

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 23rd day of October, 2013, by, between, and among the following undersigned parties (collectively, "Parties"): the Federal Deposit Insurance Corporation as Receiver for Strategic Capital Bank, the Federal Deposit Insurance Corporation as Receiver for Citizens National Bank, the Federal Deposit Insurance Corporation as Receiver for Colonial Bank, and the Federal Deposit Insurance Corporation as Receiver for Guaranty Bank (collectively, "FDIC"), on the one hand, and Ally Financial, Inc. ("AFI"), and Ally Securities, LLC ("Ally Securities") (collectively, "Ally"), on the other.¹

WHEREAS:

Prior to May 22, 2009, Strategic Capital Bank ("Strategic") was a depository institution organized and existing under the laws of Illinois. On May 22, 2009, Strategic was closed by the Illinois Department of Financial and Professional Regulation, Division of Banking and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the Federal Deposit Insurance Corporation as Receiver succeeded to all rights, titles, powers and privileges of Strategic, including those with respect to its assets.

Prior to May 22, 2009, Citizens National Bank ("Citizens") was a depository institution organized and existing under the laws of the United States. On May 22, 2009, Citizens was closed by the Office of the Comptroller of the Currency and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the Federal Deposit Insurance Corporation as Receiver succeeded to all rights, titles, powers and privileges of Citizens, including those with respect to its assets.

Prior to August 14, 2009, Colonial Bank ("Colonial") was a depository institution organized and existing under the laws of Alabama. On August 14, 2009, Colonial was closed by the Alabama State Banking Department and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the Federal Deposit Insurance Corporation as Receiver succeeded to all rights, titles, powers and privileges of Colonial, including those with respect to its assets.

Prior to August 21, 2009, Guaranty Bank ("Guaranty") was a depository institution organized and existing under the laws of the United States. On August 21, 2009, Guaranty was closed by the Office of Thrift Supervision and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the Federal Deposit Insurance Corporation as Receiver succeeded to all rights, titles, powers and privileges of Guaranty, including those with respect to its assets.

¹ Guaranty Bank, Citizens National Bank, Colonial Bank, and Strategic Capital Bank will collectively be referred to herein as the "Failed Banks."

Among the assets to which the FDIC succeeded were any and all of the Failed Banks' claims, demands, and causes of actions arising from any person's action or inaction related to any loss incurred by 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. The FDIC filed complaints for money damages against certain persons, including Ally Securities. Those claims for damages are now pending.² Ally has denied liability for the FDIC's claims.

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, Ally shall pay or cause to be paid \$55,308,631 to the FDIC ("Settlement Funds") within 60 days of the execution of the Agreement. In the event that the Settlement Funds are not delivered to the FDIC within 60 days, interest shall accrue on all unpaid amounts at the rate of 5% per annum from 60 days after the execution of the Agreement until the date of payment. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC within 60 days of the execution of the Agreement, then the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) 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 Ally agrees to jurisdiction in the U.S. District Court for the Eastern District of Michigan and agrees to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC 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 declares this Agreement null and void, the FDIC will return all amounts paid to it under this Agreement.

² The four pending lawsuits the FDIC brought against Ally Securities are: (1) *Federal Deposit Insurance Corporation as Receiver for Strategic Capital Bank and Federal Deposit Insurance Corporation as Receiver for Citizens National Bank v. Bear Stearns Asset Backed Securities I LLC, et al.*, No. 12 Civ. 4000 (LTS) (S.D.N.Y.); (2) *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. Citigroup Mortgage Loan Trust Inc., et al.*, No. 03-CV-2012-901035.00 (Montgomery Cty., Ala.); (3) *Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. Chase Mortgage Finance Corp., et al.*, No. 12 Civ. 6166 (LLS) (S.D.N.Y.); and (4) *Federal Deposit Insurance Corporation as Receiver for Guaranty Bank v. Ally Securities LLC, et al.*, No. D-1-GN-12-002522 (Travis Cty., Tex.) (collectively, the "Actions").

