

September 10, 2009

## **SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This Settlement and Mutual Release Agreement (the "Agreement") is made and entered into this 9<sup>th</sup> day of September, 2009, by and between Fidelity National Financial, Inc. ("FNF"), LandAmerica Financial Group, Inc. ("LFG"), Southland Title Corporation, Southland Title of San Diego and Southland Title of Orange County (collectively, "Southland"), Commonwealth Land Title Insurance Company ("CLTIC"), United Capital Title Insurance Company ("UCTIC") and Lawyers Title Insurance Corporation ("LTIC" and collectively with CLTIC and UCTIC, the "Underwriters"). FNF, LFG, Southland and the Underwriters are collectively referred to as the "Parties" throughout this Agreement. FNF and the Underwriters are collectively referred to as the "Fidelity Parties" and LFG and Southland are collectively referred to as the "LandAm Parties", in each case throughout this Agreement.

### **RECITALS**

A. LFG and certain of its affiliates (collectively, the "Debtors") filed petitions for chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Virginia (the "Court"). The Debtors cases are jointly administered and captioned as Case No. 08-35994 (KRH) (the "Chapter 11 Cases").

B. Fidelity National Title Insurance Company ("FNTLC"), Chicago Title Insurance Company, and LFG entered into that certain (i) Stock Purchase Agreement, dated November 25, 2008, as amended and restated as of December 12, 2008, and as further amended and restated on December 21, 2008 (the "SPA"), whereby FNTLC purchased LFG's shares of stock (the "Transaction") in the Underwriters and (ii) FNF and LFG entered into that certain Stock Purchase Agreement (the "LCSPA"), dated as of May 12, 2009, for the purchase and sale of all outstanding capital stock of LoanCare Servicing Center, Inc. and LC Insurance Agency, Inc.

C. In order to effectuate the Transaction, the Parties entered into ancillary agreements, including, but not limited to, a Transition Services Agreement, dated December 22, 2008 (the "TSA").

D. The Parties have asserted or may assert claims (hereinafter, as defined in section 101(5) of the Bankruptcy Code, "Claims") against each other under the terms of the SPA, the TSA and under other applicable law. Certain of such Claims are the subject of disputes between the Parties.

E. Except as explicitly provided herein, each Party now desires to settle all existing and potential Claims against each other Party and their respective affiliates, officers, directors, shareholders, partners, agents, contractors, employees, attorneys, predecessors, successors and assigns, in each case solely in their capacity as such. The Parties now enter into this Agreement according to the terms set forth below:

### **AGREEMENT**

1. Unified Loss Election. Although not required pursuant to the SPA, on or prior to September 15, 2009:

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- a. LFG shall include with its timely filed U.S. federal income tax return for the tax year ended December 31, 2008, a Section 1.1502-36 Statement prepared in the form and manner prescribed by Section 1.1502-36(e)(5) of the Treasury Regulations in which LFG elects pursuant to Section 1.1502-36(d)(6) of the Treasury Regulations to reduce the basis in the stock of each of the Underwriters to the extent of the Underwriter's respective "attribute reduction amount" associated with the transactions effected by the SPA. The 2008 consolidated federal tax return that will be filed by LFG will contemplate (but will not guarantee) that, after giving effect to the election provided in subparagraph 1(a) hereof and after giving effect to clause (i) of subparagraph 1(b) hereof, an aggregate amount of net operating losses of the Underwriters to be carried forward to the first year immediately following December 22, 2008 of not less than \$174 million. For this purpose, each Underwriter's respective "attribute reduction amount" shall be calculated in accordance with Section 1.1502-36(d)(3) of the Treasury Regulations without regard to the election to be made pursuant to this Section 1(a). Notwithstanding the foregoing, in determining the attribute reduction amount, LFG will be permitted to adjust such amount in order to retain or utilize tax attributes, as and to the extent contemplated by Section 1(b) below;
- b. Notwithstanding the provisions of Section 1(a) hereof, LFG (and any successors, including any trustee or other representative of LFG appointed pursuant to a plan confirmed by order of the Court), may take all actions necessary to retain and apply 2008 NOLs and 2008 capital losses (in an amount not to exceed \$80 million in the aggregate for such NOLs and capital losses) solely (i) to offset (and/or assert and collect any refund with respect to) any income tax (and/or interest thereon) arising from its 2005, 2006, and 2007 tax years, and to satisfy claims (or settlements thereof) with respect to any IRS claims or assessments relating to LFG's consolidated tax returns for the 2005, 2006 and 2007 tax years, and (ii) to satisfy claims and assessments (or settlements thereof, collectively the "2003 Settlement") arising out of the 2003 IRS proceeding if either (A) FNF provides its prior consent to any 2003 Settlement, or (B) as a result of any such 2003 Settlement, there remain 2008 NOLs of at least \$90,576,722 after giving effect to such 2003 Settlement and the use of NOLs and capital losses permitted under clause (i) of this subparagraph 1(b);
- c. Except as set forth in Section 1(b) above, it is understood and agreed that LFG shall have no right or interest in any of the benefits derived from the attributes preserved for the Underwriters as a consequence of the election LFG makes pursuant to Section 1(a) hereof; and
- d. LFG shall notify FNF within 20 days of the earliest of the receipt of notice of any pending U.S. federal income tax audit or examination or notice of deficiency or other adjustment that involves an issue that could reasonably be expected to result in a reduction in the amount of the attributes

