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

U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Trustee of the HOME EQUITY ASSET TRUST 2006-5 (HEAT 2006-5), U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Trustee of the HOME EQUITY ASSET TRUST 2006-6 (HEAT 2006-6), and U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Trustee of the HOME EQUITY ASSET TRUST 2006-7 (HEAT 2006-7), Plaintiff, - against - DLJ MORTGAGE CAPITAL, INC., Defendant.	Index No.________________ Date Purchased: August 15, 2019 **SUMMONS** Plaintiff designates New York County as the place of trial. The basis of venue is CPLR 503

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer upon the undersigned attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the state of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 15, 2019

KASOWITZ BENSON TORRES LLP

By: */s/ David J. Abrams*
Hector Torres (htorres@kasowitz.com)
David J. Abrams (dabrams@kasowitz.com)
David J. Mark (dmark@kasowitz.com)

1633 Broadway
New York, New York 10019
(212) 506-1700

Attorneys for Plaintiff

TO:

DLJ Mortgage Capital, Inc.
c/o Credit Suisse (USA) Inc.
Corporate Tax Dept.
11 Madison Avenue
New York, NY 10010

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

U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Trustee of the HOME EQUITY ASSET TRUST 2006-5 (HEAT 2006-5), U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Trustee of the HOME EQUITY ASSET TRUST 2006-6 (HEAT 2006-6), and U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Trustee of the HOME EQUITY ASSET TRUST 2006-7 (HEAT 2006-7),

Plaintiff,

- against -

DLJ MORTGAGE CAPITAL, INC.,

Defendant.

Index No. ________________

COMPLAINT

COMPLAINT

Plaintiff U.S. Bank National Association solely in its capacities as Trustee (the "Trustee" or "Plaintiff") of the Home Equity Asset Trust 2006-5 ("HEAT 2006-5 Trust" or "HEAT 2006-5"), Home Equity Asset Trust 2006-6 ("HEAT 2006-6 Trust" or "HEAT 2006-6") and Home Equity Asset Trust 2006-7 ("HEAT 2006-7 Trust" or "HEAT 2006-7"; collectively with HEAT 2006-5 and HEAT 2006-6, the "Trusts"), by its attorneys, Kasowitz Benson Torres LLP, for its Complaint against DLJ Mortgage Capital, Inc. ("DLJ" or "Defendant"), hereby alleges as follows:

NATURE OF ACTION

1. The Trustee brings this action, on behalf of the Trusts and their certificateholders, pursuant to CPLR § 205(a), to revive the actions in this court styled U.S. Bank National Association, solely in its capacity as *Trustee of the Home Equity Asset Trust 2006-5 (2006-5) v. DLJ Mortgage Capital, Inc.*, Index No. 652344/2012, *U.S. Bank National Association, solely in*

its capacity as Trustee of the Home Equity Asset Trust 2006-6 (2006-6) v. DLJ Mortgage Capital, Inc., Index No. 652644/2012, *U.S. Bank National Association, solely in its capacity as Trustee of the Home Equity Asset Trust 2006-7 (2006-7) v. DLJ Mortgage Capital, Inc.*, Index No. 653467/2012, and consolidated by Stipulation and Order entered on January 25, 2013 (the "Original Actions"). The HEAT 2006-5, HEAT 2006-6 and HEAT 2006-7 actions were each originally commenced by the Federal Housing Finance Agency, in its capacity as Conservator of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), a Certificateholder in each of the Trusts, by the filing of Summons with Notice on July 3, 2012, July 31, 2012 and October 2, 2012, respectively. The three captioned actions were consolidated by Stipulation and Order entered on January 25, 2013. The Original Actions were dismissed by the Supreme Court on statute of limitations and standing grounds on January 3, 2014. On July 7, 2016, the Appellate Division, First Department affirmed the dismissal of the Original Actions on standing grounds. On February 19, 2019, the Court of Appeals affirmed the order of the Appellate Division, also on standing grounds.

2. This action arises out of DLJ's failure to comply with its unambiguous contractual obligation to repurchase mortgage loans that breach various representations and warranties ("R&Ws") made by DLJ that are contained in the agreements governing the transfer to the Trusts of approximately 14,790 residential mortgage loans (the "Mortgage Loans"), comprising an aggregate principal balance of approximately $2.8 billion. The Mortgage Loans were pooled in the Trusts, which issued certificates ("Certificates") that were sold to investors ("Certificateholders"). The Certificates represent interests in the Mortgage Loans, the value of which depended, and continues to depend in large measure, on the quality of the Mortgage Loans in the Trusts.

3. As an inducement to investors in Certificates, in connection with the conveyance of the Mortgage Loans to the Trusts, DLJ made dozens of representations and warranties ("R&Ws") regarding the characteristics of the Mortgage Loans, including R&Ws that, among other things, the Mortgage Loans met certain minimum quality standards and complied with sound underwriting practices and applicable legal requirements. These R&Ws were made by DLJ for the benefit of investors, in order to ensure that the risk from defective and non-compliant mortgages in the Trusts lay entirely with DLJ, and not with investors in the Trusts. In practical terms, DLJ represented and warranted that all of the Mortgage Loans it was depositing into the Trusts were made to borrowers who satisfied basic risk criteria for responsible underwriting, and that the pool of Mortgage Loans would provide adequate cash flow and collateral for the Certificates to be sold to investors. To enforce DLJ's obligation, the Trusts' Pooling and Servicing Agreements ("PSAs," as defined below), and related trust documents expressly require DLJ to cure or repurchase defective Mortgage Loans that breach any of the R&Ws made by DLJ and that materially and adversely impact the value of the Mortgage Loans and the interest of the Certificateholders in the Mortgage Loans (the "Defective Loans").

4. In its role as "sponsor" of the securitization transactions by which the Trusts were created, DLJ selected the Mortgage Loans for purchase from mortgage originators to be pooled in the Trusts. Neither the Trustee nor the Certificateholders had access to the loan files relating to the Mortgage Loans or any obligation to verify the quality of the Mortgage Loans or the accuracy of the R&Ws made by DLJ regarding the Mortgage Loans. As a result, through DLJ's R&Ws and an enforcement mechanism in the event of breaches of those R&Ws, the PSAs and related trust documents each ensure that the Trusts and the Certificateholders do not assume any risk of holding Defective Loans pooled in the Trusts.

5. However, instead of transferring pools of loans that satisfied its R&Ws, DLJ conveyed to the Trusts loan pools that included many Defective Loans that breached DLJ's R&Ws. DLJ has subsequently refused to repurchase any of the Defective Loans within the applicable cure or repurchase periods, in violation of its contractual obligation to do so. As a result, the Trusts have sustained losses in excess of $936 million to date.

6. Forensic review of certain loan files from all three Trusts establishes DLJ's extensive breaches of its R&Ws with respect to each of the Trusts. An analysis of 630 Mortgage Loans in Group 1 of the HEAT 2006-5 Trust revealed that 551 of those loans – approximately 87.5 percent – breached DLJ's R&Ws. Similarly, an analysis of 772 Mortgage Loans in Group 1 of the HEAT 2006-6 Trust revealed that 694 of those loans – approximately 90 percent – breached DLJ's R&Ws. In addition, a review of 1,281 Mortgage Loans in Group 1 of the HEAT 2006-7 Trust, revealed that 1,147 of those loans – approximately 90 percent – breached DLJ's R&Ws. Moreover, loan-level review of an additional sample of approximately 1,000 of the Mortgage Loans in each of the Trusts confirms that the principal originators of the Mortgage Loans failed to adhere to industry-standard and reasonable underwriting guidelines in an extremely high percentage of cases. As a result, given these high breach rates, it is reasonable to infer that breaches of DLJ's R&Ws exist throughout the entire pools of Mortgage Loans in the Trusts.

