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Counsel for the ResCap Borrower Claims Trust

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**NOTICE OF FIFTH MOTION FOR ORDER EXTENDING THE TERM OF THE
RESCAP BORROWER CLAIMS TRUST**

PLEASE TAKE NOTICE that the undersigned has filed the attached *Fifth Motion for Order Extending the Term of the ResCap Borrower Claims Trust* (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will take place on **November 26, 2024 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Martin Glenn of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 523 (the “**Bankruptcy Court**”). The hearing will be conducted by way of Zoom for Government, which requires registration of an eCourtAppearance by 4 p.m. the business day before the hearing. The link with information and instructions for registering an eCourtAppearance can be found on the Court website here: <https://www.nysb.uscourts.gov/content/chief-judge-martin-glenn>.



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PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **November 19, 2024**, upon (a) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 100041408; (b) Polsinelli, 600 Third Avenue, 42nd Floor, New York, NY 10016 (Attention: Daniel J. Flanigan), as counsel to the ResCap Borrower Claims Trust; (c) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Linda A. Riffkin and Brian S. Masumoto); (d) counsel to the ResCap Liquidating Trust, Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attention: Kenneth H. Eckstein, Joseph A. Shifer and Nathaniel Allard).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

Dated: October 29, 2024

POLSINELLI

By: /s/ Daniel J. Flanigan

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In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

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Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**FIFTH MOTION FOR ORDER EXTENDING THE TERM
OF THE RESCAP BORROWER CLAIMS TRUST**

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The ResCap Borrower Claims Trust (the “**Borrower Claims Trust**,” “**Borrower Trust**,” or “**Trust**”), as successor to the debtors and debtors in possession in the above-captioned cases (the “**Debtors**”), hereby submits this motion (the “**Motion**”) for entry of an order in substantially the form annexed hereto as **Exhibit A** (the “**Proposed Order**”) pursuant to sections 105(a) and 1141 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”), Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6065] (the

“**Confirmation Order**”), the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] as attached to the Confirmation Order as Appendix 1 [Docket 6065-1] (the “**Plan**”), and the *ResCap Borrower Claims Trust Agreement*, dated December 17, 2013, by and among Peter S. Kravitz, as Borrower Claims Trustee, Province East LLC, as Delaware Trustee, and each of the Debtors [Docket No. 6136](as amended, the “**Trust Agreement**”), extending the term of the Borrower Claims Trust for a period of up to two (2) years from the tenth (10th) anniversary of the Effective Date (i.e. December 17, 2024), through and including December 17, 2026 (subject to possible earlier termination in accordance with the Plan and Borrower Trust Agreement). In support of the Motion, the Borrower Trust represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 105 and 1334. Further, pursuant to the Plan, the Court retained jurisdiction to “issue such orders in aid of execution of the Plan.” See Plan, Art. XII. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 1141 and Bankruptcy Rule 9006(b)(1).

BACKGROUND

3. On May 14, 2012 (the “**Petition Date**”), each of the Debtors filed a voluntary petition with the Court for relief under Chapter 11 of the Bankruptcy Code. The Debtors managed and operated their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108 until the effective date of the Plan, which established the Liquidating Trust and the Borrower Trust as successors to the Debtors in certain respects. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

4. On December 11, 2013, the Court entered the Confirmation Order confirming the Plan. The Plan created the Borrower Trust for the primary purpose of resolving Borrower Claims and making distributions thereon. In furtherance of that purpose, the Plan provided that the Borrower Trust would succeed to the rights and duties of the Debtors under the Claims Procedures Order with respect to Borrower Claims. The Plan further provided for the transfer by the Debtors to the Borrower Trust of \$57.6 million (which, as of confirmation, was reduced to \$56.1 million due to certain credits for pre-confirmation payments made by Debtors to certain Borrower Claimants in settlement of their claims) (“**Borrower Trust Fund**”).¹

5. The amount of the Borrower Trust Fund was established pursuant to the Global Settlement memorialized in the Plan, in an amount estimated to be sufficient to provide Borrower Claimants with recoveries at least equal to recoveries of the respective non-Borrower Unsecured Creditors at the applicable Debtor Group, primarily the Residential Funding Company (“**RFC**”) and GMAC Mortgage, LLC (“**GMACM**”) groups (“**Comparable Recoveries**”).² Borrower Claimants were classified as follows under the Plan: (i) Class R-5 (ResCap Unsecured Claims)³; (ii) Class GS-5 (GMACM Unsecured Claims); (iii) Class RS-5 (RFC Unsecured Claims), and (iv) ETS. The respective Comparable Recovery percentages, which for all purposes of the Borrower Trust were finally fixed under the Plan and not subject to further modification for any reason

¹The additional amount of \$3,200,000.00 was transferred to the Trust for the intended purpose of covering the Trust’s estimated expenses of administration.

²The discussion herein is based on the Plan, the Disclosure Statement, and the thorough discussion of the creation and funding of the Borrower Trust and the True-Up process contained in the *Direct Testimony of William R. Thompson* [Docket No. 5713] (“**Thompson Testimony**”).

³While these are identified as a possible class in the Plan, the Borrower Trust believes, based on representations made by the Debtor and Committee professionals, that there are no valid Borrower claims against ResCap. The Debtor and Committee professionals’ representations are reflected in the fact that there is no discussion at all in the Plan or Disclosure Statement of any Borrower Claims against ResCap, no funds were allocated for payment of those Claims, and the Borrower Claims True-Up analysis identified no such Claims. The absence of such Claims is also evidenced by the fact that there have been no such Claims Allowed to date.

including subsequent developments in the administration of the Liquidating Trust, were as follows:
Residential Capital, LLC (“ResCap”) – 36.3%, GMACM – 30.1%, ETS – 100.0% and RFC–9.0% (“Comparable Recovery Percentages”).

