

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following parties:

Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank (“FDIC-R”) and Gateway First Bank, successor by conversion to Gateway Mortgage Group, LLC (“Gateway”) (individually, FDIC-R and Gateway may be referred to herein as “Party” and collectively as the “Parties”). This Settlement Agreement shall be effective as of the date last executed by any Party (“Effective Date”).

### RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank (“WaMu”) was a depository institution organized and existing under the laws of Nevada.

On September 25, 2008, the Office of Thrift Supervision closed WaMu and pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of WaMu, including those with respect to its assets.

Among the assets to which FDIC-R succeeded were all of WaMu’s claims, demands, and causes of action against mortgage brokers that originated mortgage loans for WaMu.

The Parties seek to resolve FDIC-R’s claims, both asserted and unasserted and whether known or unknown, against Gateway related to Gateway’s brokering, selling and/or delivering mortgage loans to WaMu (the “Claims”). Gateway denies liability for the Claims.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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-R**

A. As an essential covenant and condition to this Agreement, on or before January 15, 2023, Gateway shall pay FDIC-R the sum of \$1,075,000 (one million seventy-five thousand dollars) (“the Settlement Payment”). The Settlement Payment shall constitute a debt due and owing Federal Deposit Insurance Corporation, an agency of the United States, on the Effective Date. The debt shall be discharged by payment in full to FDIC-R.

B. Gateway shall deliver the Settlement Payment to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by FDIC-R, contemporaneous with signing the Agreement.

C. If FDIC-R does not receive the Settlement Payment in full on or before January 15, 2023, then Gateway shall be in default of its payment obligations (“Default”) and interest shall accrue at the rate of five percent (5% ) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher (“Default Interest Rate”) on the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) until paid in full, and FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the Settlement Payment in writing, including interest at the Default Interest Rate accruing from January 15, 2023. Any decision by FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Payment shall not prejudice its rights to pursue relief under subsections 2 through 4 below at any time prior to receipt of the full Settlement Payment (including all accrued interest); provided, however, that in the event FDIC-R terminates this Agreement by declaring it null and void, FDIC-R will return to Gateway any and all amounts paid to FDIC-R under this Settlement Agreement; or
2. Enforce this Agreement, including without limitation, by FDIC-R’s filing an action to summarily enforce the agreed-upon settlement by a Court entering judgment against Gateway for breach of the settlement agreement in the

amount of the unpaid total (i.e. unpaid amount of Settlement Payment together with all accrued interest) together with the costs of collection and all of FDIC-R's reasonable attorney's fees and costs incurred in enforcing the terms of this Agreement. In such event, Gateway waives and covenants not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement and agrees to exclusive jurisdiction and venue in the U.S. District Court for the District of Columbia; or

3. Terminate the Agreement by declaring it null and void and institute an action on the Claims. Gateway further agrees to waive, and covenants to not plead, argue, or otherwise assert, any defense, claim, or counterclaim of any kind whatsoever that did not exist or was otherwise unavailable as of the Effective Date except for the defense of payment of the Settlement Payment, in part or in full; and/or
4. Seek any other relief available to it in law or equity.

## **SECTION II: Releases**

### A. FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section II.D., FDIC-R, for itself and its successors and assigns, hereby releases and discharges Gateway and its employees, officers, directors, attorneys, 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 FDIC-R that arise from or relate to the Claims.

### B. Gateway's Release.

Effective simultaneously with the release granted in Section II.A. above, Gateway, for itself and its respective successors and assigns, hereby releases and discharges FDIC-R and its employees, officers, directors, attorneys, 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 Claims.

C. Waiver of California Civil Code § 1542.

Each Party hereby waives and relinquishes any rights each may have under California Civil Code § 1542, 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.”

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, Federal Deposit Insurance Corporation, in any capacity, does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:
  - a. Against Gateway 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-R, WaMu, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to WaMu or any person or entity other than WaMu; and
  - b. Against any person or entity not expressly released by FDIC-R in this Agreement.
2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of Federal Deposit Insurance

Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

### **SECTION III: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Gateway is or was a shareholder of WaMu or its holding company and by virtue thereof is or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of WaMu or proceeds in any litigation that has been or could be brought against Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of WaMu, or any alleged acts or omissions by Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with WaMu, its conservatorship, or receivership, Gateway hereby knowingly assigns to FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

### **SECTION IV: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties 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 trustees, administrators, representatives, successors, and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or 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.

#### **SECTION V: 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, execution, filing, recording, and entry, of any documents necessary to perform the terms of this Agreement.

#### **SECTION VI: Other Matters**

A. 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 defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Counterparts and Digital Signatures. This Agreement may be executed digitally (through a method that employs public key cryptography so as to meaningfully guarantee authenticity, consent, and integrity) or by hand, in any number of counterparts, and delivered electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

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 District of Columbia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

D. Notices. Any notices required hereunder shall be sent by nationally recognized overnight delivery service (e.g. FedEx or UPS), and by email, to the following:

If to the FDIC-R:

Stuart Tonkinson  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive  
Arlington, VA 22226  
(214) 673-7549  
jtonkinson@fdic.gov

If to Gateway:

Timothy P. Ofak  
Weiner Brodsky Kider PC  
1300 19<sup>th</sup> St. NW Fifth Floor  
Washington, DC 20036  
(202) 628-2000  
ofak@thewbkfirm.com

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

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 WASHINGTON MUTUAL BANK

Date: 11/15/22

BY: b6

TITLE: Counsel

PRINT NAME: Stuart Tonkinson

Date: 11/17/22

GATEWAY FIRST BANK, SUCCESSOR BY CONVERSION TO GATEWAY MORTGAGE GROUP, LLC

b6

PRINT NAME: *Stuart W. Tonkinson*