

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for NetBank, F.S.B., (“FDIC” or “Plaintiff”), on the one hand and First American Title Insurance Company (“FATIC” or “Defendant”) on the other hand. The FDIC and FATIC are referred to collectively as the “Parties.”

**RECITALS**

A. WHEREAS, the FDIC filed a Complaint against FATIC and others entitled *Federal Deposit Insurance Corporation as Receiver of NetBank, F.S.B. v. Golden Key Realty & Mortgage Banker, Inc.*, Case3:10-cv-04285-WA, in United States District Court, Northern District of California, (the “Action”).

B. WHEREAS, the Parties desire to resolve the FDIC’s claims against FATIC, and agree as follows:

**AGREEMENT AND MUTUAL RELEASE**

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and are integral parts of this agreement.
2. Settlement Payment by FATIC to FDIC. No later than thirty (30) business days following full execution of this Agreement, Defendant FATIC shall pay Plaintiff the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). This settlement payment shall be made by sending a check to “Rudow Law Group, LLC,” Reference: FATIC Settlement. The

payee should be the FDIC as Receiver for NetBank, FSB. The Parties agree that timely receipt of the Settlement Payment is an essential term of this Agreement, and a condition to the effectiveness of this Agreement.

3. Dismissal of the Action. Together with the execution of this Agreement, counsel for Plaintiff and Defendant shall execute a Stipulation of Dismissal of the Action against FATIC, with prejudice. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for Plaintiff shall file the executed Stipulation of Dismissal with the Court.

4. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

5. Release by Plaintiff. The FDIC hereby releases and forever discharges FATIC and its current and former officers, directors, employees, agents, policy issuing agents (including but not limited to Alliance Title Company, its current, former and future agents, employees and representatives), representatives, shareholders, sureties, bonding companies, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims or causes of action set forth in the Action, except as expressly reserved in Paragraph 6, below. Nothing herein shall be deemed a release of Golden Key Realty & Mortgage Banker, Inc. or Samuel Gbilila.

6. Express Reservations from Release. Notwithstanding any other provision contained herein, by this Agreement, the Parties do not release, and expressly preserve fully and to the same extent as if the Agreement had not been executed (a) any claims or causes of action that do not arise from or relate to the facts, occurrences and transactions alleged in the Action, (b) any claims brought on behalf of another failed institution or another governmental entity or any defenses to such claims, or (c) any claims relating to the facts, occurrences and transactions alleged in the Action against any other person or entity not released in Paragraph 5, above, and Paragraph 7, below. This Agreement does not waive or release any claim relating to or arising from any loan other than the loans at issue in the Action. In addition, this Agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office, or any other federal department or agency, for violation of any federal criminal statutes, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, nor any defenses to such claims.

7. Release by Defendant. Defendant hereby releases and forever discharges Plaintiff and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims or causes of action set forth in the Action, except as expressly reserved in Paragraph 6, above. Nothing herein shall be deemed a release of Golden Key Realty & Mortgage Banker, Inc. or Samuel Gbilila.

7.A. Waiver of Civil Code Section 1542 With respect to the matters herein released, the Parties expressly intend to relinquish all claims, whether or not now known, and expressly waive any and all rights and benefits conferred on them by the provisions of Section 1542 of the Civil Code of the State of California, which reads:

*A general release does not extend to claims which the creditor does not know or suspects 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 understand and acknowledge the significance and consequences of such waiver of the provisions of Section 1542.

8. Consideration. The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.

9. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

10. Agreement Binding on Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers, directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors, successors, representatives and assigns.

11. Applicable Law. This Agreement has been negotiated and exchanged in the State of California. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of California without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this Agreement, the Parties agree that

the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the District of California.

12. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in .pdf format shall have the same force and effect as original signatures.

14. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa.

15. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect to the fullest extent permitted under the law.

16. Warranty of Authority. Each Party whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed and that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Party to all of the obligations imposed by the Agreement and that all corporate and/or governmental approvals necessary to bind the Party to this Agreement have been received. The Parties have not assigned or transferred any of their claims being released herein and have the standing and authority to release said claims.

17. Attorneys' Fees and Costs. Plaintiff and Defendant each agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action.

18. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this Agreement.

19. Notices. Any notice required under this Agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

Person To Receive Notice	Notification Information
Defendant:	Jeffrey H. Lowenthal Edward Egan Smith Steyer Lowenthal Boodrookas Alvarez & Smith LLP 1 California Street, Suite 300 San Francisco, CA 94111 Telephone: [REDACTED] Facsimile: [REDACTED]
Plaintiff:	William Rudow, Esq. Rudow Law Group, LLC 5603 Newbury Street Baltimore MD 21209 Telephone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]

(b)(4),(b)(6)

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The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph, that writing shall be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

20. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

21. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this Agreement.

22. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

23. Compliance Dates. In the event that any date specified in this Agreement shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this Agreement.

24. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

25. Jury Trial Waiver. The Parties hereby waive any and all rights that they may otherwise have to a trial by jury in any action, proceeding, claim, counterclaim or third party complaint, whether in contract or tort, at law or in equity, arising out of or in any way related to this Agreement.

26. Entire Agreement. This Agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

27. No Admission of Liability. The parties understand and acknowledge that this Settlement Agreement Constitutes a settlement of disputed claims and is not an admission of liability by any party.

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
NETBANK FSB

(b)(6)

Dated: 5/23/, 2012

[Redacted Signature]

Robert J. DeHenzel, Jr. Esq.  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for NetBank,  
F.S.B.

FIRST AMERICAN TITLE INSURANCE  
COMPANY

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Georgina Injayan  
Authorized on behalf of FATIC

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2012

RUDOW LAW GROUP, LLC

By: \_\_\_\_\_  
William Rudow Law Group, LLC  
Attorneys for Plaintiff  
The Federal Deposit Insurance Corporation, as  
Receiver for NetBank, F.S.B.

Dated: \_\_\_\_\_, 2012

STEYER, LOWENTHAL, BOODROOKAS,  
ALVAREZ & SMITH LLP

By: \_\_\_\_\_  
Edward Egan Smith  
Attorneys for Defendant  
First American Title Insurance Company

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FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
NETBANK, FSB

(b)(6)

Dated: 5/23/, 2012

[Redacted Signature]

Robert J. DeHenzel, Jr. Esq.  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for NetBank,  
F.S.B.

FIRST AMERICAN TITLE INSURANCE  
COMPANY

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Georgina Injayan  
Authorized on behalf of FATIC

APPROVED AS TO FORM:

Dated: 5/23/12, 2012

RUDOW LAW GROUP, LLC

(b)(6)

By: [Redacted Signature]  
William Rudow Law Group, LLC  
Attorneys for Plaintiff  
The Federal Deposit Insurance Corporation, as  
Receiver for NetBank, F.S.B.

Dated: \_\_\_\_\_, 2012

STEYER, LOWENTHAL, BOODROOKAS,  
ALVAREZ & SMITH LLP

By: \_\_\_\_\_  
Edward Egan Smith  
Attorneys for Defendant  
First American Title Insurance Company

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FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
NETBANK, FSB

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Robert J. DeHenzel, Jr, Esq.  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for NetBank,  
F.S.B.

FIRST AMERICAN TITLE INSURANCE  
COMPANY

(b)(6)

Dated: 5/16, 2012

By: \_\_\_\_\_  
Georgina Injayan  
Authorized on behalf of FATIC

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2012

RUDOW LAW GROUP, LLC

By: \_\_\_\_\_  
William Rudow Law Group, LLC  
Attorneys for Plaintiff  
The Federal Deposit Insurance Corporation, as  
Receiver for NetBank, F.S.B.

Dated: \_\_\_\_\_, 2012

STEYER, LOWENTHAL, BOODROOKAS,  
ALVAREZ & SMITH LLP

By: \_\_\_\_\_  
Edward Egan Smith  
Attorneys for Defendant  
First American Title Insurance Company

27. No Admission of Liability. The parties understand and acknowledge that this Settlement Agreement Constitutes a settlement of disputed claims and is not an admission of liability by any party.

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
NETBANK, FSB

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Robert J. DeHenzel, Jr, Esq.  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for NetBank,  
F.S.B.

FIRST AMERICAN TITLE INSURANCE  
COMPANY

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Georgina Injayan  
Authorized on behalf of FATIC

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2012

RUDOW LAW GROUP, LLC

By: \_\_\_\_\_  
William Rudow Law Group, LLC  
Attorneys for Plaintiff  
The Federal Deposit Insurance Corporation, as  
Receiver for NetBank, F.S.B.

Dated: 5.16, 2012

STEYER, LOWENTHAL, BOODROOKAS,  
ALVAREZ & SMITH LLP

By: \_\_\_\_\_  
Edward Egan Smith  
Attorneys for Defendant  
First American Title Insurance Company

(b)(6)

RECEIVED  
9/13/09

LIMS Page 101  
DIF/Mortgage Fraud

ENTERED

9/14/09

(b)(2)

### SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 25<sup>th</sup> day of August, 2009, by, between, and among the following undersigned parties: the Plaintiff, Federal Deposit Insurance Corporation, in its capacity as receiver for NetBank, FSB (the "FDIC"), and Trevor Powell dba Powell Appraisals (collectively, the "Settling Defendants" or "Appraiser"), and United States Liability Insurance Company (the "Insurance Company") (individually, the FDIC, the Settling Defendants and the Insurance Company may be referred to herein as "Party" and collectively as the "Parties").

