

SETTLEMENT AND RELEASE AGREEMENT**Settlement and Release Agreement**

This Settlement and Release Agreement ("Agreement") with an effective date of December 17, 2008 ("Effective Date"), by, between, and among the following Parties: the Plaintiff Federal Deposit Insurance Corporation, in its capacity as receiver for NetBank, FSB ("FDIC"), and David Tracy, Kimberly Tracy, Patrick Henry Financial Services, Inc., Scott Steiner, Kimberly Steiner, Gary M. Farah, Shannon Lalios, Mario Lalios, The Valuation Group, Inc., Scott Gailey, Justin Shallow, Scott McErlane, Richard Woolsey, Kimberly Rudolph, and Daniel Vines (collectively the "Settling Defendants") (individually, the FDIC and the Settling Defendants may be referred to herein as "Party" and collectively as the "Parties").

RECITALS**WHEREAS:**

Prior to September 27, 2007, NetBank ("Bank") was a depository institution organized and existing under the laws of Alpharetta, Georgia. Pursuant to Order No. 2007-43, issued by the Office of Thrift Supervision on September 27, 2007, the FDIC was appointed Receiver of NetBank. On September 28, 2007, the FDIC accepted its appointment as Receiver of NetBank in accordance with the Federal Deposit Insurance Act, as amended, by Receiver-In-Charge, Robert Schoppe. On the same date, NetBank's bank charter was pulled and all assets were placed in an FDIC Receivership. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC as receiver succeeded was the subject matter of this case because, as Receiver of NetBank and by express operation of law, FDIC-Receiver assumes all rights, titles, powers, privileges, and operations of NetBank. See 12 U.S.C. § 1821(d)(2). As Receiver and upon assumption of all of NetBank's operations, FDIC-Receiver essentially stands

in NetBank's shoes and operates as its successor. *Id.* § 1821(d)(2)(B). Accordingly these rights include NetBank's choses in action against all parties in the captioned case.

On September 25, 2007, NetBank filed a complaint for money damages against certain persons, including the Settling Defendants, who were involved in a series of loan transactions brokered by Home Connection Mortgage, Inc. Those claims for damages are now pending in the United States District Court for the Eastern District of Michigan, Southern Division Case: 2:07-cv-14045-AC-PJK for a mortgage loan recovery action ("MLR Action"). The Settling Defendants have denied liability for the FDIC's claims in the MLR Action.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation.

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:

SECTION I: Payment to FDIC

1) The specific terms of settlement regarding the following Parties are identified more specifically in the attached Schedules:

- a) David Tracy and Kimberly Tracy – Schedule A;
- b) Patrick Henry Financial Services, Inc. – Schedule B;
- c) Scott Steiner and Kimberly Steiner – Schedule C;
- d) Gary M. Farah – Schedule D;
- e) Shannon Lalios – Schedule E;
- f) Mario Lalios – Schedule F; and
- g) The Valuation Group, Inc., Scott Gailey, Justin Shallow, Scott McErlane, Richard Woolsey, Kimberly Rudolph, and Daniel Vines – Schedule G.

All funds due under this Agreement are called collectively, "Settlement Funds."

2) The general terms of settlement regarding the following Parties are identified as follows:

- a) As an essential covenant and condition to this Agreement, the Settling Defendants agree that all Settlement Funds to the FDIC shall include interest thereon from January 31, 2009 through the date of payment, at the simple rate of ten percent (10%) per annum.
- b) Unless specifically otherwise noted in this Agreement, upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than January 31, 2009, the Settlement Funds shall be delivered to FDIC by direct wire transfer into an account designated by FDIC or by certified or cashier's check drawn upon a depository institution acceptable to FDIC.
- c) In the event that the Settlement Funds are not delivered to the FDIC (or its counsel) by January 31, 2009, as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until the day after the FDIC executes the Agreement.
- d) 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 on or before January 31, 2009, then, with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only, 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 against the Party or Parties, failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in Eastern District of Michigan, Southern Division and agree 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 with respect to the non-delivering Party, or Parties, 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 by the non-delivering Party, or Parties. In no event shall the FDIC declare this Agreement null and void with respect to any Party that has delivered its share of the Settlement Fund (including any accrued interest) on or before January 31, 2009. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

SECTION II: Stipulation and Dismissal

Upon execution of this Agreement by each of the undersigned Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC shall move to dismiss Settling Defendants from the MLR Action. The undersigned Parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each Party to bear its own costs as these were originally incurred.