- 2. FDIC Releases.** Upon execution of the Agreement and payment of the Settlement Funds, the FDIC shall release (a) AFI and Ally Securities and all of their affiliates and subsidiaries, including without limitation Residential Capital LLC and its subsidiaries (collectively the "Ally Entity Releasees") from all claims based upon the facts alleged in the complaints and amended complaints filed in the Actions and all claims relating to the residential mortgage-backed securities at issue in the Actions; and (b) shareholders, and current and former officers, directors, employees, agents, and attorneys of the Ally Entity Releasees (but only to the extent they were acting in their capacities as shareholders, and current and former officers, directors, employees, agents, and attorneys of the Ally Entity Releasees), including without limitation current and former officers and directors of Residential Capital LLC and its subsidiaries (collectively, along with the Ally Entity Releasees, the "Ally Releasees"), from all claims based upon the facts alleged in the complaints and amended complaints filed in the Actions and all claims relating to the residential mortgage-backed securities at issue in the Actions. The FDIC does not release its claims against the non-Ally defendants in the Actions (collectively, the "Remaining Defendants").
- 3. Actions in the ResCap Bankruptcy Proceedings.** Upon execution of this Agreement, Ally shall work with appropriate parties in the ResCap Bankruptcy Proceedings, defined below, to reflect in the chapter 11 plan jointly proposed by the Creditors' Committee and the Debtors in those proceedings (as may be amended) ("the Plan") and related documents that the Actions are, contingent upon payment of the Settlement Funds, released and as such not exceptions to the Third Party Release described in the Plan and related documents. Subject to and without waiving its rights under paragraphs 8 and 12 of this Agreement, the FDIC agrees not to object to confirmation of or otherwise commence any proceeding to oppose, alter, delay or impede the Plan; provided however, that the FDIC shall retain all rights to object to and oppose any material modifications to the Plan that affect or might affect the FDIC and are inconsistent with this Agreement. Nothing in this Agreement is intended to be or shall be deemed an admission by the Federal Deposit Insurance Corporation that the above-referenced Third Party Release would bar a lawsuit by the Federal Deposit Insurance Corporation in any capacity other than as receiver of the Failed Banks. Ally shall not rely on this Agreement in any future dispute with the Federal Deposit Insurance Corporation over the applicability of the Third Party Release to any such lawsuit by the Federal Deposit Insurance Corporation.
- 4. Dismissal of Ally.** Upon execution of this Agreement and payment of the Settlement Funds, the FDIC shall move to dismiss Ally Securities from the Actions with prejudice. The FDIC and Ally Securities agree to enter stipulations providing that the dismissals in the Actions shall be with prejudice, with each party to bear its own costs. The FDIC agrees to work in good faith with Ally Securities to ensure litigation activity between the FDIC and Ally Securities in the Actions is minimally burdensome for a period of 60 days from the execution of the Agreement, extendable by agreement of the Parties.

5. **Ally Releases.** Upon execution of the Agreement and dismissal of the Actions with prejudice, Ally shall release the FDIC from any counterclaims that Ally made or would have been required per compulsory joinder to have made against the FDIC in the Actions.
6. **Settlements with Remaining Defendants.** In the event that the FDIC settles any of its claims against any of the Remaining Defendants, the FDIC shall make a good faith effort to obtain in connection with any such settlement(s) a release and waiver by such Remaining Defendants of any and all claims against any of the Ally Releasees for contribution (which, for avoidance of doubt, does not include any recovery arising from contract) from any of the Ally Releasees relating to a claim of the FDIC in the settled Action(s). The FDIC shall not, in any event, support measures by the Remaining Defendants to assess liability, responsibility, or fault upon any of the Ally Releasees in connection with any of the Actions.
7. **Authority.** The FDIC states that under the Federal Deposit Insurance Act, the Federal Deposit Insurance Corporation is authorized to be appointed as receiver for failed depository institutions. Under the Federal Deposit Insurance Act, the FDIC succeeded to all rights, titles, powers, and privileges of the Failed Banks, and any shareholder, member, account holder, 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 Ally Securities. The FDIC is empowered to sue and complain in any court of law to pursue the claims against Ally Securities asserted in the Actions. Each Party represents that it has full authority to enter this Agreement and that it has the full power and authority to bind such Party to each and every provision of the Agreement.
8. **FDIC Claims Not Released.** Notwithstanding any other provision of this Agreement, the Federal Deposit Insurance Corporation, in any capacity, shall not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:
 - a. against Ally 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 Federal Deposit Insurance Corporation, any financial institutions in receivership, other financial institutions, or any other person or entity, including without limitation any claims acquired by the Federal Deposit Insurance Corporation as successor in interest to any financial institutions in receivership or any person or entity other than financial institutions in receivership, excluding for avoidance of doubt any claims expressly released in the Agreement, relating to the Actions and the residential mortgage-backed securities at issue in them; and
 - b. against any person or entity not expressly released in the Settlement Agreement and Release.

As an exception to the releases contained herein, nothing in this Agreement is intended to alter the rights, if any, of the FDIC to recover as may be appropriate any distribution from the RMBS Trust in the Residential Capital LLC *et al.* Chapter 11 proceedings in the

Bankruptcy Court for the Southern District of New York (the "ResCap Bankruptcy Proceedings").