7. Given the thousands of loans pooled in each of the Trusts, some breaches of DLJ's R&Ws could reasonably have been expected. However, the sheer number of Defective Loans that DLJ conveyed to the Trusts far exceeds what was contemplated by the PSAs and related transaction documents. The terms of the PSAs and related transaction documents simply do not contemplate that DLJ would convey thousands of Defective Loans into the Trusts. As

such, DLJ's conveyance of so many Defective Loans as part of the loan pool for each of the Trusts was and is a substantial breach of the parties' agreements that fundamentally goes to the core of the agreements.

8. On October 19, 2012, the Trustee gave notice to DLJ of breaches of R&Ws concerning 629 Defective Loans in the HEAT 2006-5 Trust, 765 Defective Loans in the HEAT 2006-6 Trust, and 1,270 Defective Loans in the HEAT 2006-7 Trust that were the subject of the forensic review, together with supporting documentation. To date, DLJ has refused to repurchase any of the Defective Loans. Plaintiff has suffered and will continue to suffer substantial damages as a result of DLJ's refusal to comply with its contractual repurchase obligation.

9. Accordingly, Plaintiff brings this action to require DLJ to repurchase the Defective Loans as well as all other Mortgage Loans in the Trusts as to which DLJ breached its R&Ws. Plaintiff is entitled to a remedy of specific performance of DLJ's contractual repurchase obligation. In the alternative, Plaintiff is entitled to compensatory, consequential, rescissionary and equitable damages for the losses caused to the Trusts by DLJ's breaches of its R&Ws.

10. Each individual breach by DLJ of an R&W regarding a Mortgage Loan is separately actionable by the Trustee, as is DLJ's breach of its cure or repurchase obligation, entitling the Trustee to damages as a result of each such breach. Moreover, in addition to the remedies sought with respect to DLJ's breaches of the PSAs and applicable transaction agreements, the Trustee is entitled to reimbursement of all of the Trustee's costs and expenses related to enforcement of DLJ's repurchase obligation, including but not limited to attorneys' fees and costs.

PARTIES

11. Plaintiff U.S. Bank National Association, which is acting solely in its capacities as Trustee of the Trusts, is a national banking association with its principal place of business in Minnesota.

12. Defendant DLJ is a Delaware corporation with its principal place of business in New York, New York. DLJ acted as the sponsor of the Mortgage Loans for the Trusts.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the parties and this proceeding pursuant to C.P.L.R. §§ 301 and 302 because DLJ's principal office is within this State. Additionally, the Trusts were formed under New York law, and the PSAs governing the Trusts each contain a New York choice of law provision.

14. Venue is proper in this County pursuant to C.P.L.R. §§ 503(a) and (c) because DLJ is a resident of New York County.

REVIVAL PURSUANT TO CPLR § 205(a)

15. The Original Action is revived herein against Defendant in accordance with the requirements of CPLR § 205(a): (i) the Original Action was timely commenced by the Trusts; (ii) the Original Action was terminated in a manner other than "a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute, or a final judgment upon the merits"; i.e., without prejudice to revival as a 205(a) complaint, because the Supreme Court did not adjudicate the substance of the claims; (iii) this action is based "upon the same transaction or occurrence or series of transactions or occurrences" as the Original Action; and (iv) this action is commenced and service is being effected within six months of the Court of Appeal's order, dated February 19, 2019.

STATEMENT OF FACTS

I. THE SECURITIZATIONS

A. Background

16. Asset-backed securitization involves pooling cash-producing financial assets and issuing securities backed by those assets. Residential mortgage loans comprise the cash-producing assets that back securities or certificates known as residential mortgage-backed securities ("RMBS").

17. Securitizations involving residential mortgage loans typically involve a "sponsor" – the entity that either originates the mortgage loans or acquires the mortgage loans from the originator(s) of those loans and initiates the securitization – which directly or indirectly transfers a portfolio of mortgage loans to a trust. In many instances, the transfer of assets to the trust is a two-step process in which the sponsor first transfers the financial assets to an intermediate entity (generally referred to as a "depositor"), pursuant to a mortgage loan purchase agreement, and the depositor then transfers the assets to a trust. The trust is established pursuant to a pooling and servicing agreement entered into by, among others, the depositor and the trustee for that securitization.

18. The contractual agreements, including the pooling and servicing agreement, typically include or assign R&Ws made by the sponsor and the originator regarding the mortgage loans, as well as repurchase or cure obligations for mortgage loans in breach of the R&Ws. After receiving the portfolio of the mortgage loans, the trust will issue securities, referred to as certificates, using the pool of mortgage loans as collateral. By purchasing the securities issued by the trust, the RMBS holders acquire an ownership interest in the mortgage loan pool and rights to the cash flowing from the pool of mortgages owned by the trust, which is derived from the borrowers' payments of principal and interest on the mortgage loans held by the trust.

INDEX NO. 654652/2019
RECEIVED NYSCEF: 08/15/2019

19. The RMBS issued by a trust derive their value and marketability from the underlying loan pool. The characteristics and risk profiles of those mortgage loans drive the structuring of the securitization, including the interest rates the certificates pay, the prices and principal balances of certificates that can be issued with the highest rating (and, accordingly, the lowest interest rate), and the extent of protections or credit enhancement built in to the securitization, such as additional cash reserves or subordinate securities that will bear losses first. Investors receive distributions in accordance with the securitization documents.

20. The RMBS securitizations at issue in this action were established and implemented through this basic process.

B. The Trusts

21. The HEAT 2006-5 Trust closed on July 5, 2006. DLJ acquired the underlying pool of 4,349 Mortgage Loans, with an aggregate principal balance exceeding $850 million, from various originators (the "HEAT 2006-5 Originators"). Approximately 15.5% and 13.7% of the initial Mortgage Loans were originated by EquiFirst Corporation and Encore Credit Corporation ("Encore"), respectively. In addition, OwnIt Mortgage Solutions, Inc. ("OwnIt") originated approximately 12.2% of the Mortgage Loans. No other originator originated or acquired more than 10% of the HEAT 2006-5 Mortgage Loans. At closing, DLJ transferred the Mortgage Loans to the depositor, Credit Suisse First Boston Mortgage Securities Corp. ("CSFBMSC"), pursuant to an Assignment and Assumption Agreement ("HEAT 2006-5 AAA"), dated as of June 1, 2006.

22. The HEAT 2006-6 Trust closed on August 1, 2006. DLJ acquired the underlying pool of approximately 4,901 Mortgage Loans, with an aggregate principal balance of approximately $850 million, from various originators (the "HEAT 2006-6 Originators"). Approximately 32.6%, 16.6%, 13.4% and 13.1% of the initial Mortgage Loans were originated

or acquired by OwnIt, Encore, Decision One Mortgage Company LLC and Lime Financial Services Ltd. ("Lime"), respectively. No other originator originated or acquired more than 10% of the HEAT 2006-6 Mortgage Loans. At closing, DLJ transferred the Mortgage Loans to the depositor, CSFBMSC, pursuant to an Assignment and Assumption Agreement ("HEAT 2006-6 AAA"), dated as of July 1, 2006.

