pounds or less) or the Second Fuel Amount (i.e., more than 4.2 pounds below 42 pounds, or 37.8 pounds or less), then an "Event of Loss" occurred. Upon the occurrence of an Event of Loss, under Sections 4(c) and 11(a) of the Original Lease, the Satellite Owner was obligated to make liquidated damage payments under a schedule attached to the Original Lease ("Stipulated Loss Values"). A portion of any such payments were payable to the Investor Trust under Sections 4.02 and 6.01 of the Master Lease. The Stipulated Loss Values were a percentage of the original appraised cost of the Transponders to IELC ($124 million), and can equal several million dollars for each of the Transponders.

21. In March 1992, at the end of the fixed term of the Original Lease, the Satellite Owner reported to the trustee of the IELC Trust that there were 51.55 pounds of hydrazine fuel on board the Satellite. This was enough fuel to avoid an Event of Loss, but low enough to obligate the Satellite Owner to make some fuel shortfall payments. The reported fuel

amount was later amended by the Satellite Owner to 52.11 pounds as of March 11, 1992 and 41.482 pounds as of September 11, 1992. Under the Original and Master Leases, the IELC trustee and IBJ Schroder had a right to inspect the Satellite Owner's fuel records. Based on that inspection, a dispute developed as between the IELC Trust and IBJ Schroder, on the one hand, and the Satellite Owner, on the other hand, regarding the actual amount of fuel on board the Satellite as of March 11 and September 11, 1992.

22. On October 19, 1992, the Satellite Owner, the trustee for the IELC Trust and IBJ Schroder entered into an Agreement Regarding Fuel (the "Fuel Agreement"). Under Section 7.4, New York law governs the Fuel Agreement. A copy of the Fuel Agreement is attached as Exhibit C.

23. Under the Fuel Agreement, the Satellite Owner agreed to make certain fuel shortfall payments. The parties then agreed that the last day of the Satellite's life would be the day it could no longer be maneuvered by its rockets into the positions needed to maintain use of the Transponders (the "Last Day"). In Article III of the Fuel Agreement, the parties addressed Events of Loss based on deviations from the First or Second Fuel Amounts. The parties agreed that if there had been 48.6 pounds of fuel on the Satellite as of March 11, 1992 (or 37.8 pounds as of September 11, 1992), then the Last Day should be August 18, 1994. If the Satellite's Last Day occurred after August 18, then no Stipulated Loss Value damages would be due. However, under Section 3.4 of the Fuel Agreement, if the Last Day occurred before August 18, 1994, then this would constitute a "Total Loss Event" and the Satellite Owner had to pay the Stipulated Loss Values owing under the Original Lease (a "Total Loss Amount").

24. Under Section 4.1 of the Fuel Agreement, the parties set forth the burdens of proof with respect to any dispute regarding the fuel amounts as of the Last Day:

> "The use of the Last Day pursuant to this [Fuel] Agreement to determine the amounts, if any [to be paid by the parties based on the occurrence of the Last Day] is predicated upon Fuel being utilized since March 11, 1992 until the Last Day to maintain [the Satellite in proper position] at rates to be expected absent any extraordinary circumstances or event ("Normal Fuel Usage"). Accordingly, notwithstanding anything contained in this [Fuel] Agreement to the contrary, in the event (A) of the occurrence or non-occurrence of any event, matter, fact, thing, loss, catastrophe (whether by act of god or otherwise) or other occurrence . . . as the result of which Normal Fuel Usage ceases prior to August 18, 1994 or (B) the [Satellite cannot be kept in proper position] from March 11, 1992 until August 18, 1994, (either, a "Total Loss Event"), then (i) the provisions of Article III of this [Fuel] Agreement shall be inapplicable; (ii) unless [the Satellite Owner] can carry the burden of demonstrating to a reasonable certainty that the Actual March 11 Fuel Amount was greater than or equal to 48.6 pounds, then [the Satellite Owner shall pay the Total Loss Amount]."

25. In addition, under Section 7.2 of the Fuel Agreement, the parties, including the Satellite Owner, expressly reserved all claims, rights, positions and arguments with respect to matters not covered by the Fuel Agreement. This would include the defenses and counterclaims described below with respect to the Satellite Litigation.

26. Upon information and belief, the terms of the Fuel Agreement reflected a recognition by the Satellite Owner, IELC, the IELC Trustee and IBJ Schroder that (a) there may have been some fuel shortfall; (b) but determining the actual fuel amounts was extremely difficult, in part, because the Satellite fuel records were inconclusive; and (c) as such, the Satellite Owner (i) would agree to a higher standard of proof with respect to proving the Satellite's fuel usage, but (ii) would preserve the opportunity to prove that any fuel shortfalls resulted from causes other than the actual fuel usage of the Satellite, that there was more fuel on board the Satellite on

March 11, 1992 than 48.6 pounds and/or that the Stipulated Loss Value provisions of the Original Lease were unenforceable under New York law.

27. On July 27, 1994 (22 days short of August 18), the Last Day occurred when the Satellite strayed from its orbit and could no longer be properly positioned by its rockets. IBJ Schroder and the IELC Trust claimed an Event of Loss and demanded payment of the Stipulated Loss Value under the Fuel Agreement. The Satellite Owner, however, refused to pay, claiming that it could show (i) that a catastrophic event or mechanical failure had occurred that blocked fuel from getting to the rockets, or (ii) that there was a reasonable certainty that the fuel amount as of March 11, 1992 had exceeded 48.6 pounds.

28. Unable to resolve their dispute, on March 8, 1996, IBJ Schroder, IELC and the IELC Trust commenced the Satellite Litigation in this Court. As calculated under the Original Lease, the Stipulated Loss Value due was $42,073,507. Under the Fuel Agreement this amount was reduced by the rental income received by the IELC Trust and the Investor Trust from Leasing the Transponders after March 11, 1992, less fees, costs and expenses. With interest accrued under the Fuel Agreement through March 11, 1996, the amount demanded by IBJ Schroder and the IELC Trust was $40,785,455. See Satellite Litigation Complaint ¶¶ 56, 66, 71, 77 and 81.

