

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 28th day of January, 2016, by, between, and among the following undersigned parties (collectively, “Parties,” and each a “Party”): the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for Colonial Bank, the FDIC as Receiver for Security Savings Bank, and the FDIC as Receiver for United Western Bank (the FDIC in its capacity as receiver for each of the Failed Banks referred to as “FDIC-R”),¹ on the one hand, and Morgan Stanley, Morgan Stanley & Company LLC (f/k/a Morgan Stanley & Company, Inc.), and Morgan Stanley Capital I Inc. (collectively “Morgan Stanley Entities”) on the other.

WHEREAS:

The Failed Banks were depository institutions organized and existing under the laws of the United States and certain States. When each Failed 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 as Receiver succeeded to all rights, titles, powers, and privileges of each Failed Bank, including those with respect to its assets.

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

FDIC-R is the plaintiff in five residential mortgage-backed securities (“RMBS”) lawsuits against the Morgan Stanley Entities (“RMBS Actions”).² A list of the Certificates in the RMBS Actions is set forth in Exhibit A.

The Morgan Stanley Entities deny all liability with respect to all claims that the FDIC has brought as Receiver for the Failed Banks.

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 RMBS Actions.

¹ Colonial Bank, Security Savings Bank, and United Western Bank will collectively be referred to herein as the “Failed Banks.”

² The RMBS Actions are: *FDIC as Receiver for Colonial Bank v. Citigroup Mortgage Loan Trust, Inc.*, No. 03-cv-2012-901036.000 (Cir. Ct. of Montgomery County, Ala.); *FDIC as Receiver for Colonial Bank v. Credit Suisse Securities (USA) LLC*, No. 12-cv-784-WKW-WC (M.D. Ala.); *FDIC as Receiver for Security Savings Bank v. Banc of America Securities LLC*, No. 12-cv-06690-MRP (C.D. Cal.), appeal docketed, No. 15-55002 (9th Cir. Jan. 2, 2015); *FDIC as Receiver for United Western Bank v. Morgan Stanley Capital I Inc.*, No. 1:14-cv-00418- PAB-MJW (D. Colo.); *FDIC as Receiver for United Western Bank v. Banc of America Funding Corp.*, No. 014-cv-30170 (Dist. Ct. Denver, Colo.).

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

- 1. Payment.** As an essential covenant and condition to this Agreement, and as consideration for the releases and dismissals contained herein, the Morgan Stanley Entities shall pay or cause to be paid SIXTY-TWO MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS (\$62,950,000.00) to the FDIC-R (“Settlement Funds”) by February 29, 2016 (“Payment Date”). 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 the Morgan Stanley Entities agree to jurisdiction in the United States District Court for the District of Columbia. The prevailing party in any such litigation agrees to pay the other’s reasonable attorney’s fees. 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 Morgan Stanley any and all amounts paid to it under this Agreement.
- 2. Dismissals.** Upon receipt of the Settlement Funds by the FDIC-R, the FDIC-R shall move to dismiss the claims asserted against the Morgan Stanley Entities, and shall move to dismiss the Morgan Stanley Entities from any pending appeal that involves such claims, in the RMBS Actions with prejudice.
- 3. FDIC-R Releases.** Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges the Morgan Stanley Entities and all of their current or former direct or indirect parents, subsidiaries, and affiliates, together with each of their respective successors and each of their respective current or former shareholders, officers, directors, employees, attorneys and other agents, but solely in their capacities as such (“Morgan Stanley Releasees”), 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 any Failed Bank’s purchase, ownership, or sale of the RMBS certificates identified on Exhibit A, including but not limited to the facts, transactions, representations, or omissions alleged in the complaints and amended complaints filed in the RMBS Actions. (For the avoidance of doubt, the FDIC-R does not release its claims against the non-Morgan Stanley Entities that are defendants in the RMBS Actions).

4. Morgan Stanley Entities Releases. Upon dismissal of the RMBS Actions with prejudice, the Morgan Stanley Entities, on behalf of themselves and the other Morgan Stanley Releasees, hereby release and discharge the FDIC-R and the FDIC, and their 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 the facts, transactions, representations, or omissions alleged in the complaints and amended complaints filed in the RMBS Actions.

