

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of the 27th day of January, 2017, 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 (“FDIC-R”), on the one hand, and First Horizon Asset Securities Inc., First Tennessee Bank National Association (successor by merger to First Horizon Home Loan Corporation), FTN Financial Securities Corp. (collectively, “First Horizon”), HSBC Securities (USA) Inc. (“HSBC”) and Credit Suisse Securities (USA) LLC (“Credit Suisse”) (each of HSBC and Credit Suisse an “Underwriter” and collectively, the “Underwriters”), on the other.

### **WHEREAS:**

Colonial Bank was a depository institution organized and existing under the laws of the United States and the State of Alabama. When Colonial 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 Colonial Bank, including those with respect to its assets.

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

FDIC-R is the plaintiff in a residential mortgage-backed securities (“RMBS”) lawsuit in which First Horizon and the Underwriters are defendants (the “RMBS Action”).<sup>1</sup> A list of the RMBS certificates at issue in the RMBS Action that are the subject of this Agreement (the “First Horizon Certificates”), is set forth in Exhibit A.

First Horizon and the Underwriters deny all liability with respect to all claims that the FDIC-R has brought against them in 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 claims asserted against First Horizon and the Underwriters in 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:

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<sup>1</sup> The RMBS Action is *FDIC as Receiver for Colonial Bank v. Banc of America Funding Corporation, et al.*, No. 03-CV-2012-901035.00, pending in the Circuit Court for Montgomery County, Alabama.

- 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, First Horizon shall pay or cause to be paid Nineteen Million Seven Hundred Thousand DOLLARS (\$19,700,000.00) to the FDIC-R ("Settlement Funds") by February 27, 2017 ("Payment Date"). No payment is due from the Underwriters. 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 First Horizon 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 First Horizon any and all amounts paid to the FDIC-R under this Agreement.
- 2. Dismissal.** Within three (3) business days after receipt of the Settlement Funds by the FDIC-R, the FDIC-R shall move for the entry of orders in the RMBS Action dismissing with prejudice the claims asserted against First Horizon and HSBC and dismissing with prejudice the claims asserted against Credit Suisse as an underwriter of First Horizon Certificates. All other claims asserted in the RMBS Action against Credit Suisse shall remain pending.
- 3. FDIC-R Releases.**

  - a. Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges First Horizon 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 ("First Horizon 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 Colonial Bank's purchase, ownership, or sale of the First Horizon Certificates identified in Exhibit A, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action. 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 Colonial Bank's purchase, ownership, or sale of any RMBS certificates other than those identified in Exhibit A.

b. Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges HSBC 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 ("HSBC 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 Colonial Bank's purchase, ownership, or sale of the First Horizon Certificates identified in Exhibit A, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action. 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 Colonial Bank's purchase, ownership, or sale of any RMBS certificates other than those identified in Exhibit A.

c. Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges Credit Suisse 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 ("Credit Suisse 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 Colonial Bank's purchase, ownership, or sale of the First Horizon Certificates identified on Exhibit A, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action. 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 Colonial Bank's purchase, ownership, or sale of any RMBS certificates other than those identified in Exhibit A.

For the avoidance of doubt, and without limiting the generality of the foregoing in any way, it is understood and agreed that the releases set forth in this paragraph 3 release and discharge any and all released claims that at any time were owned or controlled by CBG Investments,

Inc. ("CBGI"), formerly a subsidiary of Colonial Bank, to the fullest extent FDIC-R has legal ability and authority to release such claims in its capacity as receiver for Colonial Bank.

4. **Reciprocal Releases.** Upon entry of the orders of dismissal described in paragraph 2 above, each of First Horizon, HSBC, and Credit Suisse hereby releases and discharges the FDIC-R and the FDIC, and each of them, and each of 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 Colonial Bank's purchase, ownership, or sale of the First Horizon Certificates listed in Exhibit A, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action.
5. **Release of Unknown Claims.** Each of the FDIC-R, First Horizon and the Underwriters 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 Colonial Bank, and any shareholder, member, accountholder, depositor, officer, and director of Colonial Bank with respect to Colonial Bank and the assets of Colonial Bank, including, but not limited to, Colonial Bank's claims against First Horizon and the Underwriters. 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 First Horizon and the Underwriters asserted in the RMBS Action and that no other person or entity has such right. The FDIC-R further represents and warrants that CBGI has been dissolved and no longer exists, that none of the released claims that at any time were owned or controlled by CBGI, or any interest in such claims, has been assigned, transferred, or otherwise given (in whole or in part) to any third

