

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 19th day of June, 2018, by, between, and among the following undersigned parties (collectively, "Parties," and each a "Party"): the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Guaranty Bank ("FDIC-R"), on the one hand, and Goldman Sachs & Co. LLC f/k/a Goldman, Sachs & Co. ("Goldman Sachs"), on the other hand.

WHEREAS:

Guaranty Bank was a depository institution organized and existing under the laws of the United States and the State of Texas. When Guaranty Bank was closed, the FDIC was appointed Receiver pursuant to 12 U.S.C. § 1821(c).

In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of Guaranty Bank, including those with respect to its assets.

Among the assets of Guaranty Bank to which the FDIC-R succeeded were any and all of Guaranty Bank's claims, demands, and causes of action arising from any action or inaction related to any loss incurred by Guaranty Bank.

FDIC-R is the plaintiff in a residential mortgage-backed securities ("RMBS") lawsuit, *Guaranty v. Deutsche Bank*, 1:14-cv-129-SS (W.D. Tex.), pending in the United States District Court for the Western District of Texas, in which Goldman Sachs is one of the defendants ("RMBS Action"). GSR 2004-11 2A1 is the only RMBS certificate upon which Goldman Sachs is sued in the RMBS Action ("Goldman Sachs Certificate").

Goldman Sachs expressly denies all allegations of wrongdoing and claims of liability in connection with the Goldman Sachs Certificate and the RMBS Action.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation of the claims against Goldman Sachs in the RMBS Action on the terms set forth herein, without in any way acknowledging any fault or liability, or conceding the absence of any such fault or liability, on the part of any Party.

NOW, THEREFORE, in consideration of the mutual promises, undertakings, payments, and releases stated herein, the receipt, adequacy and sufficiency of which consideration are hereby acknowledged, the Parties agree, each with the other, as follows:

- 1. Payment of the Settlement Funds.** As an essential covenant and condition to this Agreement, and as consideration for the releases and dismissals contained herein, Goldman Sachs shall pay or cause to be paid THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000.00) (the "Settlement Funds") for the benefit of the FDIC-R, within the later of five (5) business days of the Parties' exchange of all signatures to this Agreement and the day upon which the FDIC-R provides Goldman Sachs with a current W-9 and wire instructions ("Payment Date"). This amount

represents the full settlement consideration, with each Party to bear its own costs and attorneys' fees in connection with the RMBS Action. At no time prior to the exchange of all signatures shall this Agreement be enforceable against any Party. In the event that the Settlement Funds are not delivered to the FDIC-R by the Payment Date, interest shall accrue on all unpaid amounts at the rate of 5 percent per annum from the Payment Date until the date the FDIC-R receives payment. Without waiving any other rights that the FDIC-R may have, in the event that all Settlement Funds are not received by the FDIC-R by the Payment Date, then the FDIC-R, in its sole discretion, shall have the right to declare this Agreement null and void, shall have the right to extend the terms of this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement, in which event Goldman Sachs agrees to jurisdiction in the United States District Court for the District of Columbia and agrees to pay the FDIC's reasonable attorney's fees if the FDIC prevails. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided, however, that in the event the FDIC-R declares this Agreement null and void, the FDIC-R will return to Goldman Sachs any and all amounts paid to the FDIC-R under this Agreement.

2. **Dismissal.** Within five (5) business days of the later of the Payment Date and the date on which Goldman Sachs executes the Stipulation of Voluntary Dismissal with Prejudice (the "Dismissal Document"), the form of which is attached hereto as Exhibit A, the FDIC-R shall file the Dismissal Document in the RMBS Action, terminating the RMBS Action as to Goldman Sachs only and resulting in dismissal with prejudice of all claims asserted against Goldman Sachs in the RMBS Action.
3. **FDIC-R Releases.** Upon receipt of the Settlement Funds and exchange of all signatures to this Agreement as set forth in Paragraph 1 above, the FDIC-R hereby releases and discharges Goldman Sachs, and all of its current or former direct or indirect parents, subsidiaries, partners, and affiliates, together with each of their respective successors and assigns, and each of their respective current or former shareholders, officers, partners, directors, employees, representatives, attorneys and other agents, but solely in their capacities as such, from any and all claims, including any cross-claims or counter-claims, demands, actions, causes of action, and liabilities of any type, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, whether fixed or contingent, whether direct or indirect, and whether at law or in equity, based upon or relating to Guaranty Bank's purchase, ownership, or sale of the Goldman Sachs Certificate, including but not limited to the facts, transactions, representations, or omissions alleged against Goldman Sachs in the RMBS Action (collectively "Released Claims"). For the avoidance of doubt, this release does not apply to any claims, demands, actions, causes of action, or liabilities of any type, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, whether fixed or contingent, whether direct or indirect, and whether at law or in equity based upon or relating to Guaranty Bank's

