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SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release ("this Agreement") is executed and delivered on this 21 day of June, 2011, by and between the undersigned Parties below:

DEFINITIONS

In addition to other terms which for convenience may be defined elsewhere in this Agreement, the Parties agree that this Agreement is subject to the following defined terms:

1. "Agreement" refers to and means this Settlement Agreement and Release of All Claims.

2. "Plaintiff" shall mean Federal Deposit Insurance Corporation, as Receiver for First National Bank of Nevada, and its servants, agents, employees, attorneys, heirs, devisees, personal representatives, shareholders, directors, successors, and assigns.

3. "Settling Defendant" shall mean Defendant Adam K. Scott, an unmarried person.

4. "Calcus" shall mean Defendant Calcus, Inc., dba U.S. Capital Mortgage.

5. "Fidelity" shall mean Defendant Fidelity National Title Insurance Company.

6. "Non Settling Defendants" refers to and includes Calcus and Fidelity.

7. "Lawsuit" shall refer to and mean the entirety of the legal action now pending before the District Court of Arizona, designated as "Federal Deposit Insurance Corporation, as Receiver for First National Bank of Nevada v. Calcus, Inc., et al." Civil Cause No. CIV 08-2194-PHX-NVW.

8. "Parties" shall mean Plaintiff and Settling Defendant.

RECITALS

A. Plaintiff alleges that Settling Defendant breached his contractual and legal duties and obligations to Plaintiff when making representations

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and disclosures in connection with Settling Defendant's loan application to  
First

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National Bank of Arizona for loans to purchase property located at 14598 Hidden Terrace Loop, Litchfield Park, Maricopa County, Arizona (the "Property").

B. First National Bank of Arizona was merged into First National Bank of Nevada on June 30, 2008. The Federal Deposit Insurance Corporation was appointed receiver for First National Bank of Nevada on July 25, 2008.

C. Settling Defendant has denied and continues to deny the allegations asserted in the Lawsuit against him.

D. The Parties recognize the expense and uncertainties that exist in connection with litigation and other unasserted claims and liabilities that may have arisen or that may arise in the future. As such, the Parties desire to amicably settle and resolve all claims between them pursuant to the terms of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the Parties agree as follows:

1. Recitals. The Parties acknowledge the accuracy of the foregoing Recitals and hereby incorporate them herein by this reference.

2. Settlement Terms. To consummate the settlement, the Parties have agreed that the following shall occur.

- a. The Parties shall execute and deliver to each opposing party an executed copy of this Agreement.
- b. Settling Defendant has agreed to pay Plaintiff in the form of readily available funds the total sum of \$20,000.00.

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3. Settlement Contingent Upon Dismissal of Settling Defendant. In exchange for, and as a condition of the payment set forth in the preceding paragraph, the Plaintiff agrees to release Settling Defendant and dismiss all claims against Settling Defendant in the Lawsuit, with prejudice, as more specifically set forth below.

4. Release of Claims and Covenant Not To Sue.

- a. Release by Plaintiff. Effective upon the payment of \$20,000 as stated in Paragraph 2.b., above, Plaintiff releases Settling Defendant from all claims, demands, actions, or causes of action arising out of or related to the loan application and related representations and disclosures prepared by or on behalf of Settling Defendant in 2006 and 2007 regarding the Property, described more fully in the pleadings, discovery responses, and disclosures filed and served in the Lawsuit. This release extends to all claims, demands, actions, liability, or causes of action arising out of or related to the described loan application, representations and disclosures, whether previously made or not, previously discovered or not, or previously known or not.
- b. Joint and Several Liability. Plaintiff knowingly enters into this Agreement with Settling Defendant despite the fact that the Non Settling Defendants have not settled with Plaintiff. Plaintiff has previously alleged as part of its claims that all defendants are jointly and severally liable for part or all of Plaintiff's injury or damages. See e.g., A.R.S. 12-2506(D). Settling Defendant has denied all claims against him for joint liability. Plaintiff, by this Agreement, relinquishes its right to hold Non Settling Defendants jointly liable with Settling Defendant. To the extent that Plaintiff has made or makes claims or allegations regarding Non Settling Defendants' joint liability involving the Settling Defendant and relating to or arising out of any acts or omissions of the Settling

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Defendant, Plaintiff agrees to hold Non Settling Defendants only severally liable for Plaintiff's injuries and damages. Additionally, Plaintiff agrees that Non Settling Defendants shall not be held liable for the fault of Settling Defendant, nor shall Non Settling Defendants be held jointly liable for Settling Defendant's actions. In part, the intent of this Agreement is that the Non Settling Defendants will have no right of contribution against the Settling Defendant, no express or implied rights of indemnity against Settling Defendant, no right to a credit for the sums paid by Settling Defendant toward any judgment recovered by Plaintiff against the Non Settling Defendants, and no other recourse or right against Settling Defendant or Plaintiff. To the extent that Non Settling Defendants file a claim, action or lawsuit against Settling Defendant related to the foregoing, Plaintiff shall have no duty to defend, indemnify or hold Settling Defendant harmless for such claim, action, or lawsuit.