(b)(2)

### RECITALS

#### WHEREAS:

Prior to September 27, 2007, NetBank, FSB (the "NetBank") 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 the Settling Defendants;

The FDIC has asserted claims against certain persons, including the Settling Defendants, who appraised 142 East 95<sup>th</sup> Street, Brooklyn NY 11212 (the "Appraisal") for a purchase by Denise Lewis of said property to be funded by NetBank's wholly owned subsidiary Meritage Mortgage Corporation (the "MMC"). The Appraisal was ordered by Premium Capital Funding, LLC dba Topdot Mortgage, a mortgage broker acting as the limited agent for MMC for the express purpose of ordering the Appraisal. The Settling Defendants have denied liability for the FDIC's claims.

The Insurance Company issued a professional liability policy (the "Policy"), which insured the Appraiser according to the terms, provisions and conditions of the Policy. The Settling Defendants have made claims under the Policy. The Insurance Company has reserved its rights to deny coverage under the Policy for claims asserted by FDIC against the Settling Defendants.

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, 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 undersigned parties agree, each with the other, as follows:

#### **SECTION I: Payment to FDIC**

A. As an essential covenant and condition to this Agreement, the Settling Defendants and the Insurance Company, collectively, agree to pay the FDIC the sum of Ninety Thousand Dollars (\$90,000.00) ("the Settlement Funds"), within 30 days of execution of this Settlement Agreement, together with interest thereon commencing on the 31<sup>st</sup> day after execution of this Agreement through the date of payment, at the rate of 6% per annum.

B. 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 30 days from execution of this Settlement Agreement, 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 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 as required by this Agreement, 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 United States District Court for the Eastern District of New York, Brooklyn Main Office, 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 Funds within 30 days of execution of this Agreement. 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: This Section Is Intentionally Left Blank**

**SECTION III: Releases**

A. Release of Individual Settling Defendants by FDIC.

Effective upon payment of the Settlement Funds, plus any accrued interest described in SECTION(S) I above, and except as provided in PARAGRAPH(S) III.H. 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 performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions relating to the Appraisal.

B. Release of FDIC by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.A. 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 Bank or to the performance, nonperformance, or manner of performance of the Settling Defendants' respective functions, duties and actions as officers and/or directors of the Bank or that arise from or relate to the policy, including without limitation, the causes of action regarding the Appraisal.

C. Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph III.B. 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 performance, nonperformance, or manner of performance of their respective functions, duties and actions relating to the Appraisal.

D. Release of The Insurance Company by FDIC.

Effective simultaneously with the releases granted in Paragraphs III.A. and III.B. above, the FDIC, for itself and its successors and assigns, hereby releases and discharges the Insurance Company, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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 Policy as to the Appraisal. The FDIC agrees that any interest it may have under the Policy as to the Appraisal is extinguished.

E. Release of The Insurance Company by Settling Defendants.

Effective simultaneously with the releases granted in Paragraphs III.A. and III.B. above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the Insurance Company, its parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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 Policy as to the Appraisal. The Settling Defendants agree that any interest they may have under the Policy as to the Appraisal is extinguished.

F. Release of FDIC by The Insurance Company.

Effective simultaneously with the release granted in Paragraph III.D. above, the Insurance Company, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges FDIC, and its employees, officers, directors, agents, 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 Policy as it relates to the Appraisal.

G. Release of Settling Defendants by The Insurance Company

Effective simultaneously with the releases granted in Paragraph III.E. above, the Insurance Company, for itself and its successors and assigns, and on behalf of its parents, subsidiaries, affiliates, and reinsurers, and their successors and assigns, hereby releases and discharges each of the Settling Defendants, and their respective heirs, executors, administrators, agents, 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 Policy as it relates to the Appraisal.

H. Express Reservations From Releases By FDIC.

1. 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:

a. 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;

- b. against any person or entity not expressly released in this Agreement; and
- c. which are not expressly released in Paragraphs III.A. or III.D. above.

2. 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.

3. 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 Eastern District of New York 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 prorata 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**

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 that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. 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 this Agreement.

C. 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 undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

D. 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.

E. 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).

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 this 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.

