

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 2nd day of July, 2019, 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 Loan Corporation), FTN Financial Securities Corp. (collectively, “First Horizon”), Deutsche Bank Securities, Inc. (“DBSI”), and UBS Securities LLC (“UBS”), (each of DBSI and UBS 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, *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. First Horizon Asset Securities Inc., et al.*, No. 1:12-cv-06166-LLS, pending in the United States District Court for the Southern District of New York, in which First Horizon and Underwriters are defendants (the “RMBS Action”).

The RMBS certificates at issue in the RMBS Action that are the subject of this Agreement are First Horizon Alternative Mortgage Securities (“FHAMS”) 2007-FA1 A4 and FHAMS 2007-FA2 1A4 (collectively, the “First Horizon Certificates”).

First Horizon and 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 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:

- 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 TWENTY-TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$22,500,000) to the FDIC-R (“Settlement Funds”). First Horizon shall make such payment within 20 days of the later of the day upon which the FDIC-R provides First Horizon with a current W-9 and wire instructions or the date by which all Parties shall have executed this Agreement as evidenced by the latest date on the signature pages hereto. 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 non-prevailing party in any such litigation agrees to pay the other’s reasonable attorneys’ 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 promptly shall return to First Horizon any and all amounts paid to the FDIC-R under this Agreement.
- 2. Dismissal.** No later than five business days after the Settlement Funds are received by the FDIC-R, the FDIC-R shall move for the entry of an order in the RMBS Action dismissing with prejudice the claims asserted against First Horizon and Underwriters relating to the First Horizon Certificates, in the form attached as Exhibit A hereto.
- 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, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action.
 - b. Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges

DBSI 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 (“DBSI 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, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action.

c. Upon receipt of the Settlement Funds, the FDIC-R hereby releases and discharges UBS 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 (“UBS 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, including but not limited to the facts, transactions, representations, or omissions alleged in the complaint and amended complaints filed in the RMBS Action.

d. For the avoidance of doubt, the releases set forth in this paragraph 3 do 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 the First Horizon Certificates.

e. 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 claims released in this paragraph 3 that at any time were owned or controlled by or could have been asserted by CBG Investments, Inc. (“CBGI”), formerly a subsidiary of Colonial Bank, to the fullest extent the 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 order of dismissal described in paragraph 2 above, each of First Horizon, DBSI, and UBS 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, 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, DBSI, and UBS acknowledges that it has been advised by its attorneys concerning, and is familiar with, California Civil Code § 1542 and expressly waives any and all provisions, rights, and benefits conferred by California Civil Code § 1542 or any law of any other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to the provisions of California Civil Code § 1542, including that provision itself, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

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, DBSI, and UBS. 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, DBSI, and UBS 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. Notwithstanding the foregoing, subject to Paragraph 7, the FDIC-R represents that it has the authority to release all of the claims based upon or relating to the purchase, ownership, or sale of the First Horizon Certificates identified above by Colonial Bank or 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 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 First Horizon, DBSI, UBS, 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 against First Horizon, DBSI, UBS, or any other person or entity relating in any way to the London Interbank Offered Rate;
- c. any claims or causes of action against First Horizon, DBSI, UBS, 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 First Horizon, DBSI, UBS, or any other person or entity relating in any way to First Horizon's, DBSI's, or UBS'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 Colonial Bank;
- f. any claims or causes of action against any person or entity, including, but not limited to, First Horizon, DBSI, and UBS, not expressly released in this Agreement.

First Horizon, DBSI, and UBS fully reserve all of their rights, claims and defenses relating to any claim or cause of action that is not released by the FDIC under 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, DBSI, UBS, and the FDIC-R acknowledge and agree that this Agreement shall not be confidential and may be disclosed by the Parties.
- 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, each of which is 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. Tax Treatment.** In accordance with I.R.C. § 162(f), the Settlement Funds of \$22,500,000 set forth in Paragraph 1 are restitution for damage which may be caused by the potential violation of a law. Accordingly, the FDIC-R shall (if required) report this amount to the IRS in compliance with I.R.C. § 6050X(a)(1) or any other applicable regulations.
- 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 signatories below represents and warrants that he or she is authorized to sign this Agreement on behalf of the Party for which he or she signs, and that he or she 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 or permitted by this Agreement shall be communicated by email and any form of overnight mail or in person to:

(b)(6)

If to the Federal Deposit Insurance Corporation:

Mark Black [REDACTED]
Professional Liability & Financial Crimes Section
Room VS-B 7010
3501 Fairfax Drive
Arlington, VA 22226

and

(b)(6)