29. The defendants in the Satellite Litigation served answers and counterclaims, denying all liability and pleading numerous defenses and counterclaims. Among the defenses and counterclaims already raised by the Satellite Litigation defendants are (a) that the Stipulated Loss Value used as the basis of the claims in the Satellite Litigation is unenforceable under New York law; (b) that the Satellite's loss of maneuverability on July 27, 1997 resulted from a catastrophic event or mechanical failure and not a lack of fuel; (c) that the method used to calculate the Last Day in the Fuel Agreement was rendered invalid by a mechanical failure on the

Satellite; and (d) that there is a reasonable certainty that the Satellite on March 11, 1992 had enough fuel to avoid an Event of Loss or Total Loss Event.

30. The Investor Trustee has informed the Beneficiaries of the Fuel Agreement and the Satellite Litigation.

The Proposed Settlement

31. In September 1997, the parties to the Satellite Litigation conditionally agreed to a settlement (the "Proposed Settlement"). The Proposed Settlement is embodied in a Settlement Agreement, which is attached hereto as Exhibit D. By its conditions, the Proposed Settlement cannot be consummated absent certain rulings sought by this Petition.

32. Section 3 of the Settlement Agreement provides for the Satellite Owner to pay $8,500,000, of which $6,970,000 (82%) plus applicable interest would be paid to IBJ Schroder, as Investor Trustee for the Beneficiaries of the Investor Trust, and $1,530,000 (18%) plus applicable interest would be paid to IELC. In exchange for such payments the parties agreed to exchange mutual releases.

33. The 82%-18% split was agreed to by the Investor Trust and IELC in 1992 at the outset of the Satellite fuel dispute. The split was based on IELC's estimation, based on a 1991 appraisal of the Satellite and its then purported fuel use, that the Satellite would probably remain in use until December 1994. This was 33 months after March 1992, when the Original Lease term ended. With respect to any recoveries based on a fuel shortfall as of March 1992, IELC agreed to accept 6/33 or 18%. This corresponded to the six months, from March to September 1992, by which the Master Lease exceeded the Original Lease. The Investor Trust would receive 27/33 or 82%. Even though the Satellite's Last Day occurred in July 1994, IELC

and the Investor Trust did not change the split to reflect the shorter measurement period. In the context of the Settlement Agreement, this yields an additional $291,429 to the Investor Trust.

34. The Settlement Agreement is intended to give all parties to the Satellite Litigation repose from any further claims relating to the fuel dispute involving the Satellite, the Transponders or the Satellite Transaction. The Settlement Agreement includes broad releases of such claims given and received by the Satellite Litigation plaintiffs, defined to include the Investor Trustee and the Beneficiaries of the Investor Trust, and the Satellite Litigation defendants, defined with identical breadth. Each Satellite Litigation plaintiff and defendant, including IBJ Schroder, represents in the Settlement Agreement that it has the authority to enter into the Settlement Agreement. Each Satellite Litigation plaintiff then agrees to indemnify and hold harmless each defendant from any claims released under the Settlement Agreement. A similar obligation runs from each defendant to each of the plaintiffs.

35. The Investor Trustee has informed the Beneficiaries of the Proposed Settlement and IBJ Schroder's intention to bring this proceeding to seek instructions from the Court under Article 77.

The Investor Trustee's Need For Instructions

36. As Investor Trustee, IBJ Schroder owes a fiduciary duty to all the Beneficiaries to act in good faith and with reasonable prudence in conserving and protecting the Trust Estate. This duty applies even to the extent one or more of the Beneficiaries disagree with the Investor Trustee's actions. At the same time, however, the Investor Trustee is not obligated to act at its peril or in the absence of express terms in the Investor Trust Agreement.

37. The Investor Trust Agreement's provisions make it unclear whether the Investor Trustee may settle the Satellite Litigation it commenced on behalf of the Beneficiaries and the Trust Estate. This leaves IBJ Schroder in the untenable position of either pursuing litigation which it believes imprudent or attempting to settle the litigation and face exposure for acting beyond the powers expressly provided to it under the Investor Trust Agreement. In addition, in order to make the required representations, and ensure compliance with the releases and indemnification clauses under the Settlement Agreement, the Investor Trustee must know that it is acting with the proper authority and that the Beneficiaries will be bound by the Settlement Agreement and the releases contained therein.

38. IBJ Schroder's need for instructions is made manifest by the communications it has received from one Beneficiary who purports to speak for other Beneficiaries asserting various objections to the Proposed Settlement, including that:

(a) IBJ Schroder lacked the authority to participate in or settle the Satellite Litigation because the Investor Trust has terminated;

(b) any Beneficiaries who desire to proceed with their "share" of the Satellite Litigation should be permitted by IBJ Schroder to do so pursuant to a "distribution" of interests in that Litigation by IBJ Schroder to the Beneficiaries; and

(c) in any event, the Proposed Settlement provides inadequate amounts to the Investor Trust.

These objections place the terms of the Investor Trust Agreement directly in issue. In this proceeding, IBJ Schroder seeks an instruction to address each of these objections.

The Investor Trustee's Ability to
Commence But Not Resolve the Satellite Litigation

39. The Investor Trust has not terminated because the requirements for termination in Section 11 of the Investor Trust Agreement have not been met. As such, under the

terms of the Investor Trust Agreement, only IBJ Schroder had the authority to bring the Satellite Litigation. The Beneficiaries did not have standing to bring the Satellite Litigation, because they have no title to the Trust Estate assets, nor do they have severable interests in the Trust Estate.

The Investor Trust Has Not Terminated

40. The Investor Trust is a grantor trust governed by the laws of the State of New York. Section 1.01 of the Investor Trust Agreement provides that the Trust Estate held by IBJ Schroder shall include both the Transponders and "all amounts of payments or proceeds of any kind for or with respect to the [Investor Trust] Assets, including, without limitation, rent payable pursuant to the Master Lease and any and all payments and proceeds received by the Trustee after the termination of the Master Lease with respect to [Satellite] Equipment as the result of a sale, lease, casualty or other disposition thereof...." Investor Trust Agreement § 1.01; Exhibit A, at 3. Under Section 1.01, the Satellite Litigation, which relates to an alleged casualty to the Equipment (the Transponders), is part of the Trust Estate held by IBJ Schroder.

