

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties, as of this 12th day of February 2014:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank (“FDIC-R”) and Defendants ServiceLink Appraisal, LLC (f/k/a LSI Appraisal, LLC) and BKFS National TaxNet, LLC, (f/k/a LPS Property Tax Solutions, Inc., f/k/a Fidelity National Tax Service, Inc.) (collectively, the “Settling Defendants”) (individually, the FDIC-R and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

### RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank (“Bank”) was a depository institution;

On September 25, 2008, the Office of Thrift Supervision closed the Bank, and pursuant to 12 U.S.C. § 1821(c), the FDIC-R was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R 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-R succeeded were all of the Bank’s claims, demands, and causes of action against its former directors, officers, accountants, appraisers, professionals, employees, and other third parties arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts which occurred on or before the appointment of FDIC-R, including, specifically, all of the Bank’s claims, demands, and causes of action which accrued against the Settling Defendants;

On May 9, 2011, the FDIC-R filed a complaint for money damages against the Settling Defendants. Those claims for damages are now pending in the United States District Court for the Central District of California in *FDIC v. LSI Appraisal, LLC*, No. SACV11-706 DOC (“Action”). The Settling Defendants have denied liability in the Action; and

The Settling Defendants represent that following the January 2, 2014 acquisition of Lender Processing Services, Inc., LSI Appraisal, LLC became known as ServiceLink Appraisal, LLC and that LPS Property Tax Solutions, Inc., formerly known as Fidelity National Tax Service, Inc., became known as BKFS National TaxNet, LLC.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation in the Action, and all Parties hereto deem it in their best interests to enter into this Agreement to achieve finality with respect to all claims, asserted and not asserted, covered by this Agreement.

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 fourteen (14) calendar days following full execution of this Agreement by all of the Parties, the Settling Defendants collectively agree to pay the FDIC-R the sum of thirty million dollars and no cents (U.S. \$30,000,000.00) (“the Settlement Payment”).

B. The Settling Defendants shall deliver the Settlement Payment to the FDIC-R by direct wire transfer into the following designated account:

**BANK:** Federal Home Loan Bank of New York

(b)(4) **ROUTING #:**

**FOR CREDIT TO:** FDIC National Liquidation Account

(b)(4) **ACCOUNT #:**

**OBI:** FIN 10015; Washington Mutual Bank, Henderson, NV

(b)(4) **CONTACT:** Catherine Wood; 703-516-1267; Professional Liability lawsuit  DIF Fund; Asset no.  (b)(4)

In the event that the Settlement Payment is not delivered to the FDIC-R within the time period specified herein, interest shall accrue on all unpaid amounts at the rate of 5% per annum until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by Section I.A. above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by Section I.A. above, through the date of payment at a rate of 5% per annum; or

2. Enforce this Agreement, in which event the FDIC-R and the Settling Defendants agree to jurisdiction in the United States District Court for the Central District of California and further agree that the prevailing party or parties shall be entitled to recover its or their reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement from the non-prevailing party or parties; or

3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendants further agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

## **SECTION II: Stipulation and Dismissal**

Within three business days after receipt of the Settlement Payment (plus any accrued

interest that may be due under Section I), the FDIC-R shall file a stipulation of dismissal with prejudice with each party to bear its own costs and fees in the Action. The stipulation of dismissal with prejudice shall be executed by the attorneys for all Parties who are parties to the Action and shall be in the form attached hereto as Exhibit A. In the event the FDIC-R fails to file such a stipulation of dismissal within the time required, the Settling Defendants may elect to file the stipulation of dismissal in this Action.

### **SECTION III: Releases**

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

Notwithstanding any other provision of this Agreement, upon receipt of the Settlement Payment in full, and except as provided in Section III.D., effective simultaneously with the release granted in Section III.B. below, the FDIC-R, for itself and its respective subsidiaries, predecessors, successors and assigns, hereby releases and forever discharges the Settling Defendants and each of their respective predecessors, successors, present and former parent companies, subsidiaries and affiliates, present and former stockholders, members, partners and principals, present and former officers, directors, employees, servants and representatives, and present and former independent contractors, subrogees, insurers, attorneys, agents and assigns, and the respective predecessors, successors, present and former parent companies, subsidiaries and affiliates, present and former stockholders, members, partners and principals, present and former officers, directors, employees, servants and representatives, and present and former independent contractors, subrogees, insurers, attorneys, agents and assigns, of any of the foregoing persons or entities (collectively, including the Settling Defendants, "Defendant Releasees"), from any and all claims, causes of action, claims for indemnity, subrogation and/or contribution, debts, suits, rights of action, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, variances, executions, demands, rights, liabilities, claims for attorneys' fees and costs, losses, and any obligations, claims and demands of any kind or nature whatsoever, asserted or not, threatened or not, alleged or not, known or unknown, suspected or unsuspected, disclosed or undisclosed,

contingent or fixed, at law or in equity, which the FDIC-R ever had, now has, or may have against the Defendant Releasees, or any of them, directly or indirectly, from the beginning of time to the date of these presents, in any way arising out of or related to: (1) the performance, nonperformance, or manner of performance of any of Defendant Releasees' respective functions, duties, and actions as alleged in the Action, or (2) any of the acts, omissions, representations, facts, events, circumstances, matters, claims transactions, occurrences or subject matter which could have been alleged against the Settling Defendants in the Action related to or arising out of appraisal or valuation services provided to the Bank. Notwithstanding the foregoing, this release shall not in any way impair or restrict the rights of the FDIC-R or the Settling Defendants to enforce the terms of this Agreement.

