

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by and between the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Nova Bank (“FDIC-R”) and First American Title Insurance Company (“Settling Defendant”) (individually, the FDIC-R and the Settling Defendant may be referred to herein as “Party” and collectively as the “Parties”). This Agreement shall be effective as of the date last executed by any Party (“Effective Date”).

RECITALS

WHEREAS:

Prior to October 26, 2012, Nova Bank (“Bank”) was a depository institution organized and existing under the laws of the Commonwealth of Pennsylvania.

The Bank made a \$1.65 million loan to R&S Real Estate, LLC (“R&S Loan Transaction”). The Bank subsequently submitted a title claim (“Title Claim”) under an alleged title policy (“Policy”) arising out of the R&S Loan Transaction. The FDIC-R has asserted that it has a claim under a closing services letter (“Closing Services Letter”) in connection with the R&S Loan Transaction.

On September 6, 2012, the Bank and its holding company, Nova Financial Holdings, Inc. (“Nova Holdings”), filed a complaint for money damages against the Settling Defendant in connection with the R&S Loan Transaction. Those claims for damages are now pending in the United States District Court for the Eastern District of Pennsylvania in *Federal Deposit Insurance Company as Receiver for Nova Bank v. First American Title Insurance Company*, 2:12-cv-05087-NIQA (“Action”).

On October 26, 2012, the Pennsylvania Department of Banking and Securities closed the Bank and, pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed as Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were all of the claims, demands, and causes of action of the Bank, including, without limitation, the claims in the Action, and claims relating to the Policy and the Closing Services Letter.

PBB Property Holdings, LLC (“PBB”) was a subsidiary of the Bank. After the failure of the Bank, PBB was dissolved. Any claims of PBB against the Settling Defendant became the property of the FDIC-R.

On April 10, 2023, the United States District Court for the Eastern District of Pennsylvania dismissed any and all claims of Nova Holdings against the Settling Defendant, with prejudice, for failure to prosecute.

The Settling Defendant has denied liability in the Action, and denied liability under the Closing Services Letter.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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, on or before thirty (30) calendar days following the Effective Date, the Settling Defendant shall pay the FDIC-R the sum of \$885,000.00 (“Settlement Payment”). The Settlement Payment shall constitute a debt due and owing to the FDIC-R, an agency of the United States, on the Effective Date. The debt shall be discharged by payment in full to the FDIC-R.

B. The Settling Defendant shall deliver the Settlement Payment to the FDIC-R by overnight mail pursuant to written instructions, including a tax identification number to be provided by the FDIC-R contemporaneous with signing the Agreement.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection A above, then the Settling Defendant shall be in default of its

payment obligations (“Default”) and interest shall accrue at the rate of five percent (5%) per annum or the rate calculated in accordance with 26 U.S.C. § 6621(a)(2), whichever rate is higher (“Default Interest Rate”) on the unpaid total (*i.e.* unpaid amount of Settlement Payment together with all accrued interest) until paid in full, and the FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above. Any decision by the FDIC-R to extend the terms of this Agreement or to accept a portion of the Settlement Payment shall not prejudice its rights to pursue relief under subsections 2 through 4 below at any time prior to receipt of the full Settlement Payment (including all accrued interest); provided, however, that in the event the FDIC-R terminates this Agreement by declaring it null and void, the FDIC-R will return to Settling Defendant any and all amounts paid to the FDIC-R under this Agreement; or

2. Enforce this Agreement, including without limitation, by FDIC-R’s motion to summarily enforce the agreed upon settlement by the Court entering judgment against the Settling Defendant for breach of the Agreement in the amount of the unpaid total (*i.e.* unpaid amount of Settlement Payment together with all accrued interest) together with the costs of collection and all of the FDIC-R’s reasonable attorney’s fees and costs incurred in enforcing the terms of this Agreement. In such event, the Settling Defendant waives and covenants not to plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever except the defense of payment of the Settlement Payment, in part or in full, to an action or motion to enforce this Agreement and agrees to exclusive jurisdiction and venue in the United States District Court for the Eastern District of Pennsylvania; or

3. Terminate the Agreement by declaring it null and void, move to vacate any dismissal order, to which the Settling Defendant agrees to consent, and re-institute an action on the FDIC-R’s claims. The Settling Defendant further agrees to waive and covenants to not plead, argue, or otherwise assert any defense, claim or counterclaim of any kind whatsoever that

did not exist or were otherwise unavailable as of the Effective Date, except the defense of payment of the Settlement Payment, in part or in full; 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 the Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten (10) business days after (i) full execution of this Agreement by all of the Parties, and (ii) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by the attorneys for all Parties hereto, in the form attached hereto as Exhibit A, in the Action.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendant and its respective heirs, executors, trustees, 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-R, that arise from or relate to, the R&S Loan Transaction, Title Claim, Policy, and/or Closing Services Letter, including, without limitation, the causes of action alleged in the Action. For the avoidance of doubt, and without limiting the generality of the foregoing in any way, it is understood and agreed that the releases set forth in this paragraph release and discharge any and all of the claims released in this paragraph that at any time were owned or controlled by or could have been asserted by PBB, formerly a subsidiary of the Bank, to the fullest extent the FDIC-R has legal ability and authority to release such claims in its capacity as Receiver for the Bank.