5. Release of Unknown Claims. Each of the FDIC-R and the Morgan Stanley Entities 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 the Failed Banks, and any shareholder, member, accountholder, depositor, officer, and director of the Failed Banks with respect to each Failed Bank and the assets of that Failed Bank, including, but not limited to, the Failed Banks' claims against the Morgan Stanley Entities. 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 the Morgan Stanley Entities asserted in the RMBS Actions. 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 the Morgan Stanley Entities 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 them 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 by the FDIC in any capacity other than as Receiver for the Failed Banks; and
 - c. any claims or causes of action against any person or entity, including but not limited to the Morgan Stanley Entities, not expressly released in this Agreement.
- 8. Enforcement.** Except as otherwise expressly stated herein, nothing in the 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.
- 9. Actions of the United States.** Notwithstanding any other provision of this Agreement, this Agreement shall not be construed as 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.
- 10. No Confidentiality.** The Morgan Stanley Entities 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.
- 11. 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 claim, 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.

12. 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 District of Columbia 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 his or her counsel.
- h. Notices. Notices required by this Agreement shall be communicated by email and any form of overnight mail or in person to:

Federal Deposit Insurance Corporation
Attn: Assistant General Counsel –
Professional Liability and Financial Crimes Section
3501 Fairfax Drive
Arlington, VA 22226

With a copy to:

(b)(6) David J. Grais ()
Graiss & Ellsworth LLP
1211 Avenue of the Americas
New York, New York 10036

Attorneys for FDIC-R

and

(b)(6) David P. Restaino ()
Morgan Stanley
1221 Avenue of the Americas
New York, New York 10020

and

(b)(6) James P. Rouhandeh ()
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017

Attorneys for Morgan Stanley Entities

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.

FDIC AS RECEIVER FOR COLONIAL BANK;

(b)(6) _____
Date: 01/29/2016 BY: ()

PRINT NAME: Mark A. Blzale

TITLE: FDIC Counsel

FDIC AS RECEIVER FOR SECURITY SAVINGS BANK

(b)(6) _____
Date: 01/29/2016 BY:

PRINT NAME: Mark A. Blzek

TITLE: FDIC Counsel

FDIC AS RECEIVER FOR UNITED WESTERN BANK

(b)(6) _____
Date: ~~3/29/2016~~
1/29/2016
PGB BY:

PRINT NAME: PATRICIA C. BUTLER

TITLE: FDIC COUNSEL

MORGAN STANLEY

Date: _____ BY: _____

PRINT NAME:

TITLE:

MORGAN STANLEY & COMPANY, LLC

Date: _____ BY: _____

PRINT NAME:

TITLE:

FDIC AS RECEIVER FOR SECURITY SAVINGS BANK

Date: _____

BY: _____

PRINT NAME:

TITLE:

FDIC AS RECEIVER FOR UNITED WESTERN BANK

Date: _____

BY: _____

PRINT NAME:

TITLE:

MORGAN STANLEY

(b)(6)

Date: _____

BY:

[Redacted Signature]

PRINT NAME: Eric F. Grossman

TITLE: Executive Vice President and
Chief Legal Officer

MORGAN STANLEY & COMPANY, LLC

(b)(6)

Date: _____

BY:

[Redacted Signature]

PRINT NAME: Eric F. Grossman

TITLE: Managing Director

MORGAN STANLEY CAPITAL I INC.

(b)(6)

Date: _____

BY:



PRINT NAME: *Kevin Ng*

TITLE: *Managing Director*

EXHIBIT A

RFMSI 2006-S6 A13

CWALT 2005-86CB A1

CWALT 2005-74T1 A1

CWALT 2005-74T1 A5

CWALT 2006-28CB A4

CWALT 2006-28CB A14

CWHL 2006-13 1A19

CWALT 2005-74T1 B2

CWALT 2005-19CB B2

MSM 2006-1AR 4A1

MSM 2006-3AR 2A4

MSM 2006-6AR 3A1

MSM 2006-6AR 3A4

WFMBS 2006-AR3 A1