B. The Settling Defendants' Release.

Notwithstanding any other provision of this Agreement, except as provided in Section III.E., effective simultaneously with the release granted in Section III.A. above, the Settling Defendants for themselves and their respective predecessors, successors, assigns, parents, subsidiaries and affiliates, hereby release and forever discharge the FDIC-R and each of its predecessors, successors, present and former subsidiaries, members, partners and principals, present and former officers, directors, employees, servants and representatives, and present and former independent contractors, subrogees, insurers, attorneys, agents and assigns, and the respective predecessors, successors, present and former subsidiaries, present and former stockholders, members, partners and principals, present and former officers, directors, employees, servants and representatives, and present and former independent contractors, subrogees, insurers, attorneys, agents and assigns, of any of the foregoing persons or entities (collectively, including the FDIC-R "Plaintiff Releasees"), from any and all claims, causes of action, claims for indemnity, subrogation and/or contribution, debts, suits, rights of action, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, variances, executions, demands, rights, liabilities, claims for attorneys' fees and costs, losses and any obligations, claims and demands of any kind or nature

whatsoever, asserted or not, threatened or not, alleged or not, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or fixed, at law or in equity, which the Settling Defendants ever had, now have, or may have against the Plaintiff Releasees, or any of them, directly or indirectly, from the beginning of time to the date of these presents, in any way arising out of or related to: (1) the performance, nonperformance, or manner of performance of the FDIC-R's respective functions, duties, and actions as alleged in the Action, or (2) any of the acts, omissions, representations, facts, events, circumstances, matters, claims transactions, occurrences or subject matter which could have been alleged against the FDIC-R in the Action. Notwithstanding the foregoing, this release shall not in any way impair or restrict the rights of the FDIC-R or the Settling Defendants to enforce the terms of this Agreement.

C. Release of Unknown Claims

The Parties understand and agree that the releases in Section III.A. and III.B. are intended to and do operate as full and final releases of all claims within the scope of Section III.A. and III.B., respectively, including all unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character. The Parties acknowledge that they may have claims, and may have sustained damages, expenses, and losses, within the scope of these respective Sections, that are presently unknown or not suspected, and that such claims, damages, expenses, and losses, if any, might give rise to additional damages, expenses, or losses in the future that are not now anticipated by the Parties, or that might have affected their decision to enter into such releases. The Parties understand that they may hereafter discover facts different from what they now believe to be true, which if known, could have materially affected their decisions or such releases, but the Parties confirm their intention to waive all such applicable claims, damages, expenses and losses, including unknown claims, damages, expenses and losses and any claims, damages, expenses and losses based on different or additional facts. The Parties accordingly expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights and benefits that they may have under federal law or any law of any state or territory of the United States or any foreign country, or principle of

common law, which would limit the effect of their respective releases to those claims actually known or suspected to exist at the time of the execution of their respective releases, including but not limited to Section 1542 of the California Civil Code, which provides 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 are aware of the contents of California Civil Code Section 1542, and understand and agree that Section 1542 and the benefits thereof, and of any other similar law and benefit of any other state, if applicable, are hereby expressly waived.

D. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R 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 the Defendant Releasees 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, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than the Bank; and

b. Against any person or entity not expressly released by the 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 the 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, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by any agency or instrumentality of the United States government other than the FDIC-R. In addition, the 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, except as to the Settling Defendants.

E. Exceptions from Releases by Settling Defendants.

1. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising any defenses of any kind of any of the Defendant Releasees in response to any claims, causes of action, administrative enforcements or other proceedings of any kind brought against Defendant Releasees.

2. Notwithstanding any other provision of this Agreement, the Settling Defendants do not release, and expressly preserve fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

a. against any person or entity not expressly released by the Settling Defendants in this Agreement, including but not limited to any insurers of the Settling Defendants or Defendant Releasees; or

b. which are not expressly released in above Section III.B. or III.C.

**SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Settling Defendants are or were shareholders of the Bank or its holding company and by virtue thereof are or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any alleged acts or omissions by the Federal Deposit Insurance Corporation, the United States government, or



any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Settling Defendants hereby knowingly assign to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

#### **SECTION V: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party for which he or she is signing, and that he or she has the full power and authority to bind such Party, as well as all of the present and former parent companies, subsidiaries and affiliates of the respective Party, to each and every provision of this Agreement that is applicable thereto. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors and assigns.

B. Advice of Counsel. Each of the Parties 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 its counsel.

C. Ownership of Claims. Each of the Parties represents and warrants that it owns and has not sold, assigned, conveyed or otherwise transferred any rights, benefits or claims as alleged in the Action.