41. The Investor Trust Agreement further provides that:

> "This Trust Agreement and the Trust created hereby in any event shall terminate and this Trust Agreement shall be of no further force or effect upon the earlier of (a) the sale, transfer or other final disposition, and the final distribution, by the Trustee of all Equipment, money, other property and proceeds constituting the Trust Estate, (b) August 26, 1993 (or if the Equipment is covered by a lease on such date, the date which is eleven months and fifteen days after the date on which such lease expires or is sooner terminated), (c) termination or revocation by all of the Beneficiaries in accordance with the provisions of Section 11.03, or (d) the resignation or removal of the Trustee and failure to appoint a Successor Trustee pursuant to Section 9.01(a) hereof because a Beneficiary objects to such appointment or for any reason; otherwise this Trust Agreement and the trusts created created hereby shall continue in full force and effect in accordance with the terms hereof."

Investor Trust Agreement Section 11.02, Ex. A, at 22 (emphasis added).

42. The Investor Trust continues to exist pursuant to the Investor Trust Agreement because none of the conditions of Section 11.02 have been met. Subsections (a), (c) and (d) of Section 11.02 do not apply here because none of the events mentioned in those subsections has occurred. Subsection (b) of Section 11.02 also does not apply here because the Equipment is still covered by a lease.

43. Under the Master Lease, "Equipment" is defined as the Transponders on the Satellite that were the subject of the Satellite Transaction. Under Section 11(a)(i) of the Original Lease, the Satellite Owner was obligated to pay, inter alia, the Stipulated Loss Value upon an Event of Loss as to any Transponder. The next paragraph of Section 11(a) of the Original Lease then provides for termination of that lease upon such payment:

> "Upon payment in full of all amounts due pursuant to clause (i) of the preceding paragraph, . . . the obligation of the Lessee [the Satellite Owner] to pay Basic Rent with respect to such Transponder shall terminate, such Transponder shall no longer be subject to this [Original] Lease and the Lease Term with respect to such Transponder shall end."

44. Consistent with Section 11 of the Original Lease, under Sections 6.01, 6.03 and 4.02 of the Master Lease, the IELC Trust remains obligated to pay to the Investor Trust certain amounts relating to Events of Loss on the Transponders even if such recoveries come after all Fixed Rent has been paid under the Master Lease.

45. There has been an outstanding claim for a fuel related Event of Loss as to all the Transponders since March 11, 1992. Under Section 11 of the Original Lease, that lease has not terminated as to those Transponders because an Event of Loss payment is still due and owing. Under the Master Lease, any such payments must be shared with the Investor Trustee. Under Section 11 of the Investor Trust Agreement, the Equipment is, therefore, still subject to a lease and no grounds for terminating the Investor Trust exist.

46. Accordingly, IBJ Schroder requests a declaration by this Court that under the terms of the Investor Trust Agreement, the Investor Trust and Trust Estate have not terminated and that IBJ Schroder, as Investor Trustee, and the Beneficiaries continue to be subject to the Investor Trust Agreement.

IBJ Schroder's Ability to Initiate the Satellite Litigation

47. Section 2.02 of the Investor Trust Agreement provides that IBJ Schroder, as Investor Trustee, shall "hold the Trust Estate . . . for the purpose of protecting and conserving the Trust Estate" for the Beneficiaries. Investor Trust Agreement § 2.02, Ex. A, at 4.

48. The Satellite Owner's failure to pay the Stipulated Loss Value demanded by IBJ Schroder, IELC and the IELC Trust constituted an event of default under the Original and Master Leases. Consistent with its power to conserve and protect the Trust Estate, absent a cure of the default or a direction from all the Beneficiaries, the Investor Trustee is expressly authorized to exercise its discretion to preserve that Trust Estate and enforce on behalf of the Beneficiaries their rights under various agreements, including the Master Collateral Assignment Agreement referenced in paragraph 12, above. Section 5.02 of the Investor Trust Agreement provides in relevant part:

> "In the event that such event of default has not been cured within 30 days ... the Trustee shall take such action or shall refrain from taking such action, not inconsistent with the provisions of the [other Satellite Transaction] Agreements, with respect to such event of default as the Trustee shall be directed in writing by all of the Beneficiaries, or, if no such direction has been received from all of the Beneficiaries ... the Trustee shall, in its sole discretion and subject to the provisions of Sections 6.05 and 7.01 hereof [which limit the liability of the Investor Trustee], take such action as shall be necessary to terminate the Master Lease, to obtain the benefits of the Master Collateral Assignment Agreement and to cause the Lessee thereunder to perform all of its obligations upon such termination."

Investor Trust Agreement § 5.02; Ex. A, at 9-10.

49. Having notified the Beneficiaries of the Satellite Owner's failure to pay Stipulated Loss Value, IBJ Schroder did not receive direction from all the Beneficiaries. Under Section 5.02 of the Investor Trust Agreement, IBJ Schroder then exercised its discretion to join with IELC and the IELC Trust in commencing the Satellite Litigation to preserve and protect the Trust Estate and to obtain for the Beneficiaries the benefits of the Satellite Transaction under the Leases and other Satellite Transaction agreements.

50. Accordingly, IBJ Schroder requests a declaration by this Court that under the terms of the Investor Trust Agreement, IBJ Schroder, as Investor Trustee, had the authority to commence the Satellite Litigation on behalf of the Investor Trust.

The Beneficiaries Lack Standing to Pursue the Satellite Litigation

51. As opposed to the Investor Trustee, the Beneficiaries have no title to the Trust Estate. No Beneficiary has standing to declare a default, terminate the Leases or otherwise take any step to pursue Trust Estate assets. Section 11.04 of the Investor Trust Agreement provides in relevant part:

> "The Beneficiaries shall not have legal title to any part of the Trust Estate, unless this Trust is revoked ... or is otherwise terminated."

Ex. A, at 28-29. Instead, each Beneficiary holds a certificate representing a beneficial interest in the Trust Estate equal to the percentage value of their unit holding.

52. The Beneficiaries do not have standing to pursue the Satellite Litigation. Nor may the Beneficiaries simply elect to take over "shares" of the Satellite Litigation. Any attempt to split or assign "pieces" of the Satellite Litigation would (i) fail under the Investor Trust Agreement; (ii) subject the Beneficiaries to unique and serious defenses regarding their standing; and (iii) potentially subject IBJ Schroder to claims for acting contrary to the Investor Trust Agreement.