purchase, ownership, or sale of any Goldman Sachs certificates other than the Goldman Sachs Certificate.

4. **Goldman Sachs Releases.** Upon entry of the order of dismissal of the claims asserted against it in the RMBS Action with prejudice, Goldman Sachs hereby releases and discharges the FDIC-R, and each of its current or former employees, officers, directors, representatives, successors, and assigns, from any and all claims, demands, actions, causes of action, and liabilities of any type, whether known or unknown, whether asserted or unasserted, whether disclosed or undisclosed, whether accrued or unaccrued, whether fixed or contingent, whether direct or indirect, and whether at law or in equity, based upon or relating to Guaranty Bank's purchase, ownership, or sale of the Goldman Sachs Certificate, including but not limited to the facts, transactions, representations, or omissions alleged in the RMBS Action.
5. **Release of Unknown Claims.** Each of the FDIC-R and Goldman Sachs acknowledges that it has been advised by its attorneys concerning, and is familiar with, California Civil Code Section 1542 and expressly waives any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 or any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the provisions of the California Civil Code Section 1542, including that provision itself, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Parties acknowledge that inclusion of the provisions of this Paragraph 5 of this Agreement was a material and separately bargained-for element of this Agreement. The Parties further acknowledge that the releases granted herein are specific releases, not general releases.

6. **Authority.** The FDIC-R represents that under the Federal Deposit Insurance Act, the FDIC is authorized to be appointed as receiver for failed depository institutions and that it succeeded to all rights, titles, powers, and privileges of Guaranty Bank, and any shareholder, member, accountholder, depositor, officer, and director of Guaranty Bank with respect to Guaranty Bank and the assets of Guaranty Bank, including, but not limited to, Guaranty Bank's claims against Goldman Sachs. The FDIC-R further represents that it is empowered to sue and complain in any court of law to pursue, *inter alia*, the claims against Goldman Sachs asserted in the RMBS Action. Each Party represents that it has full authority to enter into this Agreement and that it has the full power and authority to bind such Party to each and every provision of the Agreement.
7. **Certain FDIC Claims Not Released.** Notwithstanding the releases in Paragraph 3 above, the FDIC, in any capacity, shall not release, and expressly preserves fully and to

the same extent as if the Agreement had not been executed (provided, that this provision shall not be construed as an acknowledgment that any such claims or causes of action exist or are valid):

- a. any claims or causes of action against Goldman Sachs or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by it to the FDIC, to any financial institutions in receivership, to other financial institutions, or to any other person or entity (including without limitation any claims acquired by the FDIC as successor in interest to any financial institutions in receivership or any person or entity, excluding for avoidance of doubt any claims or causes of action expressly released in the Agreement);
 - b. any claims or causes of action against Goldman Sachs or any other person or entity relating in any way to the London Interbank Offered Rate;
 - c. any claims or causes of action against Goldman Sachs or any other person or entity by or on behalf of the FDIC, in any capacity, as a class member in any actions that are, are part of, or are related to the consolidated actions, centralized actions, or multi-district litigations: (i) *In re Treasury Securities Auction Antitrust Litigation*, MDL No. 2673 (S.D.N.Y.); (ii) *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789 (S.D.N.Y.); (iii) *In re Interest Rate Swaps Antitrust Litigation*, MDL No. 2704 (S.D.N.Y.); (iv) *Alaska Electrical Pension Fund v. Bank of America*, No. 1:14-cv-07126 (S.D.N.Y.); (v) *In re SSA Bonds Antitrust Litigation*, No. 1:16-cv-03711 (S.D.N.Y.); and (vi) *Sullivan v. Barclays PLC*, No. 1:13-cv-02811 (S.D.N.Y.) including any successor action to any action in Paragraph 7.c.i.–vi., or in the event the FDIC, in any capacity, elects to opt out of any class in any of the foregoing actions, to any opt-out claim brought by the FDIC, in any capacity, on the same subject;
 - d. any claims or causes of action by the FDIC against Goldman Sachs or any other person or entity relating in any way to Goldman Sachs's performance of duties or obligations as trustee for structured finance securities, including, but not limited to RMBS, purchased by any failed financial institution;
 - e. any claims or causes of action by the FDIC in any capacity other than as Receiver for Guaranty Bank;
 - f. any claims or causes of action relating to RMBS certificates other than the Goldman Sachs Certificate; and
 - g. any claims or causes of action against any person or entity, including, but not limited to, Goldman Sachs not expressly released in this Agreement.
- 8. Certain Goldman Sachs Claims Not Released.** Notwithstanding the releases in Paragraph 4 above, Goldman Sachs shall not release, and expressly preserves fully and to