**THE CLAIMS RESOLUTION PROCESS/
THE FINAL DISTRIBUTION TO GMACM CLAIMANTS
AND SECOND INTERIM DISTRIBUTION TO RFC CLAIMANTS**

6. On October 26, 2016, the Court entered its *Order Authorizing Interim Distribution and Disputed Claims Reserve* [Docket No.10197] granting the *Motion of Rescap Borrower Claims Trust for Order Authorizing Interim Distribution and Establishing Disputed Claims Reserve* [Docket No. 10136]. The Distribution Order authorized and directed the Trust to make a distribution to the holders of Allowed Borrower Claims in the aggregate amount of \$48,435,226,.87, which occurred as ordered.

7. By October 2018 all Borrower Claims had been resolved. On October 22, 2018, the Court entered its *Order Authorizing Termination of Special Reserve Fund, Final Distribution to GMACM Borrower Trust Claimants, Second Distribution to RFC Borrower Trust Claimants, and Other Related Relief* granting the Borrower Trust’s Motion to make a final distribution to GMACM Claimants and an interim distribution to RFC Claimants, which distribution was completed.

8. The second distribution made to RFC Claimants has been characterized as an interim distribution because of the possibility of a substantial additional distribution to the RFC Claimants as beneficiaries of a possible award or settlement in the pending litigation being prosecuted jointly by the Borrower Trust and the Liquidating Trust against various insurance companies (“**Insurance Recovery Litigation**”). The **Insurance Recovery Litigation** was initiated in the Bankruptcy Court as adversary case no. 15-01025 and has now been withdrawn to

the United States District Court for the Southern District of New York as case no. 23-CV-02712-JPO where it now pends.⁴ The District Court recently entered an Order (the “Order”) which declined to adopt a portion of the bankruptcy court’s Report and Recommendation that partial summary judgment be granted to Plaintiffs on the applicability of the fees exclusion set forth at clause II.C.9 of the policy (the “Fees Exclusion”). [S.D.N.Y. Docket No. 217] Instead, the District Court granted partial summary judgment to the Defendant Insurers on the applicability of the Fees Exclusion. [Id.] The parties are to submit a joint status letter by November 4, 2024 regarding the effect of the Order on the remaining objections to the Report and Recommendation. [S.D.N.Y. Docket No. 219] The Plaintiffs in the **Insurance Recovery Litigation** disagree with that ruling and will appeal such Order at the appropriate time. As the long history of this litigation reveals, this Litigation is complex and hotly contested and is likely to take at least an additional two (2) years to resolve including a future appeal. While the Litigation may well take even longer than two years to resolve, the Borrower Trust is suggesting an extension of up to just two (2) years, a date not too far in the future, so the Court can review the situation at that time.

9. The Borrower Claims Trust was created for an initial term of three (3) years subject to further extension by the Court upon motion filed within the six (6) months prior to the third anniversary of the Effective Date of the Plan. Trust Agreement, Section 11.1(a). Pursuant to the Trust’s Motions, the Court has four times extended the term of the Trust for two (2) years each. The fourth additional term will expire on December 17, 2024.

RELIEF REQUESTED

⁴ Citations to filings in the District Court, case no. 23-CV-02712-JPO, will be referenced as “(S.D.N.Y. Docket No. ___)” herein.

10. The Trust seeks entry of the Proposed Order extending the term of the Trust up to and through and including December 17, 2026 (subject to possible earlier termination in accordance with the Plan and Borrower Trust Agreement), without prejudice to further extensions.

BASIS FOR RELIEF

11. The Trust Agreement provides at Section 11.1(a) that the Bankruptcy Court may extend the term of the Trust if it “determines that a fixed-period extension is necessary to facilitate or complete the recovery and liquidation of the Borrower Claims Trust Assets . . .” As set forth above in this Motion, despite the Trust’s best efforts, the liquidation is still incomplete in that there is the possibility of further substantial recovery from the Insurance Recovery Litigation, which is more than sufficient cause for the limited extension requested herein.

NOTICE

12. The Borrower Trust has provided notice of this Motion in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012 [Docket No. 141]. The Borrower Trust submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Borrower Trust requests that this Court enter the Proposed Order granting the relief requested in this Motion and such other and further relief as may be just.

Dated: October 29, 2024

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Exhibit A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**ORDER EXTENDING THE TERM OF THE
RESCAP BORROWER CLAIMS TRUST**

This matter coming before the Court on the motion (the “**Motion**”)¹ filed by the ResCap Borrower Claims Trust, which is successor in interest to the debtors (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases, for entry of an order pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* [Docket No. 6065-1] (the “**Chapter 11 Plan**”), extending the term of the Borrower Claims Trust for a period of two years from the eleventh (11th) anniversary of the Effective Date; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1334 and the Amended Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(B); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. The duration of the Borrower Trust is extended through and including December 17, 2026, without prejudice to the Borrower Trust's ability to (i) seek further extensions or (ii) terminate the Trust in accordance with the Plan and the Borrower Claims Trust Agreement.
3. The Court shall retain jurisdiction relating to the interpretation and implementation of this Order.

Dated: _____, 2024
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE