

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 15<sup>th</sup> day of January, 2011, by and between the Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank ("FDIC-Receiver"), First American Title Insurance Company ("First American") and First Metropolitan Title Company d/b/a Metropolitan Title Company (First American and First Metropolitan are hereinafter collectively referred to as the "First American Parties").

### WITNESSETH:

WHEREAS, the FDIC-Receiver has represented that it is the duly appointed receiver for and successor to Washington Mutual Bank ("WaMu"); and

WHEREAS, at all relevant times Long Beach Mortgage Company ("Long Beach") was a wholly owned subsidiary of WaMu (WaMu and Long Beach are hereinafter collectively referred to as the WaMu Entities); and

WHEREAS, the WaMu Entities were the plaintiffs, and the First American Parties were among the defendants, in a certain lawsuit pending in the Allen County Circuit Court, denominated as Cause No. 02C01-0809-PL-124 (the "Lawsuit"); and

WHEREAS, the FDIC-Receiver has been substituted as the plaintiff in the Lawsuit in place of the WaMu Entities; and

WHEREAS, in the Complaint filed in the Lawsuit on September 23, 2008 (the "Complaint"), the FDIC-Receiver seeks to recover damages arising from transactions involving the parcels of real estate described on Exhibit "A" (which parcels of real estate are hereinafter referred to as the "First American Properties"); and

WHEREAS, the First American Parties and the FDIC-Receiver wish to resolve the claims

asserted in the Lawsuit against the First American Parties, but only those asserted against the First American Parties; and

WHEREAS, the parties hereto have reached the agreements provided for herein to fully and finally resolve the Lawsuit as it pertains to the First American Parties, but only as to the First American Parties; and

WHEREAS, nothing contained herein shall be taken or construed to be at any time or place an admission of liability by any party hereto.

NOW, THEREFORE, UPON SUCH RECITALS, which are hereby adopted as representations by the parties hereto, and in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

1. Contemporaneously with the execution of this Agreement by all parties hereto, the First American Parties shall pay to the FDIC-Receiver the sum of Forty-five Thousand Dollars (\$45,000.00). Said payment shall be made payable to the Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank and delivered to the FDIC-Receiver's counsel of record, Daniel Bobilya, Esq., at his law office in Fort Wayne, Indiana.

2. Upon the payment by the First American Parties of the settlement amount required by the preceding paragraph, the FDIC-Receiver shall immediately prepare and cause to be filed with the Allen Circuit Court a Stipulation for Dismissal in order to obtain the dismissal of the Complaint and the Lawsuit, with prejudice, as to the First American Parties, but only as to the First American Parties, with the FDIC-Receiver and the First American Parties to each bear their own respective costs, expenses, and fees, to include attorneys' fees. The dismissal of the Complaint and the Lawsuit as to the First American Parties shall not affect the Complaint or the Lawsuit as to any other party to

the Lawsuit. The dismissal of the Complaint and the Lawsuit with prejudice as to the First American Parties shall also not affect the enforcement of this Settlement Agreement. The Allen Circuit Court shall maintain exclusive jurisdiction to enforce this Settlement Agreement against all parties hereto consistent with the terms hereof.

3. In consideration of the agreements and undertakings in this Agreement, the FDIC-Receiver, for itself and for and on behalf of the WaMu Entities and their respective successors, assigns, subsidiaries, and affiliates, hereby absolutely, completely, unconditionally and forever releases and discharges the First American Parties, together with the First American Parties' respective officers, employees, agents, attorneys, affiliates, subsidiaries, predecessors, successors, assigns, and parent/holding company (as well as all affiliates, divisions, subsidiaries, predecessors, successors and assigns of First American's parent/holding company, and all officers, employees, agents and attorneys of First American's parent/holding company or any affiliate or subsidiary thereof), from each and every loss, obligation, claim, right, liability, action or cause of action of each and every nature or description existing as of the date hereof, known or unknown, arising from or in any way related to the subject matter of the Complaint and/or the First American Properties.

4. In consideration of the agreements and understandings in this Agreement, the First American Parties, hereby absolutely, completely, unconditionally and forever release and discharge the FDIC-Receiver and the WaMu Entities, together with each of their officers, employees, agents, attorneys and affiliates, from each and every loss, obligation, claim, right, liability, action or cause of action of each and every nature or description existing as of the date hereof, known or unknown, arising from or in any way related to the subject matter of the Complaint and/or the First American Properties.

5. The FDIC-Receiver represents and warrants that it is the holder of all claims and causes of action asserted against the First American Parties in the Complaint and the Lawsuit, and no interest in any of the claims and/or causes of action asserted against the First American Parties in the Lawsuit, or any portion of such claims and/or causes of action, has been assigned, conveyed or transferred, in whole or in part, to any person or entity.

6. The following miscellaneous provisions shall apply to this Agreement:

(A) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed and delivered by each of the parties. Signatures provided by facsimile transmission or in PDF shall be considered an original. However, each party providing signatures by facsimile or PDF shall provide original signatures to the other parties within five (5) business days after the facsimile or PDF signatures are provided.

(B) Limitations on Rights of Third Parties. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the parties hereto any rights or remedies under or by reason of this Agreement or the transactions contemplated hereby.

(C) Agreement.

(i) The parties agree that this Agreement is the product of their joint efforts, that it expresses their agreement, and that it should not be interpreted in favor of or against any person or entity merely because of that person's or entity's efforts in preparing it.

(ii) Each person signing this Agreement (whether for herself or for himself individually or on behalf of an entity or organization) acknowledges that this Agreement may reflect changes from previous drafts, if any, and that he or she has read and reviewed this Agreement carefully. Each person signing this Agreement also acknowledges that he or she has not relied on any other party to this Agreement, or on any officer, agent, partner, employee or attorney of any other party to this Agreement, to explain the provisions of this Agreement to him or her, or to identify changes that have been made from prior drafts or versions of this Agreement, if any. Rather, each person signing this Agreement agrees to be solely responsible for being aware of the contents of this Agreement.

(D) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

(E) Amendments. No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year first above written.

**"FDIC-RECEIVER"**

Federal Deposit Insurance Corporation, as receiver for  
Washington Mutual Bank

(b)(6) Dated: Jan. 13, 2011

By:

Mrs. Lynn Collins, Counsel  
Print Name and Title

**"FIRST AMERICAN PARTIES"**

First American Title Insurance Company and First  
Metropolitan Title Company d/b/a Metropolitan Title  
Company

(b)(6) Dated: Jan. 13, 2011

By:

Beth V. Schreiber, Senior Claims Counsel

EXHIBIT "A"