(b)(6)

Date: 8/25, 2009  
FEDERAL DEPOSIT INSURANCE CORPORATION  
  
Robert J. DeHenzel, Jr., Counsel, Legal Division

Date: \_\_\_\_\_, 2009  
Trevor Powell dba Powell Appraisals

United States Liability Insurance Company

Date: \_\_\_\_\_, 2009  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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.

(b)(6)

Date: 8/25, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION

BY [Redacted]

Robert J. DeHezzel, Jr., Counsel, Legal Division

(b)(6)

Date: 8/24, 2009

[Redacted]

Trevor Powell dba Powell Appraisals

(b)(6)

Date: 8/25, 2009

United States Liability Insurance Company

BY [Redacted]

TITLE: Assistant Vice President

PRINT NAME: M. C. Hemskey

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into by and amongst The Federal Deposit Insurance Corporation, as receiver for NetBank, F.S.B., ("FDIC" or "Plaintiff"), Law Title Insurance Agency, Inc. - Minnesota ("LTIA" or "Defendant"), and The Hanover Insurance Company ("Hanover"), who are referred to collectively herein as the "Parties."

**RECITALS**

A. WHEREAS, the FDIC filed a Complaint against LTIA entitled *Federal Deposit Insurance Corporation as Receiver of NetBank, F.S.B. v. Law Title Insurance Agency, Inc. - Minnesota*, in United States District Court, District of Minnesota, Case No. 10-cv-03850-RHK-FLN (the "Action");

B. WHEREAS, LTIA disputes the allegations in the Action and denies any wrongdoing or liability for the facts and claims alleged;

C. WHEREAS, Hanover has been defending LTIA under reservation of rights and denies coverage and seeks to rescind the policy of insurance issued to LTIA; and

D. WHEREAS, the Parties continue to dispute liability and coverage issues, but desire to resolve the FDIC's claims against LTIA on the terms set forth herein, and for purposes of resolving the Action only and for no other purposes, the Parties agree as follows:

**AGREEMENT AND MUTUAL RELEASE**

**NOW, THEREFORE**, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and are integral parts of this agreement.

2. Settlement Payment by Hanover to FDIC. No later than thirty (30) business days following full execution of this Agreement, Hanover shall pay Plaintiff the amount of Thirty Thousand Dollars and No Cents (\$30,000.00). This Settlement Payment shall be made by sending a check to "Rudow Law Group, LLC," Reference: LTIA Settlement. The Parties agree that timely receipt of the Settlement Payment is an essential term of this agreement, and a condition to the effectiveness of this agreement.

3. Dismissal of the Action. Together with the execution of this agreement, counsel for Plaintiff and Defendant shall execute a Stipulation of Dismissal of the Action against LTIA, with prejudice. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for Plaintiff shall file the executed Stipulation of Dismissal with the Court, with each Party to bear its own costs and fees, due to the settlement reached by the Parties and without any adjudication of liability or of any other issues. The Parties all agree that such Stipulation of Dismissal applies to any and all claims made in the Action, or which could have been made therein.

4. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

5. Release by Plaintiff. The FDIC hereby releases and forever discharges LTIA and its current and former shareholders, members, employees, and its agents, sureties, bonding companies, insurers, attorneys, related and affiliated companies, and successors and assigns of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise,

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known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims or causes of action set forth or that could have been set forth in the Action, except as expressly reserved in Paragraph 6, below. Plaintiff's release expressly includes a release of any claim Plaintiff has or may have against Hanover, its officers, directors, employees, parent companies, subsidiaries, affiliates, successors, assigns, agents, representatives, attorneys, reinsurers and sureties, for insurance for any matters relating to or arising out of the Action.

6. Express Reservations from Release by Plaintiff. Notwithstanding any other provision contained herein, by this agreement, Plaintiff does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed (a) any claims or causes of action that do not arise from or relate to the facts, occurrences and transactions alleged in the Action and (b) any claims brought on behalf of another failed institution or another governmental entity that do not arise from or relate to the facts, occurrences and transactions alleged in the Action. This agreement does not waive or release any claim Plaintiff may have relating to or arising from any loan other than the loan at issue in the Action. In addition, this agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office, or any other federal department or agency, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*

7. Release by Defendant. Defendant hereby releases and forever discharges Plaintiff and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and

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from any and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims set forth in the Action.

8. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. Plaintiff and Defendant have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.
- b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no Party to this Agreement has relied upon any statement, representation or promise of any other Party not expressly contained herein.
- c. This Agreement is fully integrated and contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto relating to the matters and releases referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.
- d. Plaintiff and Defendant have made such investigation of the facts pertaining to the releases contained herein as they deem necessary.
- e. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party has cooperated in the drafting and preparation of

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this Agreement. Hence, in any construction to be made of this Agreement, the role of the Party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that Party, and that canon of contractual interpretation shall not be applied.

f. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.

g. The Parties have not assigned or transferred any of their claims being released herein.