23. The HEAT 2006-7 Trust closed on October 3, 2006. DLJ acquired the underlying pool of 5,540 Mortgage Loans, with an aggregate principal balance of approximately $1.1 billion, from various originators (the "HEAT 2006-7 Originators"; together with the HEAT 2006-5 Originators and the HEAT 2006-6 Originators, the "Originators"). Approximately 24.1%, 24.0% and 20.4% of the initial Mortgage Loans were originated or acquired by Encore, OwnIt and Lime, respectively. No other originator originated or acquired more than 10% of the HEAT 2006-7 Mortgage Loans. At closing, DLJ transferred the Mortgage Loans to the depositor, CSFBMSC, pursuant to an Assignment and Assumption Agreement ("HEAT 2006-7 AAA"; together with HEAT 2006-5 AAA and HEAT 2006-6 AAA, the "AAAs"), dated as of September 1, 2006.

24. CSFBMSC conveyed the Mortgage Loans, and all of its rights and obligations under the AAAs, to the Trusts, which were established at the respective Trust closings, pursuant to the terms of the following agreements for HEAT 2006-5, HEAT 2006-6 and HEAT 2006-7, respectively: Pooling and Servicing Agreement, dated as of June 1, 2006, among DLJ, as seller, CFSBMSC, as depositor, Wells Fargo Bank, N.A. ("Wells Fargo"), as servicer, JPMorgan Chase Bank, N.A., as servicer, Select Portfolio Servicing, Inc. ("Select Portfolio"), as servicer, Clayton Fixed Income Services, Inc. ("Clayton") as credit risk manager and U.S. Bank, as trustee (the "HEAT 2006-5 PSA"); Pooling and Servicing Agreement, dated as of July 1, 2006, among DLJ,

as seller, CSFBMSC, as depositor, Wells Fargo, as servicer, Select Portfolio, as servicer, Clayton as credit risk manager and U.S. Bank, as trustee (the "HEAT 2006-6 PSA"); and Pooling and Servicing Agreement, dated as of September 1, 2006, among DLJ, as seller, CSFBMSC, as depositor, Wells Fargo, as servicer, Select Portfolio, as servicer, Clayton as credit risk manager and U.S. Bank, as trustee (the "HEAT 2006-7 PSA"; together with the HEAT 2006-5 PSA and the HEAT 2006-6 PSA, the "PSAs"). Pursuant to the PSAs, the Mortgage Loans were securitized through the issuance of Certificates, representing interests in the Mortgage Loans, for sale to Certificateholders.

25. The Mortgage Loans included in the Trusts consisted of fixed-rate and adjustable-rate, first and second lien residential mortgage loans that were segregated into two loan groups, classified as Groups 1 and 2. Mortgage Loans in Group 1 backed the Class 1-A-1 Certificates issued for each of the Trusts (the "Supporting Loan Group").

II. DEFENDANT'S CONTRACTUAL OBLIGATIONS

A. DLJ's Representations And Warranties

26. Pursuant to Section 2.03 and Schedule III to the PSAs, DLJ made R&Ws that, among other things: (i) the Mortgage Loans were underwritten in accordance with the applicable Originator's underwriting guidelines; (ii) the Mortgage Loans were originated in compliance with applicable law; and (iii) the Mortgage Loan Schedules were complete, true and correct in all material respects. These R&Ws, among others, were meant to ensure that the Mortgage Loans satisfied certain essential characteristics that demonstrated the quality and value of the Mortgage Loans. Therefore, the R&Ws made by DLJ directly impacted both the price at which the Trusts purchased the Mortgage Loans and the value of the Certificates.

27. DLJ had direct access to the information contained in the loan files for the Mortgage Loans transferred into the Trusts. The Certificateholders had no such access. As a

result, the value of the Certificates to Certificateholders was derived in large measure from the R&Ws provided by DLJ and the ability to enforce DLJ's repurchase obligation in the event of breaches of its R&Ws. DLJ accepted the risk that if any of the R&Ws were breached, and DLJ could not cure that breach, DLJ – not the Trusts or the Certificateholders – would bear the consequences of that breach by having to repurchase the Defective Loans affected by the breach.

28. The specific R&Ws enforceable against DLJ with respect to each Mortgage Loan are set forth in Schedule III to each of the PSAs, and include the following:

Compliance With Underwriting Guidelines

- "The Mortgage Loan complies with all the terms, conditions and requirements of the originator's underwriting standards in effect at the time of origination of such Mortgage Loan." PSAs, Schedule III (iv).

Compliance With Applicable Law

- "Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the Mortgage Loan have been complied with in all material respects." PSAs, Schedule III (ii).

- "Each Mortgage Loan at the time it was made complied in all material respects with applicable local, state, and federal laws, including, but not limited to, all applicable predatory and abusive lending laws." PSAs, Schedule III (xxi).

Documentation

- "The information set forth in the Mortgage Loan Schedule, attached to the [PSA] as Schedule I, is complete, true and correct in all material respects as of the Cut-off Date [*i.e.*, the "as of" date of each of the PSAs, or, if a Mortgage was conveyed to the Trust on a later date, the first day of the month in which it was conveyed]." PSAs, Schedule III (v).

No High Cost Loans

- "No Mortgage Loan is classified as (a) a "high cost mortgage" loan under the Home Ownership and Equity Protection Act of 1994 or (b) a "high cost home," "covered," "high cost," "high risk home" or "predatory" loan under any other applicable state, federal or local law." PSAs, Schedule III (xxiii).

29. The R&Ws were, and are, material to the value of the Mortgage Loans and the interests of the Certificateholders in such Mortgage Loans, because they relate to criteria and characteristics that directly impact the quality and value of the Mortgage Loans. These factors include the likelihood that borrowers would be able to repay their loans on time and in full, as well as the value of the real property backing the Mortgage Loans in the event that borrowers were unable to repay their loans.

30. The breaches of the R&Ws materially and adversely affected the value of the Mortgage Loans and the interests of the Certificateholders in the Mortgage Loans, because the quality and value of those loans was lower than represented, which materially increased the risk of default and loss. Had the Certificateholders known the true quality and value of the Mortgage Loans, the economic terms of the Trust securitizations would have been materially different.

31. Section 2.03 of the PSAs specifically provides that any breach of the R&Ws set forth in Schedule III (xx) or (xxiii) (concerning high cost loans), among others, "shall be deemed to materially and adversely affect the interest of the Certificateholders in that Mortgage Loan . . . ."

B. DLJ's Repurchase Obligation

32. The PSAs require DLJ, as Seller, to cure any breach of the R&Ws that materially and adversely affects the interest of the Certificateholders in any Mortgage Loan, and, if such breach is not cured, to repurchase the affected Mortgage Loans (the "Repurchase Obligation") at the Repurchase Price, as defined in the PSAs. DLJ's Repurchase Obligation commences upon the earlier of discovery or receipt of notice by DLJ of the breach, and must be performed within 90 days.

33. Specifically, Section 2.03(d) of the PSAs provides: "The Seller [DLJ] hereby covenants that within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty made by it pursuant to Section 2.03(b) which materially and adversely affects the value of the related Mortgage Loan or the interests of the Certificateholders, it shall cure such breach in all material respects, and if such breach is not so cured, shall . . . repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Repurchase Price in the manner set forth below . . . ."[1]

34. The Repurchase Obligation applies regardless of DLJ's knowledge regarding the accuracy of such R&Ws. Section 2.03(d) of the PSAs further provides: "With respect to any representation and warranty described in this Section which are made to the best of [DLJ's] knowledge, if it is discovered by [any of the parties] that the substance of such representation and warranty is inaccurate and such inaccuracy materially and adversely affects the value of the related Mortgage Loan or the interests of the Certificateholders therein, notwithstanding [DLJ's] lack of knowledge with respect to the substance of such representation or warranty, such inaccuracy shall be deemed a breach of the applicable representation or warranty."

