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**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release of all Claims ("Agreement") is made and entered into this 17 day of March 2010 (the "Effective Date"), by and between the Federal Deposit Insurance Corporation, as Receiver for First National Bank of Nevada ("FDIC-R") and Heath Appraisal Service, Inc. ("Heath Appraisal"), and James Heath ("Heath") ("the Released Parties") (FDIC-R and the Released Parties collectively, the "Parties").

**RECITALS**

**WHEREAS**, on or about February 24, 2006 an appraisal report was prepared by Heath Appraisal for First National Bank of Arizona ("FNBA") on a residential property more specifically known as 1049 Lawton Street, S.W., Atlanta, Fulton County, Georgia 30310 (the "Appraisal");

**WHEREAS**, FNBA contended that the Appraisal was negligently performed and instituted against Heath Appraisal a lawsuit currently styled as *FDIC-R v. Rosemarie Campbell, Heath Appraisal Service, Inc., and Priority Appraisal Services, Inc.* in the United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 08-cv-01777-TWT (the "Lawsuit");

**WHEREAS**, subsequent to the filing of the Lawsuit, FNBA merged into First National Bank of Nevada. The Federal Deposit Insurance Corporation was appointed as receiver for First National Bank of Nevada ("FNBN"), and substituted itself as a party plaintiff in the Lawsuit as successor-in-interest to FNBA;

**WHEREAS**, FDIC-R and the Released Parties desire to settle fully and finally all issues related to all claims that were brought or could have been brought by and between the Parties in the Lawsuit, arising out of the Appraisal or related to any acts or omissions of James Heath or Heath Appraisal.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, and to avoid additional and/or unnecessary litigation before any other state or federal court or tribunal, it is hereby agreed by and between the Parties as follows:

1. **Recitals.** The preamble and recitals are hereby incorporated into this Agreement.
2. **Payments.** Upon execution of this Agreement, the Released Parties will pay to FDIC-R the following:
  - (a) A check in the amount of \$15,000.00 (fifteen thousand dollars and zero cents), representing settlement proceeds from the Lawsuit, made payable to First National Bank of Nevada, c/o FDIC as Receiver;

(b) The payment under Paragraph 2(a) of this Agreement will be sent to FDIC-R's counsel, Tamera M. Woodard, Schiff Hardin LLP, 1201 W. Peachtree Street, N.E., Suite 2300, Atlanta, Georgia 30309;

(c) The Released Parties will make the payment under Paragraph 2(a) within ten (10) business days of the date upon which the Released Parties receive a signed copy of this Agreement.

3. **Dismissal Of All Actions.** Within ten (10) days of receipt of the payment identified in 2(a), FDIC-R will immediately take all action to obtain dismissal of all legal actions and proceedings against Heath Appraisal with prejudice. The Parties represent and warrant that they have filed no claims and know of no claims filed in court or in any other forum between these parties pertaining to the subject matter of this Agreement, and, if any such claims do exist, the parties agree to immediately withdraw and dismiss them with prejudice.

4. **Resolution Of All Claims.**

4.1. **Resolution.** The Parties knowingly and voluntarily release and forever discharge each other, to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, that either Party may have against the other as of the date of execution of this Settle Agreement and Release of All Claims and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses and compensation whatsoever which either Party may have had, may now have, may claim to have, or may hereafter have or claim to have in any way arising out of or related to any act or omission of the Parties, their agents, or any act or omission of Heath or Heath Appraisal, or any other allegations raised or which could have been raised in the Lawsuit.

4.2. **Exceptions.** Notwithstanding any other provision, by 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) against Heath or Heath Appraisal or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, other financial institutions, or any other person or entity, and

(b) against any person or entity not expressly released in this Agreement.

5. **Releases.** As of the date of this Agreement:

5.1. **Release by FDIC-R.** The FDIC-R releases the Released Parties, their respective agents, employees, attorneys, successors and assigns from all possible claims, rights, interests, actions, causes of action, damages, demands, costs, expenses, and liabilities whatsoever, known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed, contingent, or conditional, at law or in equity, which FDIC-R may now or hereafter have against any or each of the Released Parties relating to, asserted in, arising out of, or otherwise associated with the Lawsuit, including but not limited to any and all claims the FDIC-R has or may have

against any of the Released Parties in any capacity arising out of or in any manner related to the performance of the Appraisal; or any other claim asserted in the Lawsuit or which could have been asserted in the Lawsuit.