53. Accordingly, IBJ Schroder seeks a declaration that the Investor Trust Agreement does not permit the Satellite Litigation to be split into percentage "shares" and assigned to those Beneficiaries who may wish to pursue it.

IBJ Schroder's Inability to Resolve the Satellite Litigation Without Instructions From the Court

54. Notwithstanding its powers to protect and conserve the Trust Estate, there are express limitations on IBJ Schroder's powers with respect to assets of the Trust Estate. Section 5.01 of the Investor Trust Agreement provides that:

> Except as expressly required by the terms of the [other Satellite Transaction] Agreements, including, without limitation, this [Investor] Trust Agreement, or in written instructions from all of the beneficiaries pursuant to section 5.02 and 5.03 hereof, the Trustee shall not have any duty, obligation or power to, and the Trustee agrees that it will not, manage, control, use, sell, lease (other than pursuant to the Master Lease), dispose of or otherwise deal with the Equipment or any other part of the Trust Estate, or otherwise to take or refrain from taking any action under, or in connection with, the Agreements, and no implied duties shall be read into this Trust Agreement against the Trustee.

Investor Trust Agreement § 5.01; Ex. A, at 9 (emphasis added).

55. The Proposed Settlement represents a disposition of Trust Estate property -- the Satellite Litigation. Failing an instruction from the Court, IBJ Schroder would have no choice but to prosecute the Satellite Litigation in the absence of a unanimous direction from all the Beneficiaries. Given the substantial risks attendant to the Satellite Litigation, this prospect places IBJ Schroder at peril. Absent instructions, some Beneficiaries may make claims against IBJ Schroder for acting imprudently in not settling. However, as shown by communications received from one Beneficiary purporting to speak for others, other Beneficiaries would pursue IBJ Schroder if it were to settle without Court approval for acting without authority under the Investor Trust Agreement.

56. Given that the Investor Trust is for the benefit of 408 Beneficiaries and the multiple potential courses of action the Beneficiaries may wish undertaken, there is no prospect that IBJ Schroder will receive clear and unanimous instructions from all the Beneficiaries. It would be a waste of Trust Estate assets to seek such instructions as any incompleteness in the result or divergence of views would immediately force IBJ Schroder back into an Article 77 proceeding like this one.

57. Accordingly, IBJ Schroder requests a declaration by this Court that under the terms of the Investor Trust Agreement it may not settle the Satellite Litigation absent instructions from this Court.

The Proposed Settlement Should Be Approved As Reasonable and Prudent

58. The Proposed Settlement embodied in the Settlement Agreement is reasonable and prudent and should be approved. As explained more fully in the annexed Affirmation of John S. Willems, sworn to January 21, 1998 ("Willems Aff."), notwithstanding the merits of IBJ Schroder's claims in the Satellite Litigation, IBJ Schroder believes that there is a substantial likelihood that the defendants in the Satellite Litigation would meet their burden of proof with respect to their various defenses and counterclaims to the Stipulated Loss Value claims. As such, there is a substantial risk that the defendants will raise issues of fact and law that would preclude any recovery by the Investor Trust in the Satellite Litigation. At the same time, prosecuting the Satellite Litigation will be very costly and time consuming, because such cases are extremely expert-intensive and technically complex. As such, the Settlement Agreement represents the most reasonably prudent way to conserve and protect the Trust Estate.

59. Among the principal defenses that already have been raised by the defendants in the Satellite Litigation are (i) that the Stipulated Loss Value of over $42 million is disproportionate to any damages suffered by the Beneficiaries and is otherwise unenforceable under New York law, in part, because the Beneficiaries had not only received all rent due under the Master Lease but had otherwise received the full value of their bargain; (ii) that the Satellite did not experience a loss of fuel, but rather a catastrophic or mechanical failure; and/or (iii) that as of March 11, 1992, at the expiration of the Original Lease, the Satellite did have a least 48.6 pounds of fuel such that no Stipulated Loss Value damages were owing. Willems Aff. ¶¶ 6-29.

60. In questioning the enforceability of the Stipulated Loss Value provisions, the defendants in the Satellite Litigation have raised or will likely raise other facts to defeat any claim for liquidated damages, including:

(a) Stipulated Loss Value was meant to compensate the Beneficiaries and IELC for a loss of the Transponders that denied them a chance to profit from the remarketing of the Transponders after the Original Lease. Here, there was enough fuel on the Satellite such that the Transponders lasted longer than their appraised useful life. As such, the Beneficiaries and IELC received all the benefits for which they bargained and are not entitled to a windfall of $42 million.

(b) By 1994, the Transponders were generating only $1,000 to $1,500 per day in rental income. Assuming all 14 Transponders could have been rented for the remaining 24 days until August 18, 1994, the Investor Trust would have received only an additional $350,000-$500,000 (an amount already exceeded by fuel shortfall payments). As such, the claimed Stipulated Loss Value damages constitute a windfall of over $42 million and are disproportionate to any harm suffered due to the alleged breach.

See Willems Aff. ¶¶ 6-17

61. Under New York law there is a substantial risk that the Stipulated Loss Value will be held unenforceable. In addition, it is likely that the defendants in the Satellite Litigation would meet their burden of proof under the Fuel Agreement in showing either that a mechanical failure caused the Satellite's Last Day or that, as of March 11, 1992, there was a reasonable certainty that there was more than 48.6 pounds of fuel on the Satellite. See Willems Aff. ¶¶ 22-29.

62. In order to defend against these contentions and the other arguments set forth above, IBJ Schroder would have to retain on behalf of the Investor Trust experts (a) on satellite fuel use and whether fuel use changes as a satellite gets older and carries less fuel in its tanks; (b) on satellite mechanics to rebut allegations that mechanical failure was the cause of the Satellite losing position after July 27, 1994; (c) on satellite aging and failure, who would likely have had to create and rebut historical models regarding the probability of certain kinds of failures; and (d) on the transponder rental market to address the value of the lost Transponders and the windfall issue. In addition, depending on the issues introduced by the Satellite Litigation defendants, IBJ Schroder also might be compelled to retain and present experts to address telemetry, physics, economics and tax issues. Retaining such experts could easily cost over $500,000 to the extent the Satellite Litigation proceeded to trial. Willems Aff. ¶ 30.