III. DEFENDANT'S BREACHES OF ITS REPRESENTATIONS AND WARRANTIES

A. Loan-Level Review Establishes Extensive Breaches Of Representations And Warranties By DLJ Concerning The Mortgage Loans

35. Loan-level review conducted for each of the Trusts confirms that the Originators ignored their own underwriting guidelines in an overwhelming majority of the Mortgage Loans that were reviewed. As a result, DLJ breached the R&Ws concerning the Mortgage Loans set

---

[1] The omitted language permits the Seller to substitute another Mortgage Loan if less than two years has elapsed since the securitization's closing date. That potential remedy is inapplicable here.

forth above, including R&Ws that the Mortgage Loans were originated in accordance with the Originator's underwriting guidelines and that the Mortgage Loans complied with applicable law.

36. Forensic review was undertaken of 630 Mortgage Loan files in the HEAT 2006-5 Trust Supporting Loan Group (the "HEAT 2006-5 Mortgage Files"); 772 Mortgage Loan files in the HEAT 2006-6 Trust Supporting Loan Group (the "HEAT 2006-6 Mortgage Files"); and 1,281 Mortgage Loan files in the HEAT 2006-7 Trust Supporting Loan Group (the "HEAT 2006-7 Mortgage Files"; together with the HEAT 2006-5 Mortgage Files and the HEAT 2006-6 Mortgage Files, the "Mortgage Files"). This forensic review also included an analysis of loan-level data on a random sample of approximately 1,000 Mortgage Loans in each of the Trusts.

37. The forensic review consisted of a thorough analysis of the Mortgage File for each loan, including documents submitted by the borrowers in support of their loan applications, as well as an analysis of external information such as bankruptcy proceedings and other documentation relating to the borrowers' assets.

38. Among other things, the forensic review revealed that 551 of the 630 Mortgage Loans reviewed for the HEAT 2006-5 Trust, *approximately 87.5 percent*, breached one or more of DLJ's R&Ws set forth in the HEAT 2006-5 PSA; 694 of the 772 Mortgage Loans reviewed for the HEAT 2006-6 Trust, *approximately 90 percent,* breached one or more of DLJ's R&Ws set forth in the HEAT 2006-6 PSA; and 1,147 of the 1,281 Mortgage Loans reviewed for the HEAT 2006-7 Trust, *approximately 90 percent*, breached one or more of DLJ's R&Ws set forth in the HEAT 2006-7 PSA, which R&Ws are enforceable against DLJ.

39. Examples of Mortgage Loans included in the forensic review that breach DLJ's R&Ws and which materially and adversely affect the value of the Mortgage Loans include the following:

1. *Failure To Comply With Underwriting Guidelines*

a. Misrepresentation Of Borrower Income

40. For stated income loans included in the Trusts, the underwriting guidelines required the loan underwriter to verify the employment listed by the borrower on the application and to assess whether the stated income was reasonable given the applicant's line of work.

41. An accurate assessment of the borrower's income is essential to determine the borrower's ability to repay the loan. The lower the income in relation to a given loan balance, the less likely the borrower will have the ability to repay the loan, and the less likely the borrower will save money for adverse economic conditions. Accordingly, lower than expected borrower income reveals that the originator never properly determined whether the borrower had sufficient financial means to repay the loan, thus signifying that the value of the loan was artificially inflated when it was transferred into the Trust.

42. In the following examples, taken from the Defective Loans, there was no evidence that the loan underwriter tested the reasonableness of the borrower's stated income for the employment listed on the application, despite clear evidence that the borrower had misrepresented his or her income. This misrepresentation resulted in a miscalculation of the borrower's debt to income ratio ("DTI"). Had the loan underwriter performed the required reasonableness test described above, the unreasonableness of the borrower's stated income would have been evident.

- A Mortgage Loan in the HEAT 2006-5 Trust that closed in January 2006 with a principal balance of $167,480 was originated under a stated income and verified assets loan program. On the loan application, the borrower stated employment as an assistant to operations manager earning $4,750 per month. There is no evidence in the file that the loan underwriter tested the reasonableness of the stated income. Had the underwriter done so, the misrepresentation of income would have been uncovered. According to a post-closing paystub from 2009 contained in the file, the borrower's monthly income was $2,166.67. A recalculation of DTI based on the

borrower's verified income yields a DTI of 95.89%, which exceeds the applicable guideline maximum of 50%.

- A Mortgage Loan in the HEAT 2006-5 Trust that closed in March 2006 with a principal balance of $137,700 was originated under a full documentation loan program. On the loan application, the borrower stated employment as a realtor earning $8,500 per month. There is no evidence in the file that the loan underwriter tested the reasonableness of the stated income. Had the underwriter done so, the misrepresentation of income would have been uncovered. The U.S. Bureau of Labor Statistics reported the average salary at the 75th percentile for a realtor in the same geographic region in 2006 was $5,284.17 per month. Moreover, the borrower's bankruptcy petition indicates a different employer than the borrower listed on the borrower's Form 1003, and shows 2006 earnings of $22,603, or $1,883.58 per month, as well as similar earnings in 2007. A recalculation of DTI based on the borrower's verified income of $1,883.58 yields a DTI of 86.45%, which exceeds the applicable guideline maximum of 55%.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in January 2006 with a principal balance of $216,000 was originated under a stated income and verified assets loan program. On the loan application, the borrower stated employment as an event planner earning $5,600 per month. There is no evidence in the file that the loan underwriter verified the borrower's position or tested the reasonableness of the stated income. Had the underwriter done so, the misrepresentation of income would have been uncovered. According to a written verification of employment from the borrower's employer contained in the loan file, the borrower's position was a Catering Sales Associate. In addition, the verbal verification of employment contained in the file, dated two days after closing, also reflects the borrower's title as Catering Sales Associate, and this title was verbally confirmed with the borrower's employer's human resources director during the underwriting audit. The borrower's bankruptcy petition, filed on April 23, 2007, reflects the borrower was still employed with the same employer as a Catering and Sales Representative, not an event planner. At the time of the bankruptcy filing, the borrower's income was $2,034 per month. The Statement of Financial Affairs reflects the borrower's total income earned in 2006 was $43,530, or an average of $3,627.50 per month. A recalculation of DTI based on the borrower's verified 2006 income, PITI payment of $1,854, second mortgage payment of $555, other debt of $190 and undisclosed debts of $3,346.21, yields a DTI of 163.89%, which exceeds the applicable guideline maximum of 50%.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in May 2006 with a principal balance of $178,000 was originated under a stated income and verified assets loan program. On the loan application, the borrower stated employment as a press operator earning $4,850 per month. There is no evidence in the file that the loan underwriter tested the reasonableness of the stated income. Had the underwriter done so, the misrepresentation of income would have been uncovered. The U.S. Bureau of Labor Statistics reported the average salary at the 75th percentile for a press operator in 2006 in the same geographic region was $2,748.33 per month. The borrower's

stated income is more than 1.5 times this figure. Moreover, the audit underwriter confirmed with the borrower's employer that the borrower's 2006 wages were $24,112.22, or $2,009.35 monthly. A re-calculation of DTI based on the borrower's verified income yields a DTI of 102.77%, which exceeds the applicable guideline maximum of 50%.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in May 2006 with a principal balance of $176,000 was originated under a stated income and verified assets loan program. On the loan application, the borrower stated primary employment as a room attendant/housekeeper earning $4,100 per month, and secondary employment as a cashier earning $1,000 per month. There is no evidence in the file that the loan underwriter tested the reasonableness of the stated income. Had the underwriter done so, the misrepresentation of income would have been uncovered. The U.S. Bureau of Labor Statistics reported the average salary at the 75th percentile for a housekeeper in 2006 in the same geographic region was $1,786.67 per month, less than half of the borrower's stated income for this position. Moreover, the borrower's bankruptcy petition reflects 2006 earnings as $35,814.25, or $2,984.52 per month. A recalculation of DTI based on the borrower's verified income yields a DTI of 76.22%, which exceeds the applicable guideline maximum of 50%.

b. Misrepresentation Of Occupancy Status

43. Information about occupancy status is an important factor in determining the credit risk and value associated with a mortgage loan. Borrowers who reside in mortgaged properties are less likely to default and are more likely to care for their primary residence than borrowers who purchase homes as second homes or investments and live elsewhere.