SECTION III: Releases

1) Release of Individual Settling Defendants by FDIC.

Effective upon payment of the Settlement Funds plus any accrued interest and dismissal described in SECTION(S) I and II above, and except as provided in PARAGRAPH(S) 4) and SECTION IV: below, the FDIC, for itself and its successors and assigns, hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC, that arise from or relate to the acts pled in the MLR Action complaint, as amended or the defense of the same.

2) Release of FDIC by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.1). above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge FDIC, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the acts pled in the MLR Action complaint, as amended arise from or relate to MLR Action or the prosecution of the same.

3) Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph III.2). above, the Settling Defendants, and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the acts pled in the MLR Action complaint, as amended arise from or relate to MLR Action or the defense of the same.

4) Express Reservations From Releases By FDIC.

a) Notwithstanding any other provision, by this Agreement, the FDIC does 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:

- i) against the Settling Defendants 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 FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;
- ii) against any person or entity not expressly released in this Agreement; and
- iii) which are not expressly released in Paragraph III.1), above.

- b) Notwithstanding any other provision, 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.
- c) Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the State of Michigan, Eastern District, Southern Division, or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et seq., if appropriate.

SECTION IV: Waiver of Dividends

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

SECTION V: Representations and Acknowledgements

- 1) 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 by any of them regarding any claim.
- 2) 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.

- 3) Binding Effect. Each of the undersigned persons 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 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.
- 4) 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 Michigan.
- 5) Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This 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).
- 6) Specific Representations Warranties and Disclaimer. The Parties expressly acknowledge that in determining to settle the claims released here, the FDIC has reasonably and justifiably relied upon the accuracy of financial information in the affidavits submitted. If, in their affidavits, the Parties have failed to disclose any interest, legal, equitable, or beneficial, in any asset, or if the Party was involved with the fraudulent conveyance (as defined in the Uniform Fraudulent Transfer Act as adopted by Michigan (M.C.L. 566.31 - 566.43) of any assets valued at over \$1,000.00 within three (3) years of the Effective Date of this Agreement, the Parties agree to cooperate fully with the FDIC to transfer their interest in the asset to the FDIC and to sign any and all documents necessary to transfer their interest in the asset to the FDIC. Moreover, if, in their affidavits the Parties have failed to disclose any interest, legal, equitable, or beneficial, in any asset, the FDIC in its sole discretion, may

exercise one or more or all of the following remedies: (a) the FDIC may declare the releases granted to the Parties as null and void; (b) the FDIC may retain the Settlement Funds; (c) the FDIC may sue the Parties for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC may seek to vacate any dismissal order and reinstate the FDIC's claims against the Parties. The Parties agree that if, in their affidavits, they have failed to disclose any interest, legal, equitable, or beneficial, in any asset, the Parties consent to the reinstatement of FDIC's claims and waive any statute of limitations that would bar any of the FDIC's claims against them.

7) Reasonable Cooperation.

- a) 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, execution, filing, recording, and entry, of any documents necessary to conclude the MLR Action as to the Settling Parties and to otherwise perform the terms of this Agreement.
- b) Further, the Settling Defendants agree to cooperate fully with the FDIC in connection with any action required under this Agreement, including without limitation, the FDIC's further prosecution of the MLR Action. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:
 - i) producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank;
 - ii) making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to the Bank;
 - iii) appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to the Bank, without the necessity of subpoena; and
 - iv) signing truthful affidavits upon request by the FDIC, regarding any matter, as

determined by the FDIC in its sole discretion, to be relevant to the Bank.

- 8) 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.
- 9) FDIC Agreement Enforcement. The FDIC may use specific performance to enforce this agreement.
- 10) Legal Fees. The FDIC shall be entitled to actual legal fees in the enforcement of this Agreement.