63. The Settlement Agreement represents a reasonable and prudent result to the Satellite Litigation. It would be imprudent to, in effect, "roll the dice" by attempting to seek a bigger recovery than that provided by the Settlement Agreement. Given the substantial risk of little or no recovery and significant costs and time associated with the Satellite Litigation, IBJ Schroder would be acting at its peril with respect to the Beneficiaries if it were to pursue the Satellite Litigation instead of the Proposed Settlement embodied in the Settlement Agreement.

64. Accordingly, IBJ Schroder seeks an instruction from the Court approving the Proposed Settlement embodied in the Settlement Agreement and directing it to consummate the Settlement Agreement immediately.

WHEREFORE, petitioner IBJ Schroder requests that a judgment be entered, pursuant to CPLR § 7701:

(a) declaring that under the terms of the Investor Trust Agreement, the Investor Trust and Trust Estate have not terminated and that IBJ Schroder, as Investor Trustee, continues to be subject to the Investor Trust Agreement;

(b) declaring that under the terms of the Investor Trust Agreement, IBJ Schroder, as Investor Trustee, had the authority to commence the Satellite Litigation;

(c) declaring that the Investor Trust Agreement does not permit IBJ Schroder to split the Satellite Litigation and assign it to individual Beneficiaries;

(d) declaring that under the terms of the Investor Trust Agreement, IBJ Schroder may not settle the Satellite Litigation absent instructions from the Court;

(e) approving the Proposed Settlement embodied in the Settlement Agreement and directing IBJ Schroder to consummate the Settlement Agreement immediately;

(f) declaring that the Beneficiaries be bound by the Settlement Agreement and that IBJ Schroder will not, by virtue of continued service as Investor Trustee under the Investor Trust Agreement or of actions taken in seeking or pursuant to the order in this proceeding, (i) be subject to claims for damages or otherwise based on alleged breaches of the Investor Trust Agreement or its duties to the Beneficiaries thereunder or (ii) impair the rights it has under the Investor Trust Agreement to be compensated for the fees and expenses it incurs in discharging its duties as Investor Trustee;

(g) retaining the jurisdiction of the Court with respect to the Investor Trust and the final disposition of its assets; and

(h) for such other and further relief as this Court deems just and proper.

WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036-2787
(212) 819-8200

Attorneys for Petitioner
IBJ Schroder Bank & Trust Company

VERIFICATION

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

JENNIFER L. SHEPPARD, being duly sworn, deposes and says that she is a Senior Counsel of IBJ Schroder Bank & Trust Company, the petitioner in this Article 77 proceeding and that the foregoing petition is true to her own knowledge, except as to those matters stated on information and belief, and as to those matters she believes it to be true; that the grounds of her belief as to all matters not stated upon her knowledge are documents from petitioner's files and that the reason this verification is not made by petitioner is that said petitioner is a domestic corporation.

Jennifer L. Sheppard
JENNIFER L. SHEPPARD

Sworn to before me this
14th day of January, 1998

Owen C. Pell
Notary Public

OWEN C. PELL
Notary Public, State of New York
No. 31-4994846
Qualified in New York County
Commission Expires April 13, 1998

EXHIBIT B

EXECUTION COPY

BAC Home Loans Servicing, LP
6400 Legacy Drive
Plano, TX 75024

June 28, 2011

The Bank of New York Mellon, as Trustee or Indenture Trustee
101 Barclay Street
New York, New York 10286
Attn: Mortgage-Backed Securities Group

Ladies and Gentlemen:

Re: Pooling and Servicing Agreements and Sale and Servicing Agreements

We refer to the Pooling and Servicing Agreements (the "PSAs") and Sale and Servicing Agreements (the "SSAs" and together with the PSAs, the "Sale Agreements"), as applicable, for the transactions identified on Exhibit 1 hereto, each, in PSAs, among the Depositor thereunder, the Sellers thereunder, BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing, LP), as Master Servicer (the "Master Servicer") and The Bank of New York Mellon (f/k/a The Bank of New York), as trustee (or, in the case of SSAs, the indenture trustee, together the "Trustee") and each, in SSAs, among the Depositor thereunder, BAC Home Loans Servicing, LP (f/k/a Countrywide Home Loans Servicing, LP), as Sponsor and Master Servicer, the Trust thereunder and the Trustee. We also refer to the Guaranty of Bank of America Corporation, dated as of June 28, 2011, attached hereto as Exhibit 2 (the "Guaranty"). Capitalized terms used but not defined in this letter have the meanings specified in the Sale Agreements.

Section 8.05 (*Trustee's Fees and Expenses*) of each PSA and Section 7.03 (*Master Servicer to pay Indenture Trustee's and Owner Trustee's Fees and Expenses*) of each SSA (together, the "Indemnity") each provide, in part, that "The Trustee and any director, officer, employee or agent of the Trustee shall be indemnified by the Master Servicer and held harmless against any loss, liability or expense (including reasonable attorneys fees) (i) incurred in connection with any claim or legal action relating to (a) [the Sale Agreement], (b) the [applicable securities] or (c) in connection with the performance of any of the Trustee's duties [under the Sale Agreement], other than any loss, liability or expense incurred by reason of willful malfeasance, bad faith or negligence in the performance of any of the Trustee's duties hereunder . . . ." Certain Sale Agreements also exclude from the scope of the Indemnity "any loss, liability or expense incurred . . . by reason of any action of the Trustee taken at the direction of the [investors]."[1]

[1] We note that the language referenced in this letter may vary in certain ways in the Sale Agreements. Notwithstanding such variances, we intend this letter to apply, with same effect, to all the Sale Agreements for the transactions identified on Exhibit 1 hereto, except if such variances are material, in which case the parties hereto will consider in good faith how to implement the intent of this letter to such variances if the need arises.

We confirm that we view any actions taken by the Trustee in connection with its entry into the settlement in respect of Mortgage Loan repurchase and other alleged claims against the Sellers and Master Servicer relating to the transactions identified on Exhibit 1 hereto (the "Settlement"), including but not limited to the Trustee's participation in settlement negotiations, the Trustee's analysis of the Settlement, the filing by the Trustee of any petition in connection with the Settlement, the provision of notices concerning the Settlement to interested parties (including investors), and any further actions by the Trustee in support of the Settlement, including the response by the Trustee to any objections to the Settlement and any implementation of the Settlement by the Trustee (such actions together being the "Trustee Settlement Activities") as being actions that, for purposes of the Indemnity, relate to the Sale Agreements, the applicable securities, or the performance of the Trustee's duties under the Sale Agreements. We also confirm that the manner of entering into the Settlement or undertaking the activities to prepare therefor or contemplated thereby will not serve to disqualify the Trustee from receiving the benefits of the Indemnity or the Guaranty.