44. The following are examples from the forensic review of the Defective Loans where loan underwriters did not adequately question the borrower's intended occupancy of the subject property, despite facts or circumstances that should have put a loan underwriter on notice of potential occupancy misrepresentation. This lack of compliance increased the credit risk and therefore materially and adversely decreased the value of the affected Mortgage Loans in the Trusts. These misstatements of occupancy status also constitute a violation of the representation that the Mortgage Loan Schedule is complete, true and correct. *See* PSA, Schedule (III) (v).

- A Mortgage Loan in the HEAT 2006-5 Trust that closed in April 2006 with a principal balance of $258,400 was originated under a stated income and stated assets

loan program. The loan was a refinancing of a purportedly owner-occupied property, where the borrower was required to occupy the mortgaged property. However, the loan file contained the borrower's 2006 tax returns and W-2, as used to qualify the borrower for the mortgage, which reflect that the property was a rental property. Moreover, the audit underwriter verified active service with Florida Power and Light at the mortgaged property, and was informed that the account had never been in the borrower's name (the records go back seven years). Finally, the borrower's post-closing hardship letter states that the borrower purchased the property for her daughter and son-in law.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in April 2006 with a principal balance of $100,800 was originated under a stated income and verified assets loan program. The applicable underwriting guidelines required that at least one of the borrowers on the mortgage note occupy the subject property, and the borrower represented the property was to be the borrower's primary residence. However, in connection with the purchase of an additional property in Detroit, Michigan in June 2006, the borrower listed as the mailing address the prior address on the subject loan application, for which a lease agreement was provided with the subject loan application. Further, the borrower's bankruptcy petition reflects the borrower's prior address as the borrower's current address, and does not indicate that the borrower had any other addresses within the preceding three years. Both Westlaw and NSTN place the borrower at the prior address with the same phone number disclosed on the loan application.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in January 2006 with a principal balance of $18,600 was originated under a stated income and stated assets loan program. The applicable underwriting guidelines required that at least one of the borrowers on the mortgage note occupy the subject property, and the borrower represented the property was to be the borrower's primary residence. However, the audit underwriter confirmed that the utility service at the subject property has never been in the borrower's name, and the property appraisal reflects the property is tenant-occupied. Further, the borrower's credit report reviewed during the underwriting audit does not reflect the subject property address, and reflects the borrower residing at the previous primary address after closing. Westlaw records also confirm the borrower at the previous primary residence.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in May 2006 with a principal balance of $176,000 was originated under a stated income and stated assets loan program. The applicable underwriting guidelines required that at least one of the borrowers on the mortgage note occupy the subject property, and the borrower represented the property was to be the borrower's primary residence. However, the borrower's audit credit report reflects the borrower's address as the address listed as a rental property on the loan application. The audit credit report reflects the property the borrower stated was to be his rental property is current with mortgage payments; however, the subject property, which is the claimed primary residence, is in default. Further, the sales contract for the subject property, obtained by loss mitigation,

> reflects the borrower's address as the rental property address. Moreover, all of the documents sent to the borrower after the subject property closing, including those in connection with loss mitigation, were mailed to the rental property address. Finally, the reunderwriter verified active utility service at the subject property, and was advised by the local utility company that the account had not been in the borrower's name in the prior seven years.

45. In addition to the forensic re-underwriting of loan files, a separate analysis was conducted of loan-level data on a sample of approximately 1,000 randomly-selected Mortgage Loans in the Supporting Loan Group for each of the Trusts. The sample data indicates, on a statistically-significant basis, that 21.80 percent of the borrowers in the HEAT 2006-5 Supporting Loan Group did not occupy the mortgaged property as their primary residence, as opposed to the 13.81 percent reported in the HEAT 2006-5 Prospectus Supplement; 17.26 percent of the borrowers in the HEAT 2006-6 Supporting Loan Group did not occupy the mortgaged property as their primary residence, as opposed to the 6.61 percent reported in the HEAT 2006-6 Prospectus Supplement; and 18.92 percent of the borrowers in the HEAT 2006-7 Supporting Loan Group did not occupy the mortgaged property as their primary residence, as opposed to the 5.88 percent reported in the HEAT 2006-7 Prospectus Supplement.

46. To determine whether a given borrower actually occupied the property as claimed, several tests were conducted, such as whether the address was consistent with tax records, credit reports, property records and lien records. Failing two or more of these tests is a strong indication that the borrower did not live at the mortgaged property and instead used it as a second home or an investment property, both of which make it much more likely that a borrower will not repay their loan. A significant number of the Mortgage Loans failed two or more of these tests, indicating that the borrower did not reside at the subject property.

47. For the Trusts, this loan-level data review revealed that 9.28 percent, 11.41 percent and 13.85 percent, respectively, of the sampled Mortgage Loans in the HEAT 2006-5,

HEAT 2006-6 and HEAT 2006-7 Supporting Loan Groups that had been reported as being secured by owner-occupied properties were in fact secured by second homes or investment properties. This provides further evidence of a misrepresentation as to occupancy status, and therefore a failure to adhere to the applicable underwriting guidelines, which materially and adversely affected the value of those Mortgage Loans.

c. Incorrect Calculation Of Debt and Debt-To-Income Ratio

48. Failure to incorporate all of a borrower's monthly payment obligations as part of the underwriting of a loan prevents the lender from properly evaluating the borrower's ability to repay the loan. The following are examples of Defective Loans where debt, and in turn the DTI ratio, was incorrectly calculated. When debts were properly calculated, the DTIs exceeded the allowed limits, which also constitutes a violation of the representation that the Mortgage Loan Schedule is complete, true and correct. *See* PSA, Schedule (III) (v).