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

Witness/Attest

Date: March 16, 2009

BY: _____
Robert J. DeHenzel, Jr., Counsel, Legal Division

David Tracy

Kimberly Tracy (b)(6)

Kimberly Steiner (b)(6)

Scott Steiner

Gary M. Farah

3-17-09; 7:32AM; CBS OUTDOOR

BODMAN/TROY

;713138722910

11/ 11

Shannon Lalios

Mario Lalios

Patrick Henry Financial Services, Inc.:

BY: _____
Mark Drouillard, President

, Secretary

The Valuation Group, Inc.:

BY: _____
Richard Woolsey, President

, Secretary

Scott Gailey

Justin Shallow

Scott McErlane

Richard Woolsey

Kimberly Rudolph

Daniel Vines

303 FLUORINATA GRADIENT FORM - MODEL v.3

(b)(6)



Shannon Lalios

Mario Lalios

Patrick Henry Financial Services, Inc.:

BY: Mark Drouillard, President

The Valuation Group, Inc.:

BY: Richard Woolsey, President

Scott Gailey

Justin Shallow

Scott McErlane

Richard Woolsey

Kimberly Rudolph

Daniel Vines

Schedule A

Settlement and Release Agreement - David Tracy and Kimberly Tracy

David and Kimberly Tracy shall tender to the FDIC one (1) lump sum payment of \$5,600.00 on or before December 22, 2008, Ninety (90) days from September 23, 2008.

The FDIC received this payment timely and hereby acknowledges the receipt of the same.

Schedule B

Settlement and Release Agreement - Patrick Henry Financial Services, Inc.

Patrick Henry Financial Services, Inc. shall tender to the FDIC one (1) lump sum payment of \$6,000 on or before January 30, 2009. This payment may be made by a check drawn on an attorney trust account. The releases in settlement Agreement Section III 1) and 2) are expressly intended to include Mark Drouillard individually.

Page 1 of 2

Schedule C

Settlement and Release Agreement - Scott Steiner and Kimberly Steiner

Scott Steiner agrees to pay \$50k plus actual recording fees and costs regarding the Deeds of Trust, as defined below (collectively, "Settlement Funds"), to the FDIC as follows:

1. The Settlement Funds will be paid out of the proceeds of the sale of a series of closings ("Sales") of the following real estate ("Properties"):
 - a) 12008 Rossiter St Detroit MI,
 - b) 5609 Bedford Detroit MI,
 - c) 5920 Grayton St Detroit MI and
 - d) 5231 University Detroit MI;
2. Mr. Steiner will pledge a security interest to the FDIC in the Properties;
3. Mr. Steiner will provide complete disclosure of all financing (name of secured lender and payoff) and liens (name of lienholder and amount of lien) relating to each of the Properties within 14 days.
4. The security interest will be perfected by the filing of a deed of trust ("Deed of Trust") (which will be drafted by the FDIC);
5. Mr. Steiner will list the Properties for a reasonable price within 14 days;
6. Mr. Steiner will, every 30 days, reduce the asking price for each of the Properties by the greater of 5% or the realtor's recommendation;
7. Interest will accrue on the Settlement Funds unpaid balance at 6% per annum starting the date of this agreement;
8. Mr. Steiner will provide, at his cost, legible copies of deeds to the Properties to the FDIC within 14 days;
9. Mr. Steiner will make a good faith effort to keep the mortgages on the Properties as current as possible. The FDIC recognizes that the Properties are presently in varying stages of foreclosure. The FDIC recognizes that the valuations of the Properties as presented by Scott Steiner are very rough estimates and may be radically inaccurate. Scott Steiner shall within 14 days provide the status of the foreclosure of each Property to counsel for the FDIC; Scott Steiner shall continue to provide updated statuses of the foreclosures every 90 days starting 90 days from the date this Schedule C is executed and continuing each successive 90 days until all properties have been sold or all Settlement Funds are paid.
10. If the Sales are insufficient to retire the entire Settlement Funds plus interest, then Mr. Steiner will remain responsible for paying the FDIC the difference upon demand;
11. The FDIC shall move to dismiss from the lawsuit Scott Steiner and Kimberly Steiner, pursuant to Agreement Section II, Stipulation and Dismissal, upon execution of the:
 - a) Settlement and Release Agreement and Schedule C,
 - b) Deeds of Trust for all Properties and
 - c) Presentation of valid listing agreements for all Properties. E-mail copies of each listing agreement shall be sent to counsel for the FDIC within 24 hours of the date of original execution and each time each listing agreement is modified; and

Page 2 of 2

12. All time frames discussed here start 2-26-09.

FEDERAL DEPOSIT INSURANCE CORPORATION

Witness/Attest

Date: March 16, 2009

BY: _____
Robert J. DeHenzel, Jr., Counsel, Legal Division

(b)(6)