parties, and that the FDIC-R has not received any information suggesting that any third party intends to assert any such released claims that at any time were owned or controlled by CBGI. 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 this 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 this 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 First Horizon or any Underwriter 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 this Agreement);
  - b. any claims or causes of action against First Horizon or any Underwriter or any other person or entity relating in any way to the London Interbank Offered Rate;
  - c. any claims or causes of action by the FDIC against First Horizon or any Underwriter or any other person or entity relating in any way to First Horizon's or the Underwriter's performance of duties or obligations as trustee for structured finance securities, including but not limited to RMBS, purchased by any failed financial institution;
  - d. any claims or causes of action by the FDIC in any capacity other than as Receiver for Colonial Bank;
  - e. any claims or causes of action relating to RMBS certificates not listed in Exhibit A; and
  - f. any claims or causes of action against any person or entity, including, but not limited to, First Horizon and the Underwriters, not expressly released in this Agreement.
8. **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.

- 9. 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.
- 10. No Confidentiality.** First Horizon, the Underwriters 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 this 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 this 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 this 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 this Agreement. This 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. This 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 this 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  
(b)(6) Attn: Mark Black [redacted]  
Professional Liability & Financial Crimes Section  
3501 Fairfax Drive  
Arlington, VA 22226

and

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

*Attorneys for FDIC-R*

First Horizon  
(b)(6) Attn: Desiree Franklin [redacted]  
First Horizon National Corporation  
165 Madison Avenue, 8<sup>th</sup> Floor  
Memphis, TN 38103

and

(b)(6) Amanda E. Davidoff [redacted]  
Sullivan & Cromwell LLP  
1700 New York Avenue NW  
Washington, DC 20006

*Attorneys for First Horizon*

(b)(6) HSBC  
Attn: Domenic Cervoni [redacted]  
HSBC Securities (USA) Inc.  
452 Fifth Avenue  
New York, New York 10018

and

(b)(6) Amanda E. Davidoff [redacted]  
Sullivan & Cromwell LLP  
1700 New York Avenue NW  
Washington, DC 20006

*Attorneys for HSBC*

(b)(6) Credit Suisse  
Attn: Peter Kozlowski, Esq. [redacted]  
Credit Suisse Securities (USA) LLC  
One Madison Avenue  
New York, NY, 10010

and

(b)(6) Michael T. Reynolds [redacted]  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019-7475

*Attorneys for Credit Suisse*

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  
COLONIAL BANK

(b)(6) Date: 01/27/2017 BY: [redacted]

PRINT NAME: Mark A. Black

TITLE: Counsel



(b)(6)

Date: 1-31-17

FIRST HORIZON ASSET SECURITIES INC.

BY:

[Redacted Signature]

PRINT NAME: TIMOTHY BOWMAN

TITLE: PRESIDENT

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION (successor by merger to FIRST  
HORIZON HOME LOAN CORPORATION)

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

FTN FINANCIAL SECURITIES CORP.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

HSBC SECURITIES (USA) INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

FIRST HORIZON ASSET SECURITIES INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE:

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION (successor by merger to FIRST  
HORIZON HOME LOAN CORPORATION)

(b)(6)

Date: 1/30/17

BY:

PRINT NAME: David T. Bowen II

TITLE: President

FTN FINANCIAL SECURITIES CORP.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE:

HSBC SECURITIES (USA) INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE:

FIRST HORIZON ASSET SECURITIES INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE:

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION (successor by merger to FIRST  
HORIZON HOME LOAN CORPORATION)

Date: \_\_\_\_\_

BY \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE

FTN FINANCIAL SECURITIES CORP.

Date: \_\_\_\_\_

BY:  (b)(6)

PRINT NAME: Michael E. Kober

TITLE:

HSBC SECURITIES (USA) INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE:

FIRST HORIZON ASSET SECURITIES INC.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME:

TITLE:

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION (successor by merger to FIRST  
HORIZON HOME LOAN CORPORATION)

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME:

TITLE:

FIN FINANCIAL SECURITIES CORP.

Date: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME:

TITLE:

HSBC SECURITIES (USA) INC.

(b)(6) Date: 1/31/17

BY:

PRINT NAME: *Dante Ch...*

TITLE: *Senior Loan Counsel*

Date: 1/27/17

CREDIT SUISSE SECURITIES (USA) LLC

BY:  (b)(6)

PRINT NAME: Peter Kozlowski

TITLE: Managing Director & Counsel

**EXHIBIT A**

- 1) FHAMS 2006-FA6 1-A-2
- 2) FHAMS 2006-FA6 2-A-3
- 3) FHAMS 2006-FA7 A-4
- 4) FHAMS 2007-FA4 1-A-4