9. Consideration. The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.

10. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

11. Agreement Binding on Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers, directors, joint venturers, partners, employees, agents, servants, heirs, administrators, executors, successors, representatives and assigns.

12. Applicable Law. This Agreement has been negotiated and exchanged in the State of Minnesota. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of Minnesota without regard to its principles of conflicts of law. In addition, in the event of any disputes arising between the Parties out of this Agreement, the Parties agree that

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the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the District of Minnesota.

13. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in .pdf format shall have the same force and effect as original signatures.

15. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa.

16. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

17. Warranty of Authority. Each Party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed and

that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by the Agreement.

18. Attorneys' Fees and Costs. Plaintiff and Defendant each agree to pay their own costs, attorneys' fees and expenses incurred in connection with the Action.

19. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this Agreement.

20. Notices. Any notice required under this Agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

Person To Receive Notice	Notification Information
Hanover:	Manuel A. Suarez 95 Glastonbury Boulevard Fourth Floor – Suite 400 Glastonbury, CT 06033 Telephone: [REDACTED] (b)(4),(b)(6) Facsimile: [REDACTED] Email: [REDACTED] (b)(4),(b)(6)
With a copy to:	Wen-Shin Cheng Tressler LLP 223 South Wacker Drive, 22 <sup>nd</sup> Floor Chicago, IL 60606 Telephone: [REDACTED] (b)(4),(b)(6) Facsimile: [REDACTED] Email: [REDACTED] (b)(4),(b)(6)

Person To Receive Notice	Notification Information
Plaintiff:	William Rudow Rudow Law Group, LLC 5603 Newbury Street Baltimore, MD 21209 Telephone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]
Defendant:	John Ginocchio Law Title Insurance Agency, Inc. 2900 Ogden Avenue Lisle, IL 60532

(b)(4),(b)(6)

(b)(4),(b)(6)

The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph, that writing shall be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

21. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

22. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this Agreement.

23. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

24. Compliance Dates. In the event that any date specified in this Agreement shall be on a Saturday, Sunday, or a nationally-declared holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this Agreement.

25. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

26. Jury Trial Waiver. The Parties hereby waive any and all rights that they may otherwise have to a trial by jury in any action, proceeding, claim, counterclaim or third party complaint, whether in contract or tort, at law or in equity, arising out of or in any way related to this Agreement.

27. FDIC Financial Disclosure Contingency. LTIA must provide the FDIC with a fully completed financial disclosure by providing a current financial statement completed within the last twelve months, or in the alternative, on the form as identified in Schedule A , a copy of which is attached hereto, ("Financial Disclosure"). LTIA hereby represents and warrants that it has disclosed all assets having a material value, i.e., a value over \$1,000, and that there have been no material changes in assets and liabilities since the date of the Financial Disclosure.

28. No Admission of Liability. The Parties desire to resolve the Action by entering into this agreement, but LTIA does so without any admission of liability and specifically denies that it engaged in any wrongdoing or is otherwise liable for any of the claims made in the Action and facts alleged in the Action, which are all disputed.

29. No Admission of Insurance Coverage. Nothing contained in this Agreement or any other act or undertaking by Hanover is to be construed as an admission of insurance coverage under any policy of insurance issued by Hanover to LTIA and/or that potentially provides coverage to LTIA. Hanover denies that it has any duty to defend and/or to indemnify LTIA for the Action and has filed an action seeking to rescind Miscellaneous Professional Liability Policy Number  which was issued to Law Title Insurance Agency, Inc., which is captioned *The Hanover Ins. Co. v. Law Title Ins. Agency, Inc., et al.*, No. 1:11-cv-05338, pending in the United States District Court for the Northern District of Illinois ("Rescission Action"). Nothing contained in this Agreement shall act as an estoppel against or constitute a waiver by Hanover of any and all claims Hanover has against LTIA and/or its parent or affiliated companies and entities for rescission of the insurance policy and/or declaratory judgment relief under the insurance policy. Further, FDIC agrees not to oppose or otherwise object to the facts and claims alleged in the Rescission Action and agrees to be bound by any judgment entered in the Rescission Action.

30. Entire Agreement. This Agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning the subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This

(b)(4)

agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

(b)(6)

Dated: Nov 23, 2011

By:

[Redacted Signature]

Robert DeFrenzel (b)(6)  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for NetBank,  
F.S.B.

