

## SETTLEMENT AGREEMENT AND RELEASES

This Settlement Agreement and Releases (the "Settlement Agreement") is between the Federal Deposit Insurance Corporation, solely in its capacity as Receiver for Washington Mutual Bank (the "Receiver"), Resource Title Inc. ("Resource Title"), Pawel "Paul" Wcislo ("Wcislo"), Cesar Gaitan ("Gaitan"), and Title Industry Assurance Company, R.R.G. ("TIAC"). All of the aforementioned named entities and individuals may be, from time to time herein, referred to as the "Parties."

### RECITALS

A. Resource Title provided owners and lenders with real estate closing, loan closing, title and escrow services in connection with the purchase, sale, financing, and re-financing of real estate. Gaitan and Wcislo were shareholders, officers, directors and/or employees of Resource Title and conducted and were responsible for the day to day activities of Resource Title. Under an Issuing Agency Agreement between Resource Title and Tigor