preserved for the Underwriters as a result of the election LFG makes pursuant to Section 1(a) hereof.

2. Payment to LFG. FNF shall wire transfer LFG the sum of \$5.225 million, in cash, on or before the date that is two (2) business days after the Court enters a final Order approving this Agreement (the "Settlement Order").

3. Assignment of Notes. FNF agrees that the notes and other instruments set forth on Exhibit A hereto (the "Notes") are assets of LFG. FNF hereby assigns, or shall cause its affiliates to assign, and of its rights and interests in the Notes and, except for \$267,931 already collected by FNF's affiliate related to the Notes (which shall be retained by FNF or its affiliate), any proceeds thereof to LFG free and clear of any liens and encumbrances imposed by FNF and its affiliates.

4. No Amendment of Existing Agreements. Except as provided in Section 5 and 6 below, this Agreement shall not be deemed to amend or supersede the SPA or the LCSPA or any ancillary documents related to the foregoing (including, but not limited to the FNF Note, agreements related to registration rights, the TSA, etc.) with respect to obligations that arise or are required to be performed after the date hereof. In addition, the provisions in Articles VIII and IX of the SPA are expressly preserved.

5. Mutual Releases. Upon entry of the Settlement Order, except for the obligations arising under this Agreement or matters preserved under paragraph 4 above, each Party shall each fully and forever waive and release all of its Claims (as defined under section 101(5) of the Bankruptcy Code), and shall cause each of its wholly owned affiliates to waive and release each of their Claims, against each other Party, and their respective wholly owned affiliates, officers, directors, shareholders, partners, agents, contractors, employees, attorneys, predecessors, successors and assigns, in each case, solely in their capacity as such (the "Released Parties"), whether known or unknown, monetary or non-monetary (the "Released Claims"); provided, however, that (a) the releases set forth in this Section 5 shall not apply to (i) any Claims, including any service and/or payment obligations arising on or after August 1, 2009, under the TSA, (ii) the FNF Note (as defined in the SPA), and/or (iii) LFG's rights and entitlements under the stock paid to LFG pursuant to the SPA, (b) each Party hereby covenants not to sue, and shall cause each wholly-owned subsidiary to covenant not to sue, the Released Parties and affiliates thereof with respect to the Released Claims, and (c) notwithstanding the terms of the immediately preceding clause (b), the Released Parties may assert the Released Claims defensively in any claim asserted or action commenced against them. The Released Claims, include, but are not limited to, Claims related to or arising from any and all alleged or actual breaches of the SPA, Claims set forth in proofs of Claim filed by FNF in the Chapter 11 Cases, Claims arising under the TSA in respect of facts or events that occurred or arose prior to August 1, 2009, and Claims relating to FNF's acquisition of assets and employees related to LFG affiliates or subsidiaries known as "Southland". Upon entry of the Settlement Order, all Released Claims shall be automatically released, disallowed and expunged. Notwithstanding anything to the contrary herein, the LandAm Parties and their affiliates shall not be deemed to be releasing other LandAm Parties and their respective affiliates, officers, directors, shareholders, partners, agents, contractors, employees, attorneys, predecessors,

successors and assigns.

6. Treatment of Unknown Claims. In furtherance of their intent to release and discharge each other from all claims covered by the release in the foregoing section of this Agreement, whether known and unknown, other than the excluded claims identified above, the parties expressly waive any and all rights they may have under any statute, code, ordinance or the common law, which may limit or restrict the effect of the releases included above which they did not know or suspect to exist in its favor, including, to the extent deemed applicable, any and all rights under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The parties understand and agree that, by entering into this Agreement, they are expressly, knowingly and intentionally waiving the provisions of, and all protections arising under, California Civil Code section 1542, as well as any other provisions of a similar nature that exist in any jurisdiction, whether by virtue of statute, code, ordinance, common law, or otherwise, and all protections arising thereunder.

7. No Prior Assignment. The parties hereby warrant and represent that they have not assigned any claims or causes of action against each other to any other individual or entity.

