

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 2nd day of November, 2012 (the "Effective Date"), by and between the following undersigned entities: The Federal Deposit Insurance Corporation as Receiver for Wakulla Bank ("FDIC"), and First American Title Insurance Company ("First American"). Individually, the FDIC, and First American may be referred to herein as a "Party" to this Agreement and collectively as the "Parties".

RECITALS

WHEREAS:

1. WHEREAS, First American issued Wakulla Bank ("Bank") a lender's policy of title insurance number [redacted] ("Policy") on June 1, 2006, insuring the Bank according to the terms, provisions, exceptions, conditions and stipulations of the Policy;

2. WHEREAS, on November 20, 2007, the Bank submitted a claim to closing attorney Susan Thompson of Smith, Thompson, Shaw & Manausa, which was subsequently

forwarded to First American (Claim number [redacted] ("Claim")), alleging that lots [redacted] of [redacted] the insured property were held in fee simple by [redacted] and were to be encumbered by the Bank's mortgage, but lots [redacted] were not actually wholly owned by [redacted] and that [redacted] possessed a one-half interest in lots [redacted] and [redacted] and did not subject his one-half interest in lots [redacted] to the Bank's mortgage;

3. WHEREAS, the Bank commenced litigation in Franklin County, Florida against First American on or about August 24, 2010, which matter was assigned Franklin County, Florida Circuit Court Case No. 10-000442-CA ("State Litigation");

4. WHEREAS, the Bank's complaint against First American in the State Litigation contains two causes of action for breach of the Policy alleging that First American failed to

(b)(4) resolve alleged title defects pertaining to lots [] of the insured property, which were to be encumbered by the Bank's mortgage;

5. WHEREAS, to resolve the alleged title issues underlying the Claim, First American retained Florida attorney Martin S. Friedman to commence litigation on behalf of the Bank in order to resolve the alleged ownership interest as to lots [] of the insured (b)(4)

(b)(4) property so that the entirety of lots [] would be encumbered by the Bank's mortgage or conveyed to the Bank, which litigation was assigned Franklin County, Florida Circuit Court Case No. 09-518-CA ("Curative Litigation");

6. WHEREAS, prior to October 1, 2010, the Bank was a state-chartered depository institution organized and existing under the laws of Florida;

7. WHEREAS, on October 1, 2010, the Bank was closed by the Florida Office of Financial Regulation and pursuant to 12 U.S.C. § 1821(e), the FDIC was appointed receiver. 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 and affairs;

8. WHEREAS, among the assets to which the FDIC as receiver succeeded were any and all of the Bank's claims, demands, and causes of action against any parties, including, but not limited to, claims arising out of title insurance purchased by the Bank;

9. WHEREAS, on November 8, 2010, the FDIC was substituted as plaintiff in the State Litigation. On December 2, 2010, the FDIC removed the State Litigation to the United States District Court for the Northern District of Florida. These claims for damages are now pending in the United States District Court for the Northern District of Florida in the matter captioned *Federal Deposit Insurance Corporation as Receiver for Wakulla Bank v. First American Title Insurance Company*, Case No. 4:10CV533-RH-CAS ("Federal Litigation").

10. WHEREAS, on May 28, 2011, the Federal Litigation was stayed pending resolution of the Curative Litigation;

11. WHEREAS, on May 17, 2012, the Curative Litigation was resolved, per Notice of Voluntary Dismissal, as a result of the FDIC conveying its interest in lots [redacted] of the (b)(4) (b)(6) insured property to [redacted]

12. WHEREAS, after resolution of the Curative Litigation, a Joint Status Report and Request for Amended Scheduling Order was filed in the Federal Litigation on August 1, 2012;

13. WHEREAS, the Court entered an Order extending the stay until November 2, 2012 and setting a trial date for May 7, 2013 in the Federal Litigation;

14. WHEREAS, First American has denied liability for the claims asserted in the Federal Litigation.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation, and to compromise and settle the Federal Litigation.