We also confirm that we view the Institutional Investor Agreement and any letter or other correspondence from the investors or their counsel which requests that the Trustee take the Trustee Settlement Activities, or any portion thereof, as not being the equivalent of a direction from the investors for purposes of the Indemnity. We further confirm that neither the receipt by the Trustee of any such letter or other correspondence nor the entry by the Trustee into the Institutional Investor Agreement will disqualify the Trustee from receiving the benefit of either the Indemnity or the Guaranty.

Finally, we note that the Indemnity also provides, with certain exceptions expressly provided for, that "the Master Servicer covenants and agrees . . . to pay or reimburse the Trustee for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of [the Sale Agreement] with respect to (A) the reasonable compensation and the expenses and disbursements of its counsel not associated with the closing of the issuance of the [applicable securities], (B) the reasonable compensation, expenses and disbursements of any accountant, engineer or appraiser that is not regularly employed by the Trustee, to the extent that the Trustee must engage such persons to perform acts or services [under the Sale Agreement] and (C) printing and engraving expenses in connection with preparing any Definitive [securities]."[2] We confirm that we view reasonable expenses, disbursements and advances otherwise within the Indemnity, if incurred or made by the Trustee in connection with the Trustee Settlement Activities, as being reimbursable by the Master Servicer under the Indemnity.

Without limiting any of the foregoing, we confirm that following the entry by the Trustee into the Settlement, Bank of America Corporation, BAC Home Loans Servicing, LP, Countrywide Financial Corporation and/or Countrywide Home Loans, Inc. shall pay the reasonable fees and expenses of the Trustee for Trustee Settlement Activities (including its reasonable attorneys' fees and expenses) on a current and ongoing basis (including all accrued

[2] We note that the language referenced in this letter may vary in certain ways in the Sale Agreements. Notwithstanding such variances, we intend this letter to apply, with same effect, to all the Sale Agreements for the transactions identified on Exhibit 1 hereto, except if such variances are material, in which case the parties hereto will consider in good faith how to implement the intent of this letter to such variances if the need arises.

and unpaid fees and expenses as of the date hereof, which shall be paid in full no later than 15 days from the execution of the Settlement).

Except as noted above, nothing herein is intended to limit, modify, supersede, or in any way affect any exceptions to the liability of the Master Servicer under the Indemnity that are based on the conduct of the Trustee. It is understood and agreed that the Indemnity does not cover any loss or liability incurred by reason of any tax consequences of the Settlement or arising out of the determination, administration or distribution (including distribution within each Covered Trust) of the Allocable Shares pursuant to the Settlement, which the Final Order and Judgment to be entered with respect to the Settlement shall provide shall not give rise to liability on the part of the BNYM Parties, the Bank of America Parties or the Countrywide Parties (all as defined in the Settlement Agreement). Nothing herein is intended to limit, modify, or in any way affect the limitations on the liability of the Master Servicer under Section 6.03 (*Limitation on Liability of the Depositor, the Sellers, the Master Servicer and Others*) of each PSA and Section 5.03 (*Limitation on Liability of the Seller, the Master Servicer and Others*) of each SSA.

Please acknowledge your agreement by countersigning this letter in the space provided below and returning a copy to us.

Sincerely,

BAC HOME LOANS SERVICING, L.P.

By: _____
Name: Terrence P. Laughlin
Title: Legacy Asset Servicing
Division President,
Bank of America, N.A.
By: BAC GP, LLC, its general partner
By: Bank of America, N.A., its manager

Accepted and Agreed:

BANK OF AMERICA CORPORATION

By: _____
Name: Terrence P. Laughlin
Title: Legacy Asset Servicing Division President.

THE BANK OF NEW YORK MELLON

By: _____
Name:
Title:

Accepted and Agreed:

BANK OF AMERICA CORPORATION

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON

By: _____
Name: Loretta A. Lundberg
Title: Managing Director

EXHIBIT C

GUARANTY

This GUARANTY (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Guaranty"), dated as of June 28, 2011, is made by BANK OF AMERICA CORPORATION (the "Guarantor"), in favor of THE BANK OF NEW YORK MELLON (f/k/a THE BANK OF NEW YORK) (the "Guaranteed Party").

W I T N E S S E T H:

WHEREAS, pursuant to the Pooling and Servicing Agreements and Sale and Servicing Agreements for the transactions identified on Exhibit 1 hereto (together the "Sale Agreements," and each a "Sale Agreement"), each, in Pooling and Servicing Agreements, among the Depositor thereunder, the Sellers thereunder, BAC Home Loans Servicing, L.P. (f/k/a Countrywide Home Loans Servicing, L.P.), as Master Servicer (the "Master Servicer") and the Guaranteed Party, as Trustee, and each, in Sale and Servicing Agreements, among the Depositor thereunder, BAC Home Loans Servicing, L.P. (f/k/a Countrywide Home Loans Servicing, L.P.), as Sponsor and Master Servicer, the Trust thereunder and the Guaranteed Party, as Indenture Trustee, the Master Servicer agreed to indemnify the Guaranteed Party in respect of certain losses, liabilities and expenses that might be incurred by the Guaranteed Party thereunder; and

WHEREAS, in connection with the activities of the Guaranteed Party that relate to the settlement of Mortgage Loan repurchase and other claims now or hereafter arising against the Sellers and/or the Master Servicer relating to the transactions identified on Exhibit 1 hereto (the "Settlement"), the Guarantor has agreed to execute and deliver this Guaranty.

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, the Guarantor agrees, for the benefit of the Guaranteed Party, as follows.

ARTICLE I
DEFINITIONS

SECTION 1.1. Certain Terms. The following terms (whether or not underscored) when used in this Guaranty, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Guaranteed Party" is defined in the preamble.

"Guarantor" is defined in the preamble.

"Guaranty" is defined in the preamble.

"Master Servicer" is defined in the first recital.

