

## **SETTLEMENT AND RELEASE AGREEMENT**

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

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

### **RECITALS**

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank (“WaMu”) was a depository institution organized and existing under the laws of Nevada;

On September 25, 2008, the Office of Thrift Supervision closed WaMu, and, pursuant to 12 U.S.C. § 1821(c), Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), FDIC-R succeeded to all rights, titles, powers and privileges of WaMu, including those with respect to its assets;

Among the assets to which FDIC-R succeeded were all of WaMu’s claims, demands, and causes of action against mortgage brokers;

On February 27, 2023, FDIC-R made a demand for indemnification on First Horizon (“Demand”). The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of 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 January 23, 2025, First Horizon shall pay FDIC-R the sum of Six Hundred and Thirty Thousand Dollars (\$630,000) (“the Settlement Payment”).

The Settlement Payment shall constitute a debt due and owing FDIC-R, an instrumentality, agency and/or other entity of the United States, on the Effective Date. The debt shall be discharged by payment in full to the FDIC-R.

B. First Horizon shall deliver the Settlement Payment to FDIC-R by electronic funds transfer pursuant to written instructions including a tax identification number to be provided by the FDIC-R, prior to or contemporaneous with signing this Agreement.

C. If FDIC-R does not receive the Settlement Payment in full on or before its due date, then First Horizon shall be in default of its payment obligations (“Default”). Upon Default, FDIC-R may declare the entire unpaid portion of the Settlement Payment be immediately due and payable, and interest shall accrue thereon 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 FDIC-R, in its sole discretion, shall have the right to:

1. Waive the Default and extend the period of time for the payment of any of the Settlement Payment in writing, including interest at the Default Interest Rate accruing from the date determined by subsection A above;
2. Enforce this Agreement, in which case First Horizon 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 District of Columbia; and/or

3. Seek any other relief available to FDIC-R in law or equity. Any decision by the FDIC-R to extend the time, and any extension of time, under Section I.C.1 for delivery of any installment or any decision by the FDIC-R to accept a portion of the Settlement Payment, and any 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.1 through I.C.2 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

## **SECTION II: Releases**

### **A. FDIC-R's Releases.**

Upon receipt of the Settlement Payment in full and except as provided in Section II.C., FDIC-R, for itself and its successors and assigns, hereby releases and discharges First Horizon and its respective parents, subsidiaries, and affiliates, and their respective officers, agents, 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 FDIC-R, that arise from or relate to First Horizon's mortgage broker or correspondent activities for WaMu, or loan sales to WaMu, including without limitation the liability alleged in the Demand.

### **B. First Horizon's Reciprocal Release.**

Effective simultaneously with the release granted in Section II.A. above, First Horizon, on behalf of itself and its parents, subsidiaries, and affiliates, and their respective successors

and assigns, hereby releases and discharges FDIC-R, and its employees, officers, directors, 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 First Horizon's mortgage broker or correspondent activities for WaMu, or loan sales to WaMu, including without limitation the liability alleged in the Demand.

C. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, FDIC, in any capacity, 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 First Horizon 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, WaMu, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to WaMu or any person or entity other than WaMu; and

b. By FDIC in any capacity other than as Receiver for WaMu;  
and

c. Against any person or entity not expressly released by 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 Federal Deposit Insurance Corporation 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 or entity.

3. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or interpreted as waiving, or intending to waive, any claims that could be brought by the United States or any department, agency or instrumentality thereof (other than the FDIC-R), including, but not limited to, through the United States Department of Justice or any United States Attorney's Office.

### **SECTION III: 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 he, she, or 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 his or her counsel.

### **SECTION IV: Reasonable Cooperation**

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 V: 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 by DocuSign or similar services which use public key cryptography 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/Jurisdiction. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the District of Columbia. 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. All Parties hereto submit to the personal jurisdiction of the United States District Court for the District of Columbia for purposes of implementing and enforcing the settlement embodied in this Agreement.

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

If to the FDIC-R:

Brittany A. McEwan  
3501 Fairfax Drive, VS-E-7014  
Arlington, Virginia 22226  
(703) 618-3132  
bmcewan@fdic.gov

If to First Horizon:

Amanda F. Davidoff  
Sullivan & Cromwell LLP  
1700 New York Ave NW #700  
Washington D.C. 20006  
davidoffa@sullcrom.com

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 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 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 WASHINGTON MUTUAL BANK

BRITTANY MCEWAN

Digitally signed by BRITTANY

MCEWAN

Date: 2025.01.17 08:29:20 -05'00'

Date: \_\_\_\_\_

Brittany A. McEwan  
Attorney

Date: \_\_\_\_\_

FIRST HORIZON BANK

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Desi Franklin  
SVP & AGC