NOW, THEREFORE, in consideration of the mutual covenants and obligations, promises, undertakings, payments, and releases stated herein, and other good and valuable consideration, the sufficiency of which consideration is hereby acknowledged, the Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC

A. As an essential covenant and condition to this Agreement, First American agrees to pay the FDIC the sum of SIXTY SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$67,500) (the "Settlement Funds") within thirty (30) days of the Effective Date of this Agreement.

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the Parties to this Agreement, and within thirty (30) days of the Effective Date, the Settlement Funds shall be delivered to the FDIC by direct wire transfer into an account

designated by the FDIC in writing. In the event that the Settlement Funds are not delivered to the FDIC within thirty (30) days of the Effective Date, interest shall accrue on all unpaid amounts at the rate of 0.15% per annum from the thirty-first (31) day after the Effective Date until the date of payment. The 0.15% per annum interest rate is based upon 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. However, if said Settlement Funds are not delivered to the FDIC within thirty (30) days of the Effective Date 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.

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 within thirty (30) days of the Effective Date, then 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 First American. In that event, First American agrees to exclusive personal and subject matter jurisdiction and venue in the United States District Court for the Northern District of Florida, Tallahassee Division, and agrees to pay all of the FDIC's reasonable attorneys' fees and costs expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement shall not prejudice its rights to declare this Agreement null and void, shall not be grounds for any claim of rescission First American, and shall not bar the FDIC from enforcing the terms of this Agreement against First American; provided however, that in the event the FDIC declares this Agreement null and void, the FDIC will return any and all amounts paid to it under this Agreement by First American.

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 dismiss the Federal Litigation with prejudice and with each Party to bear its own attorneys' fees and costs as these were originally

incurred. The Parties agree to file an Agreed Motion of Dismissal of the Federal Litigation, with prejudice, within ten (10) days after the receipt by the FDIC of the Settlement Funds (plus any applicable accrued interest).

SECTION III: Releases

A. Release of First American by FDIC.

Effective upon receipt in full of the Settlement Funds plus any accrued interest described in Section I. above, and except as provided in Paragraph III.C., the FDIC, for itself and its agents, representatives, successors and assigns, hereby fully releases and discharges First American, its parents, subsidiaries, affiliates, and reinsurers, and their respective current and former employees, officers, directors, agents, representatives, attorneys, insurers, successors and assigns, from any and all claims, liabilities, demands, obligations, damages (including, but not limited to, money, exemplary, and/or punitive damages), suits, actions, and causes of action, direct or indirect, both known or unknown, whether asserted or which could have been asserted, in law or in equity, that arise from or relate to the Federal Litigation, the Curative Litigation, the Policy and any Closing Protection Letter ("CPL") issued in connection therewith. The FDIC agrees that any interest it may have under the Policy or the CPL (if any) is extinguished and the Policy and the CPL are cancelled.

B. Release of FDIC by First American.

Effective simultaneously with the release granted in Paragraph II.A. above, First American, for itself and its agents, representatives, successors and assigns, and on behalf of its parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby fully releases and discharges FDIC, and its current and former employees, officers, directors, agents, representatives, attorneys, successors and assigns, from any and all claims, liabilities, demands, suits, obligations, damages (including, but not limited to money, exemplary, and/or punitive damages), actions, and causes of action, direct or indirect, whether asserted or which could have been asserted, both known or unknown, in law or in equity, that arise from or relate to the

Federal Litigation, the Curative Litigation, the Policy, and any CPL issued in connection therewith.

C. 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 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 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 the Bank, provided however that the Parties acknowledge that that this Section III(C)(1)(a) shall not apply to either the Policy or any CPL, both of which are cancelled as provided by this Agreement;

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

c. which are not expressly released in Paragraphs III.A. or II.B. 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.

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 Southern District of Florida or any other federal judicial district. In addition, for any claim not released herein, 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: Representations and Acknowledgements

A. **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, nor an admission of wrongdoing 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. A signature transmitted by email shall be as effective as an original signature.