Dated: \_\_\_\_\_, 2011

By:

PLEASE INSERT  
Authorized on behalf of LTIA

(b)(6)

Date: 12/2, 2011

By:

[Redacted Signature]

Anthony M. Carolei  
Authorized on behalf of The Hanover Insurance  
Group

agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

(b)(6)

Dated: Nov 23, 2011

[Redacted]

Robert DeFenze (b)(6)  
Authorized on behalf of The Federal Deposit  
Insurance Corporation, as receiver for NetBank,  
F.S.B. (b)(6)

(b)(6)

Dated: JAN 11, 2012

By:

(b)(6)

PLEASE INSERT JOHN F. GiNOCCHI

Authorized on behalf of LTIA

Date: \_\_\_\_\_, 2011

By:

Anthony M. Carolei  
Authorized on behalf of The Hanover Insurance  
Group

**APPROVED AS TO FORM:**

Rudow Law Group, LLC

Dated: 11/29, 2011

By: \_\_\_\_\_

[Redacted Signature]

(b)(6)

Attorney for Plaintiff the Federal Deposit Insurance Corporation, as Receiver for NetBank, F.S.B.

527123v2

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for NetBank, F.S.B. ("FDIC" or "Plaintiff"), on the one hand and Optimum Title, LLC ("Optimum" or "Defendant") on the other hand. The FDIC and Optimum are referred to collectively as the "Parties."

**RECITALS**

A. WHEREAS, the FDIC filed a lawsuit against Optimum entitled *Federal Deposit Insurance Corporation as Receiver of NetBank, F.S.B. v. Optimum Title, LLC*, in United States District Court, Middle District of Florida, Tampa Division, Case No.: 8:10-cv-01486-SDM-MAP (the "Action").

B. WHEREAS, Optimum denies liability in the Action and for the damages alleged;

C. WHEREAS, the Parties desire to resolve the FDIC's claims against Optimum, and agree as follows:

**AGREEMENT AND MUTUAL RELEASE**

NOW, THEREFORE, in consideration of the undertakings contained in this agreement, and other good, valuable and sufficient consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Preamble, Recitals and Exhibits. The foregoing preamble and recitals are true and correct and are integral parts of this agreement.

2. Settlement Payment by Optimum to FDIC. No later than thirty (30) business days following full execution of this Agreement, Defendant Optimum shall pay Plaintiff the amount of Fifty Thousand Dollars and No Cents (\$50,000.00). This settlement payment shall be made by sending a check payable to the "FDIC as receiver for NetBank, FSB" Reference: Optimum

Settlement, to be delivered to Robert J. DeHenzel, Jr., Counsel, Federal Deposit Insurance Corporation 3501 Fairfax Drive, VS-B-7002, Arlington, Virginia 22226. The payee's Federal tax ID number is  The Parties agree that timely payment of the settlement amount is an essential term of this agreement, and a condition to the effectiveness of this agreement.

(b)(2),(b)(4)

3. Dismissal of the Action. Together with the execution of this agreement, counsel for Plaintiff and Defendant shall execute a Stipulation of Dismissal of the Action against Optimum, with prejudice. Upon the receipt and clearing of the Settlement Payment, so that good and clear funds in the amount agreed to herein are actually received by Plaintiff, counsel for Plaintiff shall file the executed Stipulation of Dismissal with the Court.

4. Court to Retain Jurisdiction. The Parties agree that the Court shall have continuing jurisdiction to enforce the provisions of this Agreement to the fullest extent permitted by law.

5. Release by Plaintiff. The FDIC hereby releases and forever discharges Optimum and its current and former employees, agents, sureties, bonding companies, insurers, attorneys, companies, successors, assigns and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims or causes of action set forth in the Action, except as expressly reserved in Paragraph 6, below.

6. Express Reservations from Release by Plaintiff. Notwithstanding any other provision contained herein, by this agreement, Plaintiff does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed (a) any claims or causes of action that do not arise from or relate to the facts, occurrences and transactions alleged in the

Action, (b) any claims brought on behalf of another failed institution or another governmental entity, and that do not arise from or relate to the facts, occurrences and transactions alleged in the Action, or (c) any claims relating to the facts, occurrences and transactions alleged in the Action against any other person or entity not released in Paragraph 5, above. This agreement does not waive or release any claim Plaintiff may have relating to or arising from any loan other than the loan at issue in the Action. In addition, this agreement does not purport to waive, nor is it intended to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office, or any other federal department or agency, including any rights, if appropriate, to court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*

7. Release by Defendant. Defendant hereby releases and forever discharges Plaintiff and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, and assigns, and affiliates, of and from any and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorneys' fees and costs, past, present and future, arising out of the claims set forth in the Action.

8. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

- a. FDIC owns and holds, and is the sole and exclusive owner and holder, of the claims which were or could have been asserted in the Action.
- b. FDIC and Optimum have the legal authority and capacity to enter into this Agreement and the persons signing this Agreement for FDIC and Optimum have

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authority to execute it. Each Party or attorney whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed and that he or she is acting in the scope of such agency and authority. Each Party specifically represents and warrants that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by the Agreement.

- c. Plaintiff and Defendant have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.
- d. In connection with the execution of this Agreement and the making of the settlement provided for herein, no Party to this Agreement has relied upon any statement, representation or promise of any other Party not expressly contained herein.
- e. This Agreement is fully integrated and contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto relating to the matters and releases referred to in this Agreement other than as set forth in this Agreement, and this Agreement supersedes and replaces any and all prior negotiations and agreements between the Parties hereto, whether written or oral.
- f. Plaintiff and Defendant have made such investigation of the facts pertaining to the releases contained herein as they deem necessary.

- g. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the role of the Party in drafting and preparation of the Agreement shall not be referred to in order to construe the Agreement against that Party, and that canon of contractual interpretation shall not be applied.
- h. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.
- i. The Parties have not assigned or transferred any of their claims being released herein.

9. Consideration. The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.

10. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

11. Agreement Binding on Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective officers, directors, joint venturers, partners, members, employees, agents, servants, heirs, administrators, executors, assignors, predecessors in interest, successors, representatives and assigns.

12. Applicable Law. This Agreement has been negotiated and exchanged in the State of Florida. As such, this Agreement and all matters relating thereto shall be governed by the laws of the State of Florida without regard to its principles of conflicts of law. In addition, in the

event of any disputes arising between the Parties out of this Agreement, the Parties agree that the exclusive venue in which all disputes shall be resolved shall be by way of an action filed in the United States District Court for the Middle District of Florida.

13. Execution and Delivery Required – Effective Date. This instrument shall not be considered to be the Agreement (defined above) or an enforceable contract, nor shall it create any obligation whatsoever on the part of any or all of the Parties, nor shall it or any of its terms constitute an undertaking by any of the Parties unless and until the date on which counterparts of it have been signed by and exchanged amongst all Parties (via facsimile, e-mail or otherwise) (the “Effective Date”). Until the Effective Date, any Party who may already have signed and exchanged one or more counterparts of this agreement with other Parties shall have the right to revoke such signature. On the Effective Date, this instrument shall become the Agreement and shall become a binding and enforceable contract.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. Signatures on this Agreement, or any counterpart of this Agreement, transmitted by facsimile machine or electronic mail in .pdf format shall have the same force and effect as original signatures.

15. Construction. Each of the masculine, feminine and neuter genders shall include the others. The singular shall include the plural and vice-versa.

16. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect

17. Attorneys’ Fees and Costs. Plaintiff and Defendant each agree to pay their own costs, attorneys’ fees and expenses incurred in connection with the Action; the foregoing

notwithstanding, however, each party shall timely pay its obligations as due in the Action, including without limitation

18. Optimum paying all outstanding Plaintiff's expert fees incurred during Optimum's deposition of Plaintiff's two (2) experts, which is identified as follows: \$998.07 to The Lynn Group, Inc. and \$730.00 to Baxter, Baker, Sidle, Conn & Jones, PA.

a) FDIC's pro rata share of the cost of duplicating trial exhibits, which is \$1,201.96.

19. Captions and Headings. The captions, paragraph numbers and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this agreement, nor in any way affect this Agreement.

20. Notices. Any notice required under this Agreement shall be in writing and shall be sent via both e-mail and either by (i) hand delivery or certified or registered mail, postage prepaid, with return receipt requested, or (ii) fax, with a conformed copy by US Mail, postage prepaid, and with such writing to be addressed to the Parties as follows:

Person To Receive Notice	Notification Information
Defendant:	Mr. Leland Wallace Optimum Title 5260 State Road 64 Bradenton, Florida
With a copy to:	Andrew Showen Attorney for Optimum 1900 Summit Tower Blvd., Suite 500 Orlando, Florida 32810 <input type="text"/> fax

(b)(4),(b)(6)

Person To Receive Notice	Notification Information
Plaintiff:          With a copy to:	Robert J. DeHenzel, Jr. Counsel Federal Deposit Insurance Corporation 3501 Fairfax Drive, VS-B-7002 Arlington, Virginia 22226 (703) 562-2361  William Rudow Rudow Law Group, LLC 5603 Newbury Street Baltimore MD 21209 Telephone [REDACTED] Facsimile [REDACTED] Email: [REDACTED]