- c. Release by Settling Defendant. Settling Defendant fully and forever releases and covenants not to sue or otherwise seek legal recourse against Plaintiff from any and all claims or liabilities of any kind or nature, whether previously made or not, previously discovered or not, or previously known or not, which in any way arise out of or relate to the above described loan application, representations and disclosures, appraisals and appraisal reviews as alleged in the Lawsuit or to the filing and maintenance of the Lawsuit.
- d. Binding Nature. This Agreement, including but not limited to its releases and covenants not to sue, shall be binding upon and are intended to benefit Plaintiff and Settling Defendant as well as FDIC's predecessors in interest, including but not limited to FNB Nevada and FNB Arizona, and direct and indirect parents and subsidiaries, affiliates,

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insurers, directors, officers, agents, servants, employees, attorneys, heirs, devisees, personal representatives, successors, and assigns.

- e. Limits on Releases. Notwithstanding the foregoing, this release and discharge do not apply to any obligations created by this Agreement. It is agreed and understood that Non Settling Defendants are not affiliates of Settling Defendant and that Plaintiff's claims against Non Settling Defendants are not in any way compromised by this release, except as described in paragraph 4.b.

5. Non-Disparagement. The Parties mutually agree that they shall not directly or indirectly disparage the business or reputation of any other party to the Agreement. This provision is not intended to affect Plaintiff's lawful performance of its duties as Receiver of First National Bank of Nevada, including the maintenance of the Lawsuit, or Federal Deposit Insurance Corporation's lawful performance of its duties in its corporate capacity.

6. Agreement to Bear Own Attorneys' Fees and Costs. The Parties shall bear their own attorneys' fees, expenses, and costs incurred in connection with the Lawsuit and the negotiation and preparation of this Agreement.

7. No Admissions. This Agreement is executed and delivered in compromise and settlement of disputed and liquidated claims, any and all liability for which is denied by Settling Defendant. The execution of this Agreement shall not be construed as an admission of any liability on the part of Settling Defendant. The Parties have reached the agreements reflected herein in order to avoid further expense, inconvenience, and delay.

8. Attorneys' Fees. If there is any litigation to enforce or interpret any provisions or rights of this Agreement, the unsuccessful Party in such litigation, as determined by the court, agrees to pay the successful Party, as determined by the court, reasonable costs, legal fees, and expenses (through

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trial and appeal), including, but not limited to, reasonable attorneys' fees incurred by the successful Party.

9. **Governing Law.** This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Arizona.

10. **Sole and Entire Agreement of the Parties.** This Agreement constitutes the sole and entire agreement of the Parties. The terms of this Agreement supersede any and all prior oral or written agreements, representations, discussions or negotiations between the Parties, all of which shall be merged in this Agreement. This Agreement may not be modified, amended or terminated except by an instrument in writing, signed by each of the Parties to be affected.

11. **Headings.** The headings of this Agreement are for reference only and are not intended to limit or define the meaning of any provision of this Agreement.

12. **Severability.** If any one or more of the provisions of this Agreement or the applicability in any provision to a specific situation is held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of such provision will not be affected by any such invalidity or unenforceability.

13. **Counterpart Execution.** This Agreement may be executed in one or more counterparts. Signature pages may be detached from the counterparts and attached to a single copy of the Agreement to physically form one legally effective document. Signatures submitted by facsimile or telecopy transmission shall be effective in all respects as original signatures and shall be fully binding of the Parties.

14. **Good Faith Settlement.** The Parties acknowledge that this Agreement is entered into freely and voluntarily after consultation with counsel of their choice. The Parties acknowledge having carefully reviewed

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this Agreement and are fully aware of its contents and legal effect. This Agreement reflects a good faith resolution of claims reached after arm's-length negotiations and without coercion and not in reliance upon any representation or promise not contained herein. All the Parties have participated in the negotiation of this Agreement and no provision of this Agreement shall be construed for or against any of the Parties by reason of which Party first drafted this Agreement. The Parties shall cooperate with each other and shall execute, acknowledge and deliver such documents, and take such other actions, as may be reasonably requested (and which actions are consistent with the provisions of this Agreement) to obtain for the requesting Party the benefit of the transaction contemplated hereby.

15. **Warranty.** The respective Parties represent and warrant that they have the whole right and exclusive authority to execute this Agreement either individually or on behalf of the entity indicated; and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

16. **Dismissal of Lawsuit.** The Parties shall take all steps necessary to execute or have their attorneys execute a Stipulation for Dismissal with Prejudice within a reasonable period of time after receipt of the payment described in paragraph 2.b., above.

**Federal Deposit Insurance Corporation as  
Receiver for First National Bank of Nevada**

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By:

[Name] J. SCOTT TAYLOR  
[Position] Attorney-IN-FACT  
State of Texas )

)ss

County of Dallas )

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Executed by J. Scott Taylor before me, Notary Public in and for said State, this 29<sup>th</sup> day of June, 2011.

My Commission Expires:

8-16-2014

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Notary Public



**Adam K. Scott**

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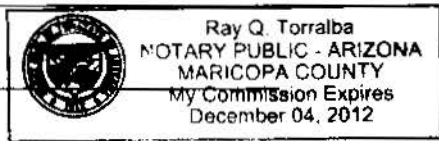
State of Arizona            )  
  )ss  
County of Maricopa        )

Executed by Adam K. Scott, an unmarried person, before me, Notary Public in and for said State, this 21 day of June, 2011.

My Commission Expires:

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Notary Public



Approved as to form this 22<sup>nd</sup> day of June, 2011.

**McCabe O'Donnell, P.A.**

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By




6-22-11

Joseph I. McCabe  
Alan L. Tipton  
Attorneys for Federal Deposit Insurance Corporation  
As Receiver for First National Bank of Arizona

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