the same extent as if the Agreement had not been executed (provided, that this provision shall not be construed as an acknowledgement that any such claims exist or are valid), any claims against any person or entity, including but not limited to the FDIC or the FDIC-R, not expressly released in this Agreement. Goldman Sachs preserves all rights, claims, counterclaims and defenses with respect to any claims reserved by the FDIC in Paragraph 7 above.

9. **Enforcement.** Except as otherwise expressly stated herein, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition, or any other administrative enforcement action which may arise by operation of law, rule, or regulation.
10. **Actions of the United States.** Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency, or instrumentality thereof (other than the FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.
11. **No Confidentiality.** Goldman Sachs and the FDIC-R acknowledge and agree that this Agreement shall not be confidential and will be disclosed pursuant to the FDIC's applicable policies, procedures, and other legal requirements.
12. **No Admission of Liability.** The Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and that the Agreement is not an admission or evidence of liability or the insufficiency of any defense by any of them regarding any claims, all of which are expressly disputed. The Parties further acknowledge that they may not base any claim of waiver or estoppel in any other matter upon the execution of the Agreement or payment of consideration described herein.
13. **Representations and Acknowledgements.**
 - a. **Execution in Counterparts.** This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties subscribed thereto upon the execution by all Parties to the Agreement.
 - b. **Binding Effect.** Each of the Parties represents and warrants that it is a Party hereto or is authorized to sign this Agreement on behalf of the respective Party, and that it has the full power and authority to bind such Party to each and every provision of the Agreement. The Agreement shall be binding upon and inure to

the benefit of the Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

- c. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the state of New York, without regard to conflicts of law principles.
- d. Jurisdiction. All Parties hereto submit to the personal jurisdiction of the United States District Court for the Western District of Texas for purposes of implementing and enforcing the settlement embodied in this Agreement.
- e. Entire Agreement and Amendments. Except as otherwise provided herein, this Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about such matters. The Agreement may not be amended or modified except by another written instrument signed by the Parties.
- f. Reasonable Cooperation. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, and execution of any documents necessary to perform the terms of this Agreement.
- g. Advice of Counsel. Each Party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that the Agreement has been explained to that Party by its counsel.
- h. Notices. Notices required by this Agreement shall be communicated by email and any form of overnight mail or in person to:

(b)(6)

Federal Deposit Insurance Corporation
Attn: Patricia Butler ([REDACTED])
Professional Liability and Financial Crimes Section
3501 Fairfax Drive
Arlington, VA 22226

(b)(6)

and

David J. Grais ([REDACTED])
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New York, New York 10022

Attorneys for FDIC-R

and

(b)(6)

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New York, NY 10282

(b)(6)

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Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Attorneys for Goldman Sachs

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

(b)(6)

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
GUARANTY BANK

Date: June 21, 2018

BY: [redacted]

PRINT NAME: PATRICIA G. BUTLER

TITLE: Counsel

(b)(6)
(b)(6)

Date: June 21, 2018

[redacted]

NAME: Janet A. Broeckel

TITLE: Managing Director /
Associate General Counsel