8. No Admission of Liability. Each Party acknowledges and agrees that this Agreement accomplishes the compromise of disputed Claims and is not intended to constitute an admission of liability, wrongdoing or error on the part of any Party or their respective employees, agents, attorneys, representatives, or parent, subsidiary or affiliates. Any liability, wrongdoing or error is expressly denied by each Party to this Agreement.

9. Authority. Subject to paragraph 18 of this Agreement, each person executing this Agreement on behalf of a corporation or other legal entity warrants that he or she holds the position indicated beneath his or her signature and that he or she has been duly authorized by said corporation or other legal entity to execute this Agreement on its behalf.

10. Independent Advice. Each Party to this Agreement acknowledges and agrees that such Party has been represented throughout the negotiation and documentation of this Agreement by attorneys of the Party's choice and has been advised by such attorneys with respect to this Agreement and the effect of the releases given in this Agreement.

11. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement and their respective affiliates, agents, representatives, successors and assigns.

12. Integration. This Agreement sets forth the entire agreement between the

Parties. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties with regard to the subject matter addressed herein are contained in this Agreement and the documents referred to herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party to any other Party. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged in this Agreement and superseded by it. This Agreement is an integrated agreement.

13. Additional Documents. In addition to the documents to be delivered as provided in this Agreement, each of the Parties agrees to execute and deliver such additional documents and take such other action as may be reasonably required to carry out the terms of this Agreement.

14. Modification and Amendment. No modification or amendment of any of the terms or provisions of this Agreement shall be binding upon any Party to this Agreement unless made in writing and signed by all Parties or by a duly authorized representative or agent of such Parties, but only with the prior consent of the Official Committee of Unsecured Creditors appointed in LFG's Chapter 11 Case (as applicable), or by a successor trustee for a Party.

15. No Construction. No Party to this Agreement or such Party's attorney shall be deemed to be the drafter of this Agreement for purposes of interpreting or construing any of the provisions of this Agreement. This Agreement shall be interpreted in accordance with the fair meaning of its language and not strictly for or against any of the parties to this Agreement.

16. Execution in Counterparts. This Agreement may be executed in any number of copies by the Parties to this Agreement on separate counterparts and will become effective upon signature by all parties upon one or more of such identical counterparts.

17. Effective Date. This Agreement shall be effective upon entry of the Settlement Order.

18. Bankruptcy Court Approval. This Agreement is subject to approval by the Court. In the event that the Court does not approve this Agreement no later than September 15, 2009; (a) nothing contained herein shall be deemed to be a waiver of any Claims or an admission of liability by any Party hereto; and (b) this Agreement shall be null and void, and all rights of the Parties prior to this Agreement shall be preserved.

19. No Warranties. Notwithstanding any other provision of this Agreement, no Party hereto represents, warrants, promises or guaranties to any other Party any particular tax result or treatment relating to the subject matter hereof.

20. Governing Law and Jurisdiction of the Bankruptcy Court. This Agreement shall be deemed to be made in and in all respects shall be interpreted ,


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governed and construed in accordance with New York law. The Parties agree that any action or proceeding brought by any Party to enforce any provision of this Agreement shall be brought in the Court or, if the Court declines to exercise jurisdiction, in the United States District Court for the Southern District of New York, or in the event that such District Court lacks jurisdiction or otherwise declines to exercise jurisdiction, in a New York State Court situated within the territorial boundaries of the United States District Court for the Southern District of New York.

**LANDAMERICA FINANCIAL GROUP, INC.**By: *Arthur*Its: CHIEF RESTRUCTURING OFFICER**SOUTHLAND TITLE CORPORATION**By: *J. William Evans*Its: President**SOUTHLAND TITLE OF SAN DIEGO**By: *J. William Evans*Its: President**SOUTHLAND TITLE OF ORANGE COUNTY**By: *J. William Evans*Its: President

September 10, 2009

**FIDELITY NATIONAL FINANCIAL, INC.**

By: 

Its: EVPR, Legal and Corp. Sec.

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

By: 


Its: EVPR Legal and Corp. Sec.

**UNITED CAPITAL TITLE INSURANCE COMPANY**

By: 

Its: EVPR, Legal and Corp. Sec.

**LAWYERS TITLE INSURANCE CORPORATION**

By: 

Its: EVPR, Legal and Corp. Sec.

CONSENTED TO BY:  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF LANDAMERICA FINANCIAL GROUP, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

September 10, 2009



**FIDELITY NATIONAL FINANCIAL, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**UNITED CAPITAL TITLE INSURANCE COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LAWYERS TITLE INSURANCE CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

CONSENTED TO BY:  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF LANDAMERICA FINANCIAL GROUP, INC.

By: \_\_\_\_\_

Its: At Counsel for the Committee

September 10, 2009