5.2 **Release by Released Parties.** Released Parties release FDIC-R, First National Bank of Arizona, First National Bank of Nevada, and the Federal Deposit Insurance Corporation, and their respective agents, employees, attorneys, successors and assigns (collectively, the "FDIC Parties") from all possible claims, rights, interests, actions, causes of action, damages, demands, costs, expenses, and liabilities whatsoever, known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed, contingent, or conditional, at law or in equity, which the Released Parties may now or hereafter have against any or each of the FDIC Parties relating to, asserted in, arising out of or otherwise associated with the Lawsuit; or any other claim asserted in the Lawsuit or which could have been asserted in the Lawsuit.

6. **Exclusions.** Excluded from this Agreement are any claims that cannot be waived under law.

7. **No Admission Of Liability.** It is understood and agreed that this Release is not and will not be construed to be an admission of liability on the part of any of the Parties. Specifically, it is understood that the Released Parties have contested certain allegations made in the Lawsuit and deny liability; and that by and through the settlement of the Lawsuit, the Parties are not admitting liability, but rather that settlement has been made to avoid the uncertainties and costs of litigation.

8. **Covenant Not To Sue.** The Parties promise never to sue each other in any forum for any reason covered by this Agreement, including but not limited to claims, laws or theories covered by the complete release contained in paragraph 5 of this Agreement.

9. **Acknowledgments.** The Parties acknowledge and agree as follows:

- (a) Neither has assigned or otherwise transferred to any party any claim that is being released pursuant to this Agreement;
- (b) Neither has filed any complaint, charge or demand against the other involving any events up to and including the date of this Agreement, with the exception of those actions stated above;
- (c) Each Party will be responsible for its own legal fees, costs and expenses; and
- (d) The Parties further agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Release.

10. **Entire Agreement.** This Agreement embodies the final and complete understanding of the parties hereto relating to the subject matter hereof. The Parties hereto acknowledge and agree that language proposed for, deleted from, or otherwise changed in the various drafts of this Agreement but not included herein, will not be considered in any way in the interpretation and application of this Agreement and will not in any way affect the rights and obligations of the parties hereto. This Agreement supersedes and replaces all prior and all contemporaneous negotiations, representations, promises and agreements between the Parties, whether written or oral.

11. **Amendments.** Except as otherwise expressly provided in this Agreement, no amendment, modification, or discharge of this Agreement will be valid or binding unless set forth in a writing duly executed by all of the parties hereto, which writing must reference this Agreement. Any waiver by any party or consent by any party to any variation from any provision of this Agreement will be valid only if in writing and only in the specific instance in which it is given, and such waiver or consent will not be construed as a waiver of any other provision or as a consent with respect to any similar instance or circumstance.

12. **Construction of Agreement.** The Parties agree that this Agreement has been negotiated by the parties through their respective counsel, and thus the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement

13. **Governing Law.** This Agreement, the rights and obligations of the Parties, and any claims or disputes relating thereto will be governed by and construed in accordance with the laws of the State of Georgia, notwithstanding the choice of law rules thereof.

14. **Severability.** If any provision of this Agreement be declared illegal or unenforceable by any Court of competent jurisdiction, and cannot be modified to be enforceable, excluding the General Release language, such provision will immediately become null and void, leaving the remainder of this Agreement in full force and effect.

15. **Counterparts.** This Agreement may be executed in two or more counterparts, none of which need contain the signatures of all parties hereto and each of which will be deemed an original. The headings provided herein are solely for the convenience of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth on the cover page of this Agreement.

**HEATH APPRAISAL SERVICE, INC.:**

By: Heath Appraisal Services, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JAMES HEATH:**

\_\_\_\_\_  
**FDIC-R:**

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for First National  
Bank of Nevada

By:  \_\_\_\_\_  
Name: Carl J. Spang  
Title: Resolution & Closing Manager

(b)(6)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth on the cover page of this Agreement.

**HEATH APPRAISAL SERVICE, INC.:**

By: Heath Appraisal Services, Inc.

By: James Heath

Name:  (b)(6)

Title: Owner/Appraiser

**JAMES HEATH:**

(b)(6)

**FDIC-R:**

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for First National  
Bank of Nevada

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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