- A Mortgage Loan in the HEAT 2006-5 Trust that closed in October 2005 with a principal balance of $214,200 was originated under a stated income and stated assets loan program. A review of the loan file revealed the underwriter failed to accurately calculate the borrowers' debts. The underwriter used monthly debts of $6,541.05 to qualify the borrowers with a 39.94% DTI at origination. To arrive at this monthly debt figure, the underwriter used a primary housing payment of $3,414 per month, negative cash flow from the subject property of $450 per month, and other monthly payments of $2,677.05 per month. However, based on the "Schedule of Real Estate Owned," the borrowers' primary housing payment was $4,650 per month, which includes principal and interest of $3,414 per month and taxes and insurance of $1,236 per month. The "Single Family Comparable Rent Schedule" reflects gross rental income of $1,400 per month for the subject property. Based on 75% of this figure and a total PITI payment of $2,301.15 per month, the audit underwriter calculated the negative cash flow from the subject property as $1,251.15 per month. The audit underwriter also calculated the borrowers' negative net rental income as $774.53 per month, based on the application and the underwriter's credit report, and the borrowers' consumer debt as $2,329 per month, based on the underwriter's credit report. A re-calculation of DTI based on the borrowers' proper debt calculation of $9,004.68 per month and more reasonable income for both borrowers, yields a DTI of 172.31%, which exceeds the applicable guideline maximum of 50%.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in February 2006 with a principal balance of $33,900 was originated under a full documentation loan program. A review of the loan file revealed the underwriter failed to accurately calculate the borrower's debts. Had the underwriter performed due diligence in verifying whether recent credit inquiries on the borrower's credit report resulted in any new debt and thoroughly reviewed public records, the underwriter would have uncovered the borrower's misrepresentation of debt obligation. The audit credit report reflects that the borrower had a mortgage for $155,143 that opened the month prior to the subject loan closing. The audit underwriter confirmed through Westlaw that this undisclosed mortgage was secured by the borrower's claimed current residence on Parkway Circle, which is being used as a rental property. A re-calculation of DTI based on the borrower's income of $4,543.26, undisclosed debt of $1,551 and re-calculated rental loss of $426, results in an increase from 47.16% to 126.10%, which exceeds the guideline maximum of 50%.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in April 2006 with a principal balance of $78,375 was originated under a full documentation loan program. A review of the loan file revealed the underwriter failed to accurately calculate the borrower's debts. Had the underwriter performed due diligence in verifying whether recent credit inquiries on the borrower's credit report resulted in any new debt and thoroughly reviewed public records, the underwriter would have uncovered the borrower's misrepresentation of debt obligation. The borrower's credit report dated March 29, 2006 reflects nine inquiries in the ninety-day period preceding the loan application, which the underwriter did not address. The audit credit report reflects that the borrower opened an undisclosed $22,032 auto loan the same month as the subject loan closing, with no payment reported. The audit underwriter estimated a monthly payment of $559 based on an interest rate of 10% for 48 months. A recalculation of DTI based on the borrower's undisclosed debt yields a DTI of 73.12%, which exceeds the applicable guideline maximum of 50%.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in June 2006 with a principal balance of $183,750 was originated under a stated income and stated assets loan program. A review of the loan file revealed the underwriter failed to accurately calculate the borrower's debts. Had the underwriter performed due diligence in verifying whether recent credit inquiries on the borrower's credit report resulted in any new debt and thoroughly reviewed public records, the underwriter would have uncovered the borrower's misrepresentation of debt obligation. The borrower's audit credit report indicated two undisclosed mortgages opened prior to the subject loan closing and one undisclosed mortgage opened during the month immediately following the subject loan closing. Public records confirmed the two mortgages opened prior to closing were in the amounts of $108,750 and $21,750 and are secured by a single family residence in Yucca Valley, California. Public records confirm the mortgage opened the month after closing is secured by a new construction in Yucca Valley, and closed twenty days after the subject loan closed. Moreover, the underwriter's credit report for the borrower reflects nine inquiries prior to the subject loan closing which the underwriter failed to address. The audit underwriter estimated

payments for all three mortgages using the same interest rate as the subject property, and included total payments of $2,706. A recalculation of DTI based on the borrower's undisclosed mortgages, more reasonable income and proper calculation of rental income yields a DTI of 143.25%, which exceeds the applicable guideline maximum of 50%.

d. False Statements Regarding LTV and CLTV Ratios

49. The loan-to-value ("LTV") and cumulative loan-to-value ("CLTV") ratios are among the most important measures of the risk of a mortgage loan. The LTV ratio is the ratio of the balance of the mortgage loan to the value of the mortgaged property when the loan is made. The denominator in the LTV ratio is the value of the mortgaged property and is generally the lower of the purchase price or the appraised value of the property. The CLTV ratio is similar, except that it includes in the numerator other loans secured by the mortgaged property.

50. The lower the LTV and CLTV ratios, the less likely that a decline in the value of the property will result in the complete loss of the owner's equity, a scenario that gives the property owner an incentive to stop making mortgage payments and abandon the property. These ratios also predict the severity of loss if the borrower defaults. The lower the ratios, the greater the "equity cushion," and consequently, the greater the likelihood that the proceeds of foreclosure will cover the unpaid balance of the mortgage loan. Thus, even small differences in the LTV and CLTV ratios of the mortgage loans materially impact the default risk and loss severity of such mortgage loans.

51. As illustrated by the examples below, DLJ breached its R&Ws concerning LTV and CLTV ratios, which materially and adversely affected the value of those Mortgage Loans.

- A Mortgage Loan in the HEAT 2006-5 Trust that closed in March 2006 with a principal balance of $340,000 was originated under a full documentation loan program. The applicable underwriting guidelines stated that the maximum LTV for a cash-out refinance of an owner-occupied property listed for sale within the last twelve months was 90%. However, the subject loan was approved at 100% LTV.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in March 2006 with a principal balance of $114,000 was originated under a full documentation loan program. The applicable underwriting guidelines stated that the maximum LTV for a loan with a credit score of 525 is 85%; however, the subject loan was approved at a 95% LTV.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in April 2006 with a principal balance of $26,250 was originated under a full documentation loan program. The applicable underwriting guidelines stated that the maximum CLTV for an owner-occupied property with a credit score of 600 is 80% for borrowers who do not meet the minimum base credit history, which the borrower did not. However, the subject loan was approved at 100% CLTV.

52. In addition, the loan-level data review demonstrated that the LTVs of the Mortgage Loans were greater than the LTVs represented, based on an overstatement of property values, which results in a corresponding material understatement of the correct LTV percentage. Specifically, if a property's true value is significantly less than the value used in the loan underwriting, then the amount of the loan constitutes a significantly higher percentage of the property's value. This, of course, increases the risk a borrower will not repay the loan as well as the risk of greater losses in the event of a default and also constitutes a violation of the representation that the Mortgage Loan Schedule is complete, true and correct. *See* PSA, Schedule III (v).

53. The data review of approximately 1,000 Mortgage Loans in each of the Trusts indicates that approximately 59.47 percent of the Mortgage Loans in the HEAT 2006-5 Group 1 sampled Loans had LTVs greater than 80 percent, as compared to the 33.30 percent represented in the Prospectus Supplement; approximately 55.87 percent of the Mortgage Loans in the HEAT 2006-6 Group 1 sampled Loans had LTVs greater than 80 percent, as compared to the 32.38 percent represented in the Prospectus Supplement; and approximately 61.11 percent of the Mortgage Loans in the HEAT 2006-7 Group 1 sampled Loans had LTVs greater than 80 percent, as compared to the 38.7 percent represented in the Prospectus Supplement. Further, the data

review revealed that 16.47 percent of the HEAT 2006-5 Group 1 sampled Loans, 14.22 percent of the HEAT 2006-6 Group 1 sampled Loans and 16.82 percent of the HEAT 2006-7 Group 1 sampled Loans had LTVs greater than 100 percent, while the Trusts' Prospectus Supplements indicated that none of the Mortgage Loans were to have LTVs greater than 100 percent.

