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9/14/09

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SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 25th 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 95th 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 31st 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