"Material Adverse Effect" means a material adverse effect on (i) the business, assets, operations, prospects or condition, financial or otherwise, of the Guarantor or (ii) the ability of the Guarantor to perform any of its obligations under this Guaranty.

"Obligations" means the payment obligations of the Master Servicer, whether now or hereafter arising, direct or indirect, absolute or contingent, under any Sale Agreement, in accordance with the terms and conditions thereof, to indemnify, hold harmless or otherwise reimburse the Guaranteed Party against certain losses, liabilities or expenses that may arise in connection with the Settlement.

"Parties" means the Guarantor and the Guaranteed Party.

"Sale Agreement" is defined in the first recital.

"Settlement" is defined in the second recital.

SECTION 1.2. Sale Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Guaranty, including its preamble and recitals, have the meanings provided in each applicable Sale Agreement solely with regard to that Sale Agreement (and not the other Sale Agreements).

ARTICLE II
GUARANTY PROVISIONS

SECTION 2.1. Guaranty. The Guarantor hereby absolutely, unconditionally and irrevocably guarantees the full and punctual payment when due of all existing and future Obligations and indemnifies and holds harmless the Guaranteed Party for any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Guaranteed Party in enforcing any rights under this Guaranty. This Guaranty constitutes a guaranty of payment when due and not of collection, and the Guarantor specifically agrees that it shall not be necessary or required that the Guaranteed Party exercise any right, assert any claim or demand or enforce any remedy whatsoever against the Master Servicer or any other Person before or as a condition to the obligations of the Guarantor hereunder.

SECTION 2.2. Reinstatement, etc. The Guarantor hereby agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be restored by the Guaranteed Party as though such payment had not been made.

SECTION 2.3. Guaranty Absolute, etc. This Guaranty shall in all respects be a continuing, absolute, unconditional and irrevocable guaranty of payment, and shall remain in full force and effect until the Obligations shall have been paid in full in cash and the Master Servicer shall have no further obligation under any Sale Agreement to indemnify, hold harmless or otherwise reimburse the Guaranteed Party. The Guarantor guarantees that the Obligations of the Master Servicer will be paid strictly in accordance with the terms of each Sale Agreement under which they arise. The liability of the Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(a) any lack of validity, legality or enforceability of the Obligations;

(b) whether or not the Settlement is ever finally approved or consummated;

(c) the failure of the Guaranteed Party (i) to assert any claim or demand or to enforce any right or remedy against the Master Servicer or any other Person under the provisions of any Sale Agreement or otherwise, or (ii) to exercise any right or remedy against any other guarantor of, or collateral securing, any Obligations;

(d) any amendment to, rescission, waiver or other modification of, or any consent to or departure from, any of the terms of any Sale Agreement; or

(e) any other circumstance (other than payment of the Obligations in full in cash) which might otherwise constitute a legal or equitable discharge of any surety or any guarantor.

SECTION 2.4. Waiver, etc. The Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations and this Guaranty and any requirement that the Guaranteed Party exhaust any right or take any action against the Master Servicer or any other Person (including any other guarantor) or entity or any collateral securing the Obligations, as the case may be.

SECTION 2.5. Postponement of Subrogation, etc. The Guarantor agrees that it will not exercise any rights which it may acquire by way of rights of subrogation until all of the Obligations shall have been paid in full in cash and the Master Servicer shall have no further obligation under any Sale Agreement to indemnify, hold harmless or otherwise reimburse the Guaranteed Party in respect of the Obligations. Any amount paid to the Guarantor on account of any such subrogation right in violation of the foregoing limitation shall be held in trust for the benefit of the Guaranteed Party and shall immediately be paid and turned-over to the Guaranteed Party in the exact form received by the Guarantor (duly endorsed in favor of the Guaranteed Party, if required) to be credited and applied against the Obligations.

SECTION 2.6. Payments. The Guarantor hereby agrees with the Guaranteed Party that all payments made by the Guarantor hereunder will be made in lawful currency of the United States to the Guaranteed Party, without set-off, counterclaim or other defense (other than that payment is not due) and without withholding or deduction for or on account of any present or future taxes, duties or other charges, unless the withholding or deduction of such taxes or duties is required by law.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

SECTION 3.1. Representations. The Guarantor hereby represents and warrants to the Guaranteed Party as set forth below.

(a) The Guarantor is a corporation incorporated under the laws of the State of Delaware, duly organized or formed, validly existing and in good standing and is duly qualified to do business, and is in good standing in, every jurisdiction in which the nature

of its business requires it to be so qualified, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. This Guaranty has been duly authorized, executed and delivered by the Guarantor;

(b) the execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary organizational action and do not contravene any provision of (i) the Guarantor's organizational documents, (ii) any law, rule or regulation, (iii) any contractual restriction binding on Guarantor or its property or (iv) any order, writ, judgment, award, injunction or decree binding on or affecting the Guarantor or its property, except in the case of the foregoing clauses (ii) through (iv), where such contravention would not reasonably be expected to have a Material Adverse Effect and would not reasonably be expected to impose any liability on the Guaranteed Party;

(c) all consents, licenses, clearances, authorizations and approvals of, and registrations and declarations with, any governmental authority or regulatory body necessary for the due execution, delivery and performance of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, except where the failure to so obtain such consents, licenses, clearances, authorizations and approvals, registration or declarations or to satisfy the conditions thereof would not reasonably be expected to have a Material Adverse Effect, and no other action by, and, except as contemplated herein, no notice to or filing with any governmental authority or regulatory body is required in connection with the execution, delivery or performance of this Guaranty; and

(d) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject to general principles of equity and applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally.

ARTICLE IV
MISCELLANEOUS PROVISIONS

SECTION 4.1. Binding on Successors, Transferees and Assigns; Assignment. This Guaranty shall be binding upon the Guarantor and its successors, transferees and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors, transferees and assigns.

SECTION 4.2. Amendments, etc. No amendment to or waiver of any provision of this Guaranty, nor consent to any departure by the Guarantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Guaranteed Party and the Guarantor and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 4.3. Notices. All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, telecopied or delivered to the Guarantor, attention Edward P. O'Keefe, General Counsel, Bank of America Corporation, at

100 N. Tryon Street, Charlotte, North Carolina 28255-0001, or, if such notice or communication is to the Guaranteed Party, attention Jane Sherburne, General Counsel, The Bank of New York Mellon, at One Wall Street, New York, New York 10286. All such notices and other communications, when mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any such notice or communication, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter.