B. The Settling Defendant's Release.

Effective simultaneously with the release granted in Section III.A. above, the Settling Defendant, on behalf of itself and its successors, and assigns, hereby releases and discharges the FDIC-R, and its 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 R&S Loan Transaction, Title Claim, Policy, and/or Closing Services Letter, including, without limitation, the causes of action alleged in the Action.

C. Exceptions from Releases by FDIC-R.

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

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

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

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

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that 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 of 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 Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et. seq.*, if appropriate.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. 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.

B. 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.

C. Authority. The FDIC-R represents that, under the Federal Deposit Insurance Act, the FDIC is authorized to be appointed as receiver for failed depository institutions and that it succeeded to all rights, titles, powers, and privileges of the Bank, and any shareholder, member, account holder, depositor, officer, and director of the Bank with respect to the Bank and the assets of the Bank, including, but not limited to, the Bank's claims against the Settling Defendant relating to the R&S Loan Transaction, Title Claim, Policy, and Closing Services Letter. The FDIC-R further represents that it is empowered to sue and complain in any court of law to pursue, *inter alia*, the claims against the Settling Defendant asserted in the Action (other than claims asserted by Nova Holdings) and a claim under the Closing Services Letter, and that no other person or entity has such rights. The FDIC-R further represents and warrants that PBB has been dissolved and no longer exists, that none of the released claims that at any time were owned or controlled by PBB, or any interest in such claims, has been assigned, transferred, or otherwise given (in whole or in part) to any third parties, and that the FDIC-R has not received any

information suggesting that any third party intends to assert any such released claims that at any time were owned or controlled by PBB.

SECTION V: Reasonable Cooperation

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action, and to otherwise perform the terms of this Agreement.

SECTION VI: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Counterparts and Digital Signatures. This Agreement may be executed digitally or by hand, in any number of counterparts, and delivered electronically or physically, each original or electronic copy thereof will be deemed an original, and all of which when taken together constitute one and the same Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the Commonwealth of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

D. Notices. Any notices required hereunder shall be sent by a nationally recognized overnight delivery service (*e.g.* FedEx or UPS), and by email, to the following:

If to the FDIC-R:

Douglas T. Hoffman
Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-E-7006
Arlington, Virginia 22226
(703) 516-5383
dohoffman@fdic.gov

Gregory K. Conway
Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-E-7026
Arlington, Virginia 22226
(703) 294-1413
gconway@fdic.gov

If to the Settling Defendant:

John F. Kaufman, Esquire
First American Title Insurance Company
1235 Westlakes Drive
Suite 400
Berwyn, PA 19312
jkaufman@firstam.com

with a copy to:

Dale K. Cathell, Esquire
DLA Piper LLP
6225 Smith Avenue
Baltimore, Maryland 21209
dale.cathell@dlapiper.com

E. Entire Agreement and Amendments. This Agreement, including Exhibits, constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

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

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement

shall not be confidential and will be disclosed 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 NOVA BANK

Date: June __, 2023

BY: _____

TITLE: _____

PRINT NAME: _____

FIRST AMERICAN TITLE INSURANCE COMPANY

Date: June 16, 2023

BY: _____

TITLE: _____

PRINT NAME: John f Kaufman

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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 NOVA BANK

Date: June 26, 2023

BY:

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TITLE: Counsel

PRINT NAME: Douglas T. Hoffman

FIRST AMERICAN TITLE INSURANCE COMPANY

Date: June __, 2023

BY: _____

TITLE: _____

PRINT NAME: _____

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FEDERAL DEPOSIT INSURANCE)
CORPORATION AS RECEIVER FOR)
NOVA BANK)
)
and)
)
NOVA FINANCIAL HOLDINGS, INC.)
)
Plaintiffs,)
)
v.)
)
**FIRST AMERICAN TITLE INSURANCE)
COMPANY**)
)
Defendant.)**

CIVIL ACTION

DOCKET NO. 12-CV-5087

**STIPULATION OF DISMISAL
WITH PREJUDICE PURSUANT TO FED.R. CIV.P. 41**

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff Federal Deposit Insurance Corporation as Receiver for Nova Bank and Defendant First American Title Insurance Company, through their attorneys, respectfully and jointly submit this Stipulation of Dismissal of this action with prejudice, each party to bear its own costs and attorneys' fees. The parties request that the Clerk of Court now close this case.

It is SO ORDERED.

SIGNED at _____ this ___ day of _____, 2023

United States District Judge

EXHIBIT A

As to form and content of the Stipulation:

Douglas T. Hoffman
Federal Deposit Insurance Corporation
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Arlington, VA 22226
(703) 516-5383
dhoffman@fdic.gov

*Attorney for Plaintiff Federal Deposit
Insurance Corporation as Receiver for
Nova Bank*

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1650 Market Street, Suite 5000
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- and -

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Adam J. Pié (admitted *pro hac vice*)
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Title Insurance Company*