

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 2nd day of July, 2015, by, between, and among the following undersigned parties (collectively, “Parties,” and each a “Party”): the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for Franklin Bank, S.S.B. (“Franklin”) on the one hand, and Morgan Stanley & Company LLC (f/k/a Morgan Stanley & Co., Inc.) (“Morgan Stanley”), on the other.

WHEREAS:

Franklin was a depository institution organized and existing under the laws of the United States and Texas. Franklin was closed by the Texas Department of Savings and Mortgage Lending on November 7, 2008, and 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 for Franklin (“FDIC-R”) succeeded to all rights, titles, powers and privileges of Franklin, including those with respect to its assets.

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

The FDIC-R commenced two residential mortgage-backed securities (“RMBS”) lawsuits against Morgan Stanley on November 4, 2011, one in the 151st Judicial District and one in the 269th Judicial District of Harris County, Texas. By order dated June 7, 2012, the two RMBS lawsuits were consolidated into one in the 151st Judicial District of Harris County, Texas and captioned *FDIC as Receiver for Franklin Bank, S.S.B. v. Morgan Stanley & Company LLC*, Cause No. 2011-67305 (Tex. Dist. Ct.) (the “RMBS Action”). A list of the Certificates in the RMBS Action is set forth in Exhibit A.

Morgan Stanley denies all liability with respect to all claims that the FDIC-R has brought as Receiver for Franklin.

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 Action.

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, Morgan Stanley shall pay or cause to be paid TWENTY-FOUR MILLION DOLLARS (\$24,000,000.00) (“Settlement Funds”) to the FDIC-R. In the event that the Settlement Funds are not delivered to the FDIC-R by July 30, 2015, interest shall accrue on all unpaid amounts at

the rate of 5 percent per annum from the date the payment was due under the terms of the Agreement, 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 in accordance with the terms of the Agreement, or all accrued interest is not received by the FDIC-R within a reasonable time, 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 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 Morgan Stanley agrees 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. **Dismissal.** Upon receipt of the Settlement Funds by the FDIC-R, the FDIC-R shall move to dismiss the RMBS Action with prejudice.
3. **FDIC-R Releases.** Upon execution of the Agreement and receipt of the Settlement Funds by the FDIC-R, the FDIC-R hereby releases and discharges Morgan Stanley and all of its 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, 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 Franklin's purchase, ownership, or sale of the RMBS certificates identified on Exhibit A, including, but not limited to the facts, transaction, representations, or omissions alleged in the petition and amended petitions filed in the RMBS Action.
4. **Morgan Stanley Releases.** Upon dismissal of the RMBS Action with prejudice, Morgan Stanley hereby releases and discharges 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 petition and amended petition filed in the RMBS Action.
5. **Release of Unknown Claims.** Each of the FDIC-R and Morgan Stanley 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 Franklin, and any shareholder, member, accountholder, depositor, officer, and director of Franklin with respect to Franklin and the assets of Franklin, including, but not limited to, Franklin’s claims against Morgan Stanley. 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 Morgan Stanley asserted in the 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 Morgan Stanley 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 Franklin; and

- c. any claims or causes of action against any person or entity, including, but not limited to, Morgan Stanley, 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.** Morgan Stanley 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 & Financial Crimes Section
3501 Fairfax Drive
Arlington, VA 22226

and

(b)(6) _____ David J. Grais (_____)
Graiss & Ellsworth LLP
1211 Avenue of the Americas, 32nd Floor
New York, New York 10036

and

(b)(6) _____ R. Paul Yetter (_____)
Yetter Coleman LLP
909 Fannin, Suite 3600

Houston, Texas 77010

Attorneys for FDIC-R

(b)(6) David P. Restaino [redacted]
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1221 Avenue of the Americas
New York, New York 10020

and

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

Attorneys for Morgan Stanley

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR FRANKLIN BANK, S.S.B.

(b)(6) Date: July 7, 2015
BY [redacted]
PRINT NAME: PHILIP A. G. BUTLER
TITLE: Counsel

MORGAN STANLEY & CO., LLC

Date: _____
BY: _____
PRINT NAME: _____
TITLE: _____

Houston, Texas 77010

Attorneys for FDIC-R

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

and

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

Attorneys for Morgan Stanley

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.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR FRANKLIN BANK, S.S.B.

Date: _____

BY: _____

PRINT NAME:

TITLE: Counsel

(b)(6) MORGAN STANLEY & CO., LLC [redacted]
Date: 7/2/15 BY: [redacted]

PRINT NAME: Eric P. Grossman

TITLE: Managing Director

Exhibit A

CMALT 2007-A4 IA11

RFMSI 2007-S7 A-1

RAST 2005-A16 A-3

MSM 2005-7 2-A-1