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. No consents, approvals, orders or authorizations of any other party, including but not limited to governmental bodies, are required for execution, delivery or performance of this Agreement. Execution and performance of this Agreement will not violate any statute, law, regulation, judgment, order or decree of any court or governmental authority applicable to them, or constitute a default under the terms of any agreement, document or instrument to which they are a party.

D. **Choice of Law, Jurisdiction and Venue.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of Florida without regard to its principles of conflicts of law. In addition, the Parties agree to exclusive personal and subject matter jurisdiction and venue in the United States District Court for the Northern District of Florida, Tallahassee Division for any litigation required to enforce this Agreement. In the event any action or proceeding relating to this Agreement is commenced or otherwise instituted, the Parties hereby agree and consent to relinquish and otherwise waive the entitlement, if any, to a trial by jury.

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. **Reasonable Cooperation.** The undersigned 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 and dismiss with prejudice the Federal Litigation and to otherwise perform the terms of this Agreement.

G. **No Reliance.** Each Party to this Agreement has had the advice of that Party's own counsel selected by the Party in the negotiation and settlement of this matter and is under no undue influence or duress but, instead, has voluntarily entered into this Agreement. In making this Agreement, no Party is relying upon any representation (whether affirmative or negative,

actual or implied, or spoken, written, or inferred from silence) made by the other Parties or their representatives, agents, employees, or attorneys, except as such representations may be contained in this Agreement and only to the extent that such representations are expressly and affirmatively stated herein.

H. **Future Acts.** The Parties agree to execute such other documents and make such other assurances as are reasonably necessary to effect the provisions of this Agreement.

I. **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 every term of this Agreement has been explained to that Party by its counsel.

J. **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.

K. **Notice.** All notices and other communications that may be necessary in connection with this Agreement ("Notices") shall be made by hand delivery or overnight delivery service of the United States Postal Service or equivalent service offered by a private carrier. Notices may also be made by email transmission, if followed by transmission of a hard copy by one of the foregoing methods. Notices shall be effective as of the date received, if any hand delivery or email transmission, or the date reflected on the sender's receipt acknowledging delivery to the United States Postal Service or private carrier. The following persons are designated to receive Notices:

For FDIC:

Federal Deposit Insurance Corporation
Attn: Mr. Gregory K. Conway
3501 Fairfax Drive
Arlington, VA 22226-3500

(b)(6)



For First American:

First American Title Insurance Company
Attn: Mr. Brian Stabley
2082 Summit Lake Drive
Tallahassee, Florida 32317

(b)(6)



The person(s) designated to receive Notices on behalf of a Party and the address(es) to which Notices are to be sent may be changed by that Party by written Notice to all Parties.

L. Captions. Captions, paragraph and subparagraph designations, and section headings are included in this Agreement for convenience only, and in no way do they define, limit, construe or describe the scope or intent of the respective parts of this Agreement.

M. Time. Time is of the essence in all matters concerning this Agreement.

N. No Drafter Inference. Each Party to this Agreement hereby stipulates, covenants, and agrees that each and every term of this Agreement was fully negotiated and agreed to by the Parties hereto, and consequently, this Agreement shall be construed without regard to the Party responsible for its preparation, and it shall be deemed to have been prepared jointly by the Parties for purposes of any statute, jurisprudential rule, or rule of contractual interpretation or construction that might cause any provision to be construed against the drafter. Any ambiguity or uncertainty shall not be interpreted or construed against any Party based on any Party's preparation of the 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

Date: November 2, 2012

BY:

[Redacted Signature]

(b)(6)

TITLE: Counsel

PRINT NAME: Gregory K. Conway

FIRST AMERICAN TITLE INSURANCE COMPANY

Date: November 2, 2012

BY:

[Redacted Signature]

(b)(6)

TITLE: VICE PRESIDENT

PRINT NAME: DOUGLAS J THIEL