

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 7th day of April 2016 by, between, and among the following undersigned Parties:

The Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank ("FDIC-R"), and First American Title Insurance Company ("First American") (individually, the FDIC-R and First American may be referred to herein as "Party" and collectively as the "Parties").

RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank ("WaMu") was a depository institution organized and existing under the laws of the State of Washington;

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

Among the assets to which the FDIC-R claims to have succeeded were any and all claims, demands, and causes of action related to or arising under Closing Protection Letters ("CPL") issued by First American;

On October 3, 2012, the FDIC-R filed a Complaint against First American seeking recovery under six CPLs issued by First American. These claims are now pending in the United States District Court for the Middle District of Florida, in *FDIC as Receiver for Washington*

Mutual Bank v. First American Title Insurance Company, Case No. 12-cv-02245-MSS-MAP (M.D. Fla.) (“Action”). First American has denied liability in the Action; and

The undersigned 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 undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, First American agrees to pay the FDIC-R the sum of three million seven hundred twenty-five thousand dollars and no cents (\$3,725,000.00) (“the Settlement Payment”).

B. Within ten (10) business days after the execution and delivery to each Party of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement (the “Payment Date”), the Settlement Payment shall be delivered to FDIC-R by direct wire transfer to the following account:

Federal Home Loan Bank of New York
New York Main Office
101 Park Avenue
New York, NY 10178-0599
212-681-6000
212-441-6890 (Fax number)

(b)(4) ROUTING #:

FOR CREDIT TO: FDIC National Liquidation Account

(b)(4) ACCOUNT #:

OBI: FIN 10015; Washington Mutual Bank; Henderson, Nevada; Contact:

Aaron M. Forester; 703-516-5056; Professional Liability lawsuit (); DIF (b)(5)
Fund.

C. If the FDIC-R does not receive the Settlement Payment in full, then FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full to:

1. Extend the period of time for the Settlement Payment; or
2. Enforce this Agreement, in which event First American agrees to jurisdiction in the United States District Court for the Middle District of Florida, Tampa Division and agrees to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement and move to vacate any dismissal of the Action to which First American agrees to consent, and reinstitute or resume any action on the FDIC-R's claims in the Action. First American further agrees not to assert any objections, defenses, claims, or counterclaims, including any defense based on any statute of limitations that would bar any of the FDIC-R's claims, that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or
4. Seek any other relief available to it in law or equity.

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

SECTION II: Stipulation of Dismissal

Within five (5) business days after receipt of the Settlement Payment, the FDIC-R shall file a stipulation of dismissal with prejudice with each party to bear its own fees and costs as these were originally incurred, executed by the attorneys for all of the Parties.

SECTION III: Releases

A. Release of First American by the FDIC-R

Effective upon receipt in full of the Settlement Payment plus any accrued interest, and except as provided in Paragraph III.C., the FDIC-R, for itself and its employees, officers, directors, attorneys, representatives, successors and assigns, hereby releases and discharges First American and its parent corporations, subsidiaries, affiliates, administrators, insurers, and all of their current and former shareholders, officers, directors, employees, agents, attorneys, 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-R, that arise from or relate to the Action.

B. Release of the FDIC-R by First American

Effective simultaneously with the release granted in Paragraph III.A. above, First American, on behalf of itself individually, and its parent corporations, subsidiaries, affiliates, administrators, insurers, and all of their current and former shareholders, officers, directors, employees, agents, attorneys, representatives, successors and assigns, hereby releases and discharges the FDIC-R, and its employees, officers, directors, attorneys, 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 Action.

C. Express Reservations From Releases By the FDIC-R

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:

- a. which are not expressly released in Paragraph III.A., above:

b. against First American or any other person or entity for liability, if any, incurred as the maker, endorser, or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, WaMu, other financial institutions, or any other person or entity, including without limitation any such claims acquired by the FDIC-R as successor in interest to WaMu or any person or entity other than WaMu; and

c. against any person or entity not expressly released in this Agreement; and

d. assigned to JPMorgan Chase Bank, National Association in the Purchase and Assumption Agreement dated as of September 25, 2008, provided, however, that for purposes of this Agreement, the FDIC-R expressly warrants that the claims in the Action which are the subject of this Agreement have not been so assigned.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency or the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution

pursuant to the relevant provisions of the Victim and Witness Protection Act and/or the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663, *et seq.*, if appropriate.

SECTION IV: Representations and Acknowledgements

A. 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 its counsel.

B. Authorized Signatories and Binding Effect All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

SECTION V: Other Matters

A. No Admission of Liability The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims or defenses, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim or defense.

B. 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 each Party or by their respective authorized attorney(s) or other representative(s).

C. Execution in Counterparts and Electronic Transmission 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. Delivery of any executed counterpart of a signature page of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

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 Florida.

E. Reasonable Cooperation The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

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

If to the FDIC-R:

Aaron M. Forester
Counsel - Professional Liability Unit
FDIC - Legal Division
3501 Fairfax Drive, VS-B-7066
Arlington, VA 22226

(b)(6) _____

and

Antony S. Burt
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606

(b)(6) _____

If to First American:

Jeffrey A. Weber
National Director of Claims,
SVP, and Associate General Counsel
First American Title Insurance Company
1 First American Way
Building 1 – Third Floor
Santa Ana, CA 92707

(b)(6) _____ [Redacted]

and

Jeffrey T. Heintz
Brouse McDowell, LPA
388 S. Main Street Suite 500
Akron, OH 44311

(b)(6) _____ [Redacted]

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

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR WASHINGTON MUTUAL BANK

(b)(6) _____
By: [Redacted]

TITLE: Counsel FDIC-R

DATE: 4/15/19 PRINT NAME: Anna Forester

(b)(6)

FIRST AMERICAN TITLE INSURANCE COMPANY

By:

TITLE: SENIOR VICE PRESIDENT

DATE: 4/14/16

PRINT NAME: JEFFREY A. WEBER, SVP

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