[Redacted Signature]

(b)(6)

Kimberly Steiner

[Redacted Signature]

Scott Steiner

(b)(6)

[Redacted Signature]

Schedule D

Settlement and Release Agreement - Gary M. Farah

Gary M. Farah shall tender to the FDIC one (1) lump sum payment of \$5,000 on or before January 16, 2009. Gary M. Farah shall tender to the FDIC an additional \$20,000 in twenty (20) consecutive monthly payments of \$1,000 each. These payments shall start February 1, 2008 and continue until paid in full. No interest shall accrue on the \$20,000 so long as all payments are timely tendered.

Schedule E

Settlement and Release Agreement - Shannon Lalius

Shannon Lalius shall tender to the FDIC one (1) lump sum payment of \$9,000 on or before January 30, 2009.

Shannon Lalius will fully cooperate with all reasonable requests by the FDIC to prosecute the MLR Action and resolution of the same, provided, however, Shannon Lalius specifically preserves, and nothing in the Settlement Agreement and Release shall be deemed to waive, any spousal or marital communications privilege she has.

Schedule F
Settlement and Release Agreement - Mario Laliros

Mario Laliros shall tender to the FDIC one (1) lump sum payment of \$100,000 on the date the Agreement is executed. Mario Laliros will tender an additional \$700,000 payable over seven (7) years with interest accruing at the rate of one year U.S. Treasury bills as reported in the Wall Street Journal at the end of the last quarter immediately preceding the date of this Agreement. This interest rate shall be recalculated on an annual basis as of January 1 or the first subsequent date that the Wall Street Journal reports the rate of one year U.S. Treasury bills. Minimally, quarterly payments will be due to prevent negative amortization of the amount due. Each such payment shall be due on the first day of each successive quarter until the obligation is paid in full. Time is of the essence and failure to timely tender one payment is a material breach of the Agreement.

Mario Laliros will provide security for the above obligations in form and content acceptable to the FDIC as determined by the FDIC in its sole and absolute discretion ("Security Option"). This security must be minimally worth the amount of the unpaid balance due under this Agreement and a security interest in the same must be properly perfected. In the alternative, Mario Laliros will consent to a judgment for the unpaid balance due ("Consent Judgment Option").

The choice of option is Mario Laliros's. Mario Laliros must exercise this option by January 31, 2009. If Mario Laliros fails to exercise his option choice then by default the Consent Judgment option shall be irrefutably deemed to be chosen by Mario Laliros. The option must be effectuated by February 28, 2009. If Mario Laliros chooses the Consent Judgment Option, the following applies: if Mario Laliros should file for relief under any chapter of the Bankruptcy Code, the debt evidenced by this Agreement shall be deemed non-dischargeable and presentation of this Agreement shall be *prima facie* and irrefutable evidence of said non-dischargeability.

Schedule G

Settlement and Release Agreement - The Valuation Group, Inc., Scott Gailey, Justin Shallow, Scott McLane, Richard Woolsey, Kimberly Rudolph, Scott Williams and Daniel Vines (collectively, "VG Parties")

The FDIC shall receive one (1) lump sum payment of \$320,000 on or before thirty days from the date the settlement Agreement is executed by the FDIC and all VG Parties.

The following terms in the settlement Agreement will not apply to the captioned defendants:

1. Representations and warranties that all assets were disclosed;
2. Representations and warranties that no assets were fraudulently conveyed w/in 3 years; or
3. All terms of the settlement agreement are based on a Non-Dischargeable debt pursuant to 11 USC § 523.

As to the VG Parties, Settlement Agreement Section III, paragraph 1 shall be deleted and replaced by the following:

1) Release of Individual Settling Defendants by FDIC.

Effective upon payment of the Settlement Funds plus any accrued interest and dismissal described in SECTION(S) I and II above, and except as provided in PARAGRAPH(S) 4) and SECTION IV: below, the FDIC, for itself and its successors and assigns, beneficiaries, employees, directors and representative hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, representatives, independent contractors, employees, beneficiaries, insurers, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, including but not limited to complaints with the Bureau of Commercial Services of the Department of Labor and Economic Growth, belonging to the FDIC, that arise from or relate to the acts pled in the MLR Action complaint, as amended or the defense of the same.