2. *Failure To Comply With Applicable Laws And Regulations And Prohibition Against High-Cost Loans*

54. The Mortgage Loans contain additional breaches of DLJ's R&Ws relating to compliance with applicable law and regulations. In addition, the forensic review revealed violations of DLJ's R&W that there are no high-cost loans in the Trusts, as defined by applicable statute. Specifically, DLJ's R&W provides that "[n]o Mortgage Loan is classified as (a) a 'high cost mortgage' loan under the Home Ownership and Equity Protection Act of 1994 or (b) a 'high cost home,' 'covered,' 'high cost,' 'high risk home' or 'predatory' loan under any other applicable state, federal or local law." PSAs, Schedule III (xxiii). Under Section 2.03 of the PSAs, a violation of the no high-cost loan R&W "shall be deemed to materially and adversely affect the interest of the Certificateholders in that Mortgage Loan." The following examples are illustrative of the high occurrence of breaches of these R&Ws in the Mortgage Loan pools.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in April 2006 with a principal balance of $147,250 was originated under a full documentation loan program. The applicable underwriting guidelines required all loans to comply with applicable federal, state and local laws and regulations, and identified High Cost Loans, as defined under any such laws or regulations, as being unacceptable. The loan's APR of 13.108% exceeds the Federal High Cost APR limit, 12.580%, by 0.528%.

- A Mortgage Loan in the HEAT 2006-6 Trust that closed in March 2006 with a principal balance of $95,550 was originated under a full documentation loan program. The applicable underwriting guidelines required all loans to comply with applicable federal, state and local laws and regulations, and identified High Cost Loans, as defined under any such laws or regulations, as being unacceptable. The loan's APR of 13.716% exceeds the Federal High Cost APR limit, 12.590%, by 1.126%.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in May 2006 with a principal balance of $183,200 was originated under a full documentation loan program. The applicable underwriting guidelines required all loans to comply with federal, state and local laws and regulations, and identified High Cost Loans, as defined under any such laws or regulations, as being unacceptable. The loan's APR of 11.358% exceeds the High Cost APR limit of Chicago, Illinois, 10.590%, by 0.768%.

- A Mortgage Loan in the HEAT 2006-7 Trust that closed in January 2006 with a principal balance of $68,000 was originated under a full documentation loan program. The applicable underwriting guidelines required all loans to comply with federal, state and local laws and regulations, and identified High Cost Loans, as defined under any such laws or regulations, as being unacceptable. The loan's APR of 13.263% exceeds the Federal High Cost APR limit, 12.830%, by 0.433%.

B. DLJ's Breaches Of Its Representations And Warranties Have Materially And Adversely Affected The Interests Of Certificateholders In The Mortgage Loans

55. DLJ's breaches of its R&Ws concerning the Mortgage Loans have materially and adversely affected the interests of Certificateholders in the Mortgage Loans. As explained above, Mortgage Loans that fail to comply with DLJ's R&Ws (whether as a result of borrower or originator fraud, negligence, mistake or otherwise) are inherently riskier than properly underwritten Mortgage Loans, and thus more likely to default, to be unenforceable, or to otherwise subject the Trusts and the Certificateholders to losses in the value of the Certificates or otherwise. As a result, from the moment the Mortgage Loans were sold to the Trusts, the Certificateholders faced a materially greater risk of loss than would have been the case had the Defective Loans complied with DLJ's R&Ws.

56. The consequences of this severely increased credit risk are now abundantly clear. Even though the Certificates were supposed to represent long-term, stable investments, a significant percentage of the Mortgage Loans backing the Certificates have defaulted, been foreclosed upon, or are delinquent, which has resulted in massive losses to the Trusts and Certificateholders. The percentage of loans in the HEAT 2006-5 Supporting Loan Group that

are at least 60 days delinquent, in bankruptcy, have been foreclosed upon, or are Real Estate Owned ("REO") as of December 31, 2012 is 41.2 percent. The percentage of loans in the HEAT 2006-6 Supporting Loan Group that are at least 60 days delinquent, in bankruptcy, have been foreclosed upon, or are REO as of December 31, 2012 is 41.2 percent. The percentage of loans in the HEAT 2006-7 Supporting Loan Group that are at least 60 days delinquent, in bankruptcy, have been foreclosed upon, or are REO as of December 31, 2012 is 38.9 percent. The systemic breaches of the R&Ws by DLJ concerning the Mortgage Loans described above have directly led to the substantial losses suffered by the Trusts and its Certificateholders.

57. Certificates for a mortgage-backed securitization are issued in a hierarchical structure, from senior to junior. The junior certificates are "subordinate" to the senior certificates in that, should the underlying mortgage loans become delinquent or default, the junior certificates suffer loss first. The subordinate certificates thus provide a degree of protection, or amount of "cushion," to the senior certificates from losses on the underlying loans.

58. For example, in July 2006, the month of the HEAT 2006-5 closing, the subordination level for the Class 1-A-1 HEAT 2006-5 Certificate was 20.83 percent. In August 2006, the month of the HEAT 2006-6 closing, the subordination level for the Class 1-A-1 HEAT 2006-6 Certificate was 21.84 percent. In October 2006, the month of the HEAT 2006-7 closing, the subordination level for the Class 1-A-1 HEAT 2006-7 Certificate was 20.35 percent. The subordination level for each of the Trusts has since plummeted to zero. In other words, the cushions that were supposed to have protected investors in higher-rated senior certificates have been completely depleted.

59. Thus, DLJ's breaches of its R&Ws contributed to the collapse in the subordination levels of the Class 1-A-1 Certificates and the overall poor performance of the Mortgage Loans.

IV. DLJ'S REFUSAL TO COMPLY WITH ITS REPURCHASE OBLIGATION

60. The Trustee has provided DLJ with notice of the numerous breaches of its R&Ws, which breaches have materially and adversely affected the interests of the Certificateholders. However, DLJ has refused to comply with its contractual Repurchase Obligation. Seeking to enforce DLJ's Repurchase Obligation, on October 19, 2012, the Trustee gave notice to DLJ of breaches of R&Ws concerning 629 loans in the HEAT 2006-5 securitization, 765 loans in the HEAT 2006-6 securitization and 1,270 loans in the HEAT 2006-7 securitization. DLJ has not responded to this notice of breaches with respect to the Trusts and the applicable cure period has expired.

61. Section 2.03 of the PSAs unequivocally provides that DLJ must perform its Repurchase Obligation upon its discovery of any Defective Loan, and not just for those Defective Loans for which the Trustee has given notice. "Repurchase" is a term of art that is generally recognized in the industry, the meaning of which is understood by the parties to these securitization transactions. In the industry, as in these transactions, repurchase is understood to mean a mechanism to make a purchaser of mortgage loans "whole" for the seller's breaches of R&Ws regarding the securitized mortgage loans. The repurchase mechanism thereby ensures that the entirety of the risk of loss associated with any breach of the R&Ws regarding the securitized mortgage loans remains with the seller of the Mortgage Loans, here, DLJ, and is not borne by the Trusts or the Certificateholders.

62. The "make whole" nature of the Repurchase Obligation is widely understood in the industry to mean that the obligation to repurchase exists even as to breaching loans that have

been liquidated, via foreclosure or otherwise, or made the subject of a Final Recovery Determination (as that term is defined in the PSAs) by the loan servicer. Established custom and practice in the industry call for such loans to be repurchased, and upon information and belief, such loans have in fact been repurchased in thousands of prior instances by DLJ and many other RMBS sponsors.

63. The language in the PSAs, including without limitation the definitions of "Mortgage Loans" and "Stated Principal Balance," must be understood, and was understood by the parties, in the context of such custom and practice. Indeed, even where loans are, or in the past have been, liquidated (through foreclosure or otherwise), upon information and belief, sponsors, including DLJ, have routinely and commonly "repurchased" such loans via make-whole payments to the trust.