(b)(4),(b)(6)

(b)(4),(b)(6)

The above addresses may be changed by any Party as to such Party by providing the other Parties notice of any address change in the same manner as is provided above, and which change shall be effective as to any Party upon receipt of written notice from the other Party. In the event that written notice, demand, or request is made as provided in this paragraph, that writing shall be deemed to have been received by the Party to whom it was addressed on the earliest of (i) the date that the notice was hand delivered, (ii) the date the notice was sent via facsimile (so long as a facsimile transmittal confirmation sheet is contemporaneously generated by the facsimile machine from which the transmission occurred), or (iii) three days after properly addressed notice was deposited with the U.S. Postal Service, applicable postage prepaid.

21. Remedies. All Parties shall be entitled to all remedies available at law or in equity for any violation of this Agreement, including, but not limited to the remedy of specific performance.

22. Further Assurances. The Parties shall execute such other documents as may be reasonably necessary to carry out the terms and conditions of this Agreement.

23. Survival. All warranties, representations, covenants, and agreements set forth herein shall survive the Effective Date.

24. Compliance Dates. In the event that any date specified in this Agreement shall be on a Saturday, Sunday, or a holiday, then the date so specified shall be deemed to be the next business day following such date, and compliance by such business day hereunder shall not be deemed a default by either of the Parties under this Agreement.

25. Waiver. The waiver by one Party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such Party of any other covenant or condition or of any later instance of the previously waived covenant or condition. The waiver by any Parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or an identical act required to be performed at a later time.

26. Entire Agreement. This Agreement contains the complete agreement of the Parties concerning the subjects of this agreement and supersedes all prior drafts of this Agreement and all other prior agreements, promises, acknowledgements, representations and warranties, if any, that may have been made between or among the Parties concerning that subject of this agreement, whether in connection with the negotiation of this agreement or otherwise. This agreement has been the product of negotiation. The Parties have had the opportunity to obtain independent advice from counsel. Prior draft documents were prepared, exchanged and discussed by some or all of the Parties before finally reaching and entering into this agreement. In any number of instances, words used in prior drafts may have been changed or removed from the language ultimately agreed to in this Agreement. In the event of a dispute over the meaning of any of the provisions or requirements of this Agreement, the fact that other words may have

been used or deleted from earlier draft documents or provisions in such draft documents that were modified before being included herein, shall not be used to aid in the construction of the meaning and legal effect of this Agreement. This Agreement may not be modified or changed except by a written instrument executed by all of the Parties and no rights under it may be waived except by a writing signed by the waiving Party. No promises, representations, warranties, agreements or other understandings exist between the parties with respect to the subject matter of this agreement, and this agreement supersedes and discharges any and all prior promises, acknowledgements, representations, warranties, agreements or other understandings that existed or may have existed between the Parties.

(b)(6)

Dated: November 17, 2011

[Redacted]

Robert J. DeHenzel, Jr.  
Authorized on behalf of The Federal Deposit Insurance Corporation, as receiver for NetBank, F.S.B.

(b)(6)

Dated: Dec 9, 2011

By

[Redacted]

PLEASE INSERT  
Authorized on behalf of Optimum

(b)(6)

APPROVED AS TO FORM:

(b)(6)

Rudow Law Group, LLC

Dated: Dec 15, 2011

[Redacted]

(b)(6)

James Webb, Esquire (b)(6)

James J. Webb  
JWebb@Mitrani.com  
2200 SunTrust International Center  
One SE Third Ave.  
Suite 2200  
Miami, Florida 33131

Tel: [Redacted]  
Fax: [Redacted]

(b)(4),(b)(6)

for Plaintiff the Federal Deposit Insurance Corporation, as Receiver for NetBank, F.S.B.

**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 PLAINFIELD AGREEMENT 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 Laliotis

Mario Laliotis shall tender to the FDIC one (1) lump sum payment of \$100,000 on the date the Agreement is executed. Mario Laliotis 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 Laliotis 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 Laliotis will consent to a judgment for the unpaid balance due ("Consent Judgment Option").

The choice of option is Mario Laliotis's. Mario Laliotis must exercise this option by January 31, 2009. If Mario Laliotis fails to exercise his option choice then by default the Consent Judgment option shall be irrefutably deemed to be chosen by Mario Laliotis. The option must be effectuated by February 28, 2009. If Mario Laliotis chooses the Consent Judgment Option, the following applies: if Mario Laliotis 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.