#### **SECTION VI: 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 Action and to otherwise perform the terms of this Agreement.

B. The Settling Defendants agree to reasonably cooperate with the FDIC-R in connection with any action required under this Agreement. Such cooperation shall consist of:

1. Producing all non-privileged documents reasonably requested by the

FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the services provided to the Bank by the Settling Defendants;

2. Appearing as reasonably requested by the FDIC-R at reasonable times and places for interviews regarding non-privileged facts, as determined by the FDIC-R in its sole discretion, to be relevant to the services provided to the Bank by the Settling Defendants;

3. Testifying as to non-privileged matters as reasonably requested by the FDIC-R, without the necessity of a subpoena, in any matter relevant to the services provided to the Bank by the Settling Defendants, as determined by the FDIC-R;

4. Signing truthful affidavits, regarding any non-privileged matter, as reasonably requested by the FDIC-R and determined by the FDIC-R in its sole discretion, to be relevant to the services provided to the Bank by the Settling Defendants.

5. FDIC-R agrees to reimburse the reasonable costs, fees, and expenses, including without limitation reasonable attorneys fees the Settling Defendants incur in connection with any response to any request made by this Section VI.B.

C. The FDIC-R agrees to reasonably cooperate with the Settling Defendants in responding to document and other information requests subject to all the requirements in 12 CFR ¶ 309 and any other applicable federal law, regulations and privileges.

#### **SECTION VII: Other Matters**

A. No Admission of Liability. The undersigned 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. 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; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the

Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of New York, without reference to the conflicts of laws principles thereof.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R: Antony S. Burt  
Schiff Hardin LLP  
233 S. Wacker Drive, Suite 6600  
Chicago, IL 60606  
Telephone: (312) 258-5762

(b)(6) Email: [REDACTED]

Leonard J. DePasquale  
Supervisory Counsel  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive, VS-B-7058  
Arlington, VA 22226  
Telephone: (703) 562-2063

(b)(6) Email: [REDACTED]

Catherine S. Wood  
Counsel  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive, VS-B-7057  
Arlington, VA 22226  
Telephone: (703) 516-1267

(b)(6) Email: [REDACTED]

If to the Settling Defendants:

David T. Case  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006  
Telephone: (202) 778-9084

(b)(6) Email: [REDACTED]

Robert E. Pinder  
Senior Vice President  
Chief Litigation Officer

(b)(6)

Black Knight Financial Services  
601 Riverside Ave., T-2  
Jacksonville, FL 32204  
Telephone: (904) 854-5974  
Email:

(b)(6)

F. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned 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 undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed by the FDIC pursuant to its applicable policies, procedures, and other legal requirements.

H. No Third Party Beneficiaries. Except as otherwise specifically provided in this Agreement, including specifically with regard to the Plaintiff Releasees and Defendant Releasees, nothing expressed herein or referred to in this Agreement is intended or shall be construed to give any person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the Parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Parties, and the Plaintiff and Defendant Releasees, and for the benefit of no other person or entity.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them by their duly authorized representatives on the dates hereinafter subscribed.

(b)(6)

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR WASHINGTON MUTUAL BANK

(b)(6)

Date: February 12, 2014

BY:

TITLE: Supervisory Counsel - FDIC Legal Div.

PRINT NAME: Leonard J. De Pasquale

SERVICELINK APPRAISAL, LLC, f/k/a LSI  
APPRAISAL, LLC

Date: February 12, 2014

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

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

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

BKFS NATIONAL TAXNET, LLC, f/k/a LPS  
PROPERTY TAX SOLUTIONS, INC., f/k/a FIDELITY  
NATIONAL TAX SERVICE, INC.

Date: February 12, 2014

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

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

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

\_\_\_\_\_

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR WASHINGTON MUTUAL BANK

Date: February 12, 2014

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

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

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

SERVICELINK APPRAISAL, I.L.C, f/k/a LSI  
APPRAISAL, LLC

(b)(6) \_\_\_\_\_  
Date: February 12, 2014

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

TITLE: General Counsel, ServiceLink \_\_\_\_\_

PRINT NAME: Marcus A. Spatafore \_\_\_\_\_

BKFS NATIONAL TAXNET, LLC, f/k/a LPS  
PROPERTY TAX SOLUTIONS, INC., f/k/a FIDELITY  
NATIONAL TAX SERVICE, INC.

Date: February 12, 2014

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

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR WASHINGTON MUTUAL BANK

Date: February 12, 2014

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

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

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

SERVICELINK APPRAISAL, LLC, f/k/a LSI  
APPRAISAL, LLC

Date: February 12, 2014

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

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

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

BKFS NATIONAL TAXNET, LLC, f/k/a LPS  
PROPERTY TAX SOLUTIONS, INC., f/k/a FIDELITY  
NATIONAL TAX SERVICE, INC.

(b)(6)

Date: February 12, 2014

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

TITLE: *Executive Vice President, General Counsel  
and Corporate Secretary*

PRINT NAME: *Michael L. Gravelle*