64. DLJ's refusal to repurchase the Defective Loans in the Trusts – in the face of irrefutable evidence of breaches identified by the Trustee and presented to DLJ – demonstrates that DLJ has repudiated its Repurchase Obligation.

FIRST CAUSE OF ACTION
(Breach Of Contract Against DLJ - Specific Performance)

65. Plaintiff incorporates by reference paragraphs 1 through 65 above as if fully set forth herein.

66. The PSAs are valid and enforceable contracts by and between, among others, DLJ and the Trustee, on behalf of the Trusts.

67. The Trustee has performed all of its obligations under the PSAs.

68. In the PSAs, DLJ made certain R&Ws to the Trustee and the Certificateholders. The Trustee may enforce DLJ's R&Ws.

69. Section 2.03 of the PSAs requires DLJ to repurchase any Mortgage Loan within 90 days of discovery or notice of any breach of R&Ws made in the PSA with respect to such Mortgage Loan, which breach materially and adversely affects the interests of Certificateholders in the Mortgage Loans and which breach has not been cured by DLJ.

70. On October 19, 2012, the Trustee notified DLJ of breaches of R&Ws concerning 629 Mortgage Loans in HEAT 2006-5, 765 Mortgage Loans in HEAT 2006-6, and 1,270 Mortgage Loans in HEAT 2006-7, which have materially and adversely affected the interests of Certificateholders in the Mortgage Loans, and sought to enforce DLJ's Repurchase Obligation.

71. DLJ is required to repurchase the Defective Loans at the contractually specified price or at a make-whole price, irrespective of whether any of these loans have been foreclosed upon, liquidated or marked down in any determination. However, DLJ has not responded to the Trustee's breach notice, and has refused to repurchase any of the Mortgage Loans or to otherwise comply with its Repurchase Obligation.

72. Consequently, DLJ has breached the PSAs through its breach of the R&Ws, and has breached its Repurchase Obligation.

73. Based on the very high breach rate uncovered by its forensic review to date, Plaintiff anticipates that additional review of loan files will uncover similar breaches and breach rates, and that DLJ will similarly fail to acknowledge and comply with its Repurchase Obligation with respect to any other Mortgage Loan in the Trusts.

74. These breaches materially and adversely affected the value of the Mortgage Loans and the interest of the Certificateholders in the Mortgage Loans.

75. Pursuant to Section 2.03 of the PSAs, in the alternative to the Trustee's claims that it is entitled to damages for DLJ's breaches, and in the absence of any other remedy at law,

the Trustee is entitled to specific performance of DLJ's Repurchase Obligation, at a repurchase price to be established at trial.

SECOND CAUSE OF ACTION
(Breach Of Contract Against DLJ – Compensatory, Consequential, Rescissionary And Equitable Damages)

76. Plaintiff incorporates by reference paragraphs 1 through 76 above as if fully set forth herein.

77. The PSAs are valid contracts, by and between, among others, DLJ and the Trustee, enforceable on behalf of the Trusts.

78. The Trustee has performed all of its obligations under the PSAs.

79. In the PSAs, DLJ made certain R&Ws to the Depositor concerning the Mortgage Loans.

80. Section 2.03 of the PSAs requires DLJ to repurchase any Mortgage Loan within 90 days of discovery or notice of any breach of R&Ws made in the PSAs with respect to such Mortgage Loan, which breach materially and adversely affects the interests of Certificateholders in the Mortgage Loans and which breach has not been cured by DLJ.

81. On October 19, 2012, the Trustee notified DLJ of breaches of R&Ws concerning 629 Mortgage Loans in HEAT 2006-5, 765 Mortgage Loans in HEAT 2006-6, and 1,270 Mortgage Loans in HEAT 2006-7, which have materially and adversely affected the interests of Certificateholders in the Mortgage Loans, and sought to enforce DLJ's Repurchase Obligation.

82. DLJ has failed to repurchase any of the Defective Loans or to otherwise comply with its Repurchase Obligation. DLJ is required to repurchase the Defective Loans at the contractually specified price or at a make-whole price, irrespective of whether any of these loans has been foreclosed upon, liquidated or marked down in any determination.

83. Consequently, DLJ has breached the PSAs by its breach of the R&Ws and by its breach of its Repurchase Obligation. Based on the very high breach rate uncovered by its forensic review to date, Plaintiff anticipates that additional review of loan files will uncover similar breaches and breach rates, and that DLJ will similarly fail to acknowledge and comply with its Repurchase Obligation with respect to any other Mortgage Loan in the Trusts.

84. Moreover, the number of Defective Loans that DLJ conveyed to the Trusts far exceeds what may have been contemplated by the PSAs and related transaction documents. The terms of the PSAs and related transaction documents simply do not contemplate that DLJ would convey hundreds, let alone thousands, of Defective Loans into the Trusts. DLJ's conveyance of so many Defective Loans as part of the loan pools for the Trusts was and is a substantial breach of the parties' agreements that entitles the Trustee to rescissionary damages.

85. Those breaches materially and adversely affected the value of the Mortgage Loans and the interest of the Certificateholders in the Mortgage Loans.

86. DLJ has failed and refused to perform, and is in breach and default of its contractual R&Ws, as well as in breach of its Repurchase Obligation.

87. The Trustee is entitled to recover any and all compensatory, consequential, rescissionary and equitable damages in an amount to be determined at trial, for the losses caused by DLJ's breaches of its contractual R&Ws and the breach of its contractual obligation to comply with its Repurchase Obligation.

THIRD CAUSE OF ACTION
(Breach Of Contract Against DLJ - Indemnification)

88. Plaintiff incorporates by reference paragraphs 1 through 88 above as if fully set forth herein.

89. The PSAs provide that DLJ must reimburse the Trustee for any expenses reasonably incurred in connection with enforcing its remedies for breaches of DLJ's R&Ws.

90. The expenses for which DLJ is liable include attorneys' fees, as well as any expenses incurred by the Certificateholders.

91. The Trustee has incurred and will continue to incur expenses in enforcing DLJ's obligations under the PSAs.

92. The Trusts have been damaged and will continue to be damaged in an amount to be determined at trial.

93. The Trustee has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the PSAs. The Trustee is entitled to be reimbursed for their expenses in enforcing their remedies, including the costs of this action, attorneys' fees and other such expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. On the First Cause of Action, specific performance by DLJ of its contractual obligation to repurchase all the defective Mortgage Loans in the Trusts;

B. On the Second Cause of Action, damages to the Plaintiff, in an amount to be determined at trial, for the losses caused by DLJ's breach of its contractual obligation to comply with its Repurchase Obligation, including any and all compensatory, consequential, rescissionary, and/or equitable damages;

C. On the Third Cause of Action, reimbursement of the Trustee for its expenses in enforcing their remedies, including the costs of this action, attorneys' fees and other such expenses.

D. An award of pre-judgment and post-judgment interest; and

E. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 15, 2019

KASOWITZ BENSON TORRES LLP

By: */s/ David J. Abrams*
Hector Torres (htorres@kasowitz.com)
David J. Abrams (dabrams@kasowitz.com)
David J. Mark (dmark@kasowitz.com)

1633 Broadway
New York, New York 10019
(212) 506-1700

Attorneys for Plaintiff Home Equity Asset Trust 2006-5, Home Equity Asset Trust 2006-6 and Home Equity Asset Trust 2006-7, by U.S. Bank National Association, solely in its capacity as Trustee