David J. Grais [REDACTED]
Grais & Ellsworth LLP
950 Third Avenue, 24th Floor
New York, New York 10022

If to First Horizon:

(b)(6)

Desiree Franklin [redacted]
First Horizon National Corporation
165 Madison Avenue, 8th Floor
Memphis, TN 38103

- and -

(b)(6)

Amanda F. Davidoff [redacted]
Sullivan & Cromwell LLP
1700 New York Avenue NW
Washington, DC 20006

If to DBSI:

Joe Salama
Deutsche Bank AG, New York
60 Wall Street
New York, NY 10005-2836

(b)(6)

and

Andrew T. Frankel [redacted]
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

(b)(6)

If to UBS:

Karen Kowalski [redacted]
UBS AG
1285 Avenue of the Americas
New York, New York 10019

(b)(6)

and

Amanda F. Davidoff [redacted]
Sullivan & Cromwell LLP
1700 New York Avenue NW
Washington, DC 20006

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: 06/28/2019

BY: 

PRINT NAME: Mark A. Block

TITLE: Counsel

(b)(6)

FIRST HORIZON ASSET SECURITIES INC.

Date: 6-27-19

BY: _____

PRINT NAME: Tim 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:

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: _____

BY: _____

PRINT NAME: *David T. Payne 4*

TITLE: *President*

FTN FINANCIAL SECURITIES CORP.

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: _____

PRINT NAME: *Michael E. Kisber*

TITLE: *President*

(b)(6)

Date: 7-1-19

DEUTSCHE BANK SECURITIES, INC.

(b)(6)

BY:

PRINT NAME:

TITLE: **Steven F. Reich**
General Counsel - Americas

(b)(6)

Date: 7-1-19

BY:

PRINT NAME:

Joe Salama
Managing Director &
Associate General Counsel

TITLE:

Date: _____

UBS SECURITIES LLC

BY: _____

PRINT NAME: Patricia Shilling

TITLE: Managing Director

(b)(6)

Date: 6/28/2019

UBS SECURITIES LLC

BY: _____

PRINT NAME: Karen Kowalski

TITLE: Executive Director & Counsel

(b)(6)

EXHIBIT A

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

FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for
COLONIAL BANK,

Plaintiff,

v.

FIRST HORIZON ASSET SECURITIES
INC. et al.,

Defendants.

No. 12 Civ. 6166 (LLS) (MHD)

**STIPULATION AND [PROPOSED] ORDER REGARDING
PARTIAL DISMISSAL WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal Deposit Insurance Corporation as Receiver for Colonial Bank and Defendants First Horizon Asset Securities Inc., First Tennessee Bank National Association (successor by merger to First Horizon Loan Corporation), FTN Financial Securities Corp., Deutsche Bank Securities, Inc., and UBS Securities LLC stipulate that all claims relating to First Horizon Alternative Mortgage Securities (“FHAMS”) 2007-FA1 A4 and FHAMS 2007-FA2 1A4 are hereby dismissed with prejudice, with each side to bear its own costs and attorneys’ fees. All remaining claims are expressly preserved.

Dated: _____

(b)(6) GRAIS & ELLSWORTH LLP

(b)(6) By: _____
David J. Grais [redacted]
Vickie Reznik [redacted]
950 Third Avenue, 24th Floor
New York, New York 10022
Telephone: (212) 755-0010
Facsimile: (212) 755-0052

(b)(6) SPOTSWOOD SANSOM & SANSBURY
LLC

(b)(6) Robert K. Spotswood [redacted]
Mary G. Menge [redacted]
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1819 Fifth Avenue North, Suite 1050
Birmingham, Alabama 35203
Telephone: (205) 986-3620
Facsimile: (205) 986-3639

*Attorneys for Plaintiff Federal Deposit
Insurance Corporation
as Receiver for Colonial Bank*

SULLIVAN & CROMWELL LLP

(b)(6) By: _____
Amanda F. Davidoff [redacted]
James H. Congdon [redacted]
1700 New York Avenue, N.W.
Washington, D.C. 20006-5805
Telephone: (202) 956-7500
Facsimile: (202) 956-6993

*Attorneys for Defendants First Horizon
Asser Securities, Inc., First Tennessee Bank
National Association (successor by merger
to First Horizon Home Loan Corp.), FTN
Financial Securities Corp., and UBS
Securities LLC*

(b)(6) SIMPSON THACHER & BARTLETT LLP

(b)(6) By: _____
Andrew T. Frankel [redacted]
Linton Mann III [redacted]
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

*Attorneys for Defendant Deutsche Bank
Securities Inc.*

* * *

IT IS SO ORDERED:

DATED:

The Honorable Louis L. Stanton
United States District Judge