SECTION 4.4. No Waiver; Remedies. In addition to, and not in limitation of, Section 2.3 and Section 2.4, no failure on the part of the Guaranteed Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 4.5. Captions. Section captions used in this Guaranty are for convenience of reference only, and shall not affect the construction of this Guaranty.

SECTION 4.6. Severability. Wherever possible each provision of this Guaranty shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 4.7. Governing Law, Entire Agreement, etc. **THIS GUARANTY SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). THIS GUARANTY CONSTITUTES THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.**

SECTION 4.8. Forum Selection and Consent to Jurisdiction. **ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE GUARANTEED PARTY OR THE GUARANTOR SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN**

OR WITHOUT THE STATE OF NEW YORK TO THE INDIVIDUAL DESIGNATED TO RECEIVE NOTICES UNDER SECTION 4.3. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTY.

SECTION 4.9. Counterparts, etc. This Guaranty may be executed by the Parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. A copy of this Guaranty executed and delivered by facsimile or in electronic form, including as a PDF file, shall be effective as delivery of an originally executed counterpart of this Guaranty.

SECTION 4.10. Counsel Representation. **EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED BY COMPETENT COUNSEL IN THE NEGOTIATION OF THIS GUARANTY, AND THAT ANY RULE OR CONSTRUCTION OF LAW ENABLING ANY PARTY TO ASSERT THAT ANY AMBIGUITIES OR INCONSISTENCIES IN THE DRAFTING OR PREPARATION OF THE TERMS OF THIS GUARANTY SHOULD DIMINISH ANY RIGHTS OR REMEDIES OF THE OTHER PARTY ARE HEREBY WAIVED.**

SECTION 4.11. Waiver of Jury Trial. **EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE OTHER PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION.**

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by the Guarantor to the Guaranteed Party as of the date first above written.

BANK OF AMERICA CORPORATION

By:_____
Title: Legacy Asset Servicing
Division President

ACCEPTED AND AGREED:

THE BANK OF NEW YORK MELLON

By:_____
Title:

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by the Guarantor to the Guaranteed Party as of the date first above written.

BANK OF AMERICA CORPORATION

By:_____
Title:

ACCEPTED AND AGREED:

THE BANK OF NEW YORK MELLON

By: [signature]
Title: Loretta A Lundberg
Managing Director

EXHIBIT D

At IAS Part 10 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 60 Centre Street, New York, New York, 10007 on the 6 day of September, 2000.

PRESENT:

HON. BEATRICE SHAINSWIT,

Justice.

In the Matter of the Application of	
IBJ SCHRODER BANK & TRUST COMPANY (not in its individual capacity but in its capacity as Trustee under a Trust Agreement dated as of December 21, 1985 among Resources Satellite Corp., J. Henry Schroder Bank & Trust Company and the Beneficiaries thereunder),	Index No. 101530/98
Petitioner,	ORDER AND JUDGMENT
for an order, pursuant to CPLR § 7701, for a Construction of an Indenture and Approval of a Settlement.	

Petitioner, IBJ Bank &Trust Company (now known as IBJ Whitehall Bank & Trust Company) ("IBJ"), solely in its capacity as successor trustee under a trust (the "Investor Trust") established under a trust agreement (the "Investor Trust Agreement") dated as of December 23, 1985 among Resources Satellite Corp., J. Henry Schroder Bank & Trust Company (now known as IBJ) and the beneficiaries thereunder, having applied to this Court for an order pursuant to CPLR § 7701 for, inter alia, approval of a settlement (the "Proposed Settlement") of an action currently pending before this Court and captioned, IBJ Schroder Bank & Trust Company, et al. v. GE Capital Spacenet Services, Inc., et al., Index No. 601228/96 (Shainswit, J.) (the "Spacenet Action"), such Proposed Settlement being embodied in the settlement agreement

(the "Settlement Agreement") attached as Exhibit D to the Petition (the "Verified Petition") filed by IBJ in this proceeding and verified on January 14, 1998 (a copy of the Settlement Agreement is annexed hereto as Exhibit A); and

Certain beneficiaries (the "Dissenting Beneficiaries") of the Investor Trust being represented by William H. Bode of Bode & Beckman LLP and having objected to the Proposed Settlement and the relief sought by Petitioner in this proceeding; and

The Appellate Division, First Department having ruled on April 20, 2000 that IBJ has the power as trustee of the Investor Trust to settle the Spacenet Action and having remanded this proceeding to this Court to determine whether the Court's approval of the Proposed Settlement is warranted; and

Upon reading and filing the Verified Petition and the exhibits thereto; the Affidavit of William H. Bode in Support of the Motion to Dismiss the Verified Petition, sworn to April 14, 1998 and the exhibits thereto; the Affirmation of Owen C. Pell, for Petitioner, in Opposition to Motion for an Order Removing IBJ as Trustee and in Opposition to Cross-Motion to Dismiss the Verified Petition, dated April 20, 1998 and the exhibits thereto; the Reply Affirmation of John S. Willems, for Petitioner, in Further Opposition to Cross Motion to Dismiss the Verified Petition, dated April 20, 1998; the written memoranda submitted by counsel for the Petitioner and counsel for the Dissenting Beneficiaries dated June 6, 2000; the reply letter submitted by counsel for the Dissenting Beneficiaries dated June 16, 2000; the reply letter submitted by counsel for the Petitioner dated June 23, 2000; and upon all prior proceedings and pleadings herein; and after the matter was submitted to the Court by White & Case LLP attorneys for IBJ and Tashjian & Padian and Bode & Beckman LLP attorneys for the Dissenting Beneficiaries, and due deliberation having been had thereon; and this Court having rendered its decision in writing dated August 16, 2000, it

is hereby ADJUDGED, [redacted] that:

(a) The Proposed Settlement as embodied in the Settlement Agreement is approved by the Court; and

(b) IBJ's decision to enter into the Proposed Settlement as embodied in the Settlement Agreement is within its powers under the Investor Trust Agreement and is reasonable and prudent; [redacted]

[redacted]

FILED

OCT 0 3 2000

COUNTY CLERK'S OFFICE
NEW YORK

ENTER

BV

J.S.C.

Norman Goodman

Clerk