9. Enforcement. Notwithstanding any other provision of this Agreement, nothing in the Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation 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, the 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 or agency thereof (other than the FDIC), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

11. Settlement with Other Claimants.

- a. Ally represents that Ally has not within the last 12 months paid or agreed to pay more than \$2,000,000 to any other claimant to settle any lawsuit for violations of the Securities Act of 1933 and/or state blue sky law based on the issuance, underwriting, or sale of residential mortgage-backed securities issued between January 1, 2006, and June 30, 2013. For the avoidance of doubt, nothing in this paragraph relates to any of the matters subject to resolution in connection with the ResCap Bankruptcy Proceedings.
- b. If, within 90 days after the execution of this Agreement, the net amount that Ally pays or agrees to pay to any other claimant to settle a lawsuit against AFI and/or Ally Securities for violations of the Securities Act of 1933 and/or state blue sky law based on the issuance, underwriting, or sale of residential mortgage-backed securities issued between January 1, 2006, and June 30, 2013, as a percentage of the damages that such claimant has asserted against AFI and/or Ally Securities is disclosed and exceeds Ally's aggregate payment under Paragraph 1 hereof as a percentage of the damages that FDIC has asserted against Ally Securities, Ally shall pay to the FDIC the additional sum of \$11,061,726. For the avoidance of doubt, nothing in this paragraph relates to any of the matters subject to resolution in connection with the ResCap Bankruptcy Proceedings.
- c. Nothing herein shall modify, limit, impair or otherwise affect the rights of any of the Ally Releasees to resolve any and all claims of any sort whatsoever, including without limitation any and all claims relating to any residential mortgage backed securities, the ResCap Bankruptcy Proceedings or any insurance policies whatsoever including those referenced herein.

- 12. Reliance on Disclosures.** Ally has provided, in good faith, certain documents to the FDIC during the course of their settlement discussions; specifically, (1) the Financial Statement of Ally Securities as of December 31, 2012, (2) the first three pages of Ally Securities, LLC's Focus Report, Part IIA, dated April 22, 2013, filed with the Financial Industry Regulatory Authority, Inc. ("FINRA"), and (3) confidential materials which Ally has represented to be all insurance policies that may provide coverage for the Ally Releasees in connection with the FDIC's claims, inter alia (together herein "Disclosures"). Ally acknowledges that the FDIC reasonably and justifiably relied upon these Disclosures, as well as certain of Ally's public filings with the Securities and Exchange Commission ("SEC"), and that they were materially accurate and substantially complete to Ally's understanding as of the time they were created or, in the case of (3), provided. Subject to the above, if any of the Disclosures or other public SEC filings is materially inaccurate, as determined by a competent court of law in an action or proceeding instituted by the FDIC or any other government or non-government entity or individual, the FDIC shall retain payment made pursuant to this agreement and may sue Ally for damages caused, if any, by the materially inaccurate misstatement.
- 13. No Confidentiality.** Ally and the FDIC 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.
- 14. 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 by any of them regarding any claim. 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.
- 15. Representations and Acknowledgements.**
- a. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the parties named herein 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 they are a party hereto or are authorized to sign this Agreement on behalf of the respective party, and that they have 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.
- d. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein. The Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).
- e. 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. Ally further agrees to cooperate in good faith to provide discovery to the FDIC in the Actions against the Remaining Defendants.
- f. 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.

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 STRATEGIC CAPITAL BANK

(b)(6)
Date: 10.23.13

BY:

PRINT NAME: Patricia G. Butler

TITLE: Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CITIZENS NATIONAL BANK

(b)(6)

Date: 10.23.13

BY:

PRINT NAME: Patricia G. Butler

TITLE: Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR COLONIAL BANK

(b)(6)

Date: 10/23/2013

BY:

PRINT NAME: Brian Marshall Simmonds

TITLE: Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR GUARANTY BANK

(b)(6)

Date: 10.23.13

BY:

PRINT NAME: Patricia G. Butler

TITLE: Counsel

ALLY FINANCIAL, INC.

Date: _____

BY:

PRINT NAME:

TITLE:

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR CITIZENS NATIONAL BANK

Date: _____

BY:

PRINT NAME: Patricia G. Butler

TITLE: Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR COLONIAL BANK

Date: _____

BY:

PRINT NAME: Brian Marshall Simmonds

TITLE: Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR GUARANTY BANK

Date: _____

BY:

PRINT NAME: Patricia G. Butler

TITLE: Counsel

ALLY FINANCIAL INC.

(b)(6)

Date: 10/23/2013

BY:

PRINT NAME: Cathy L. Quenneville

TITLE: Corporate Secretary

Date: October 23, 2013

ALLY SECURITIES LLC

(b)(6)

BY:

PRINT NAME: Paula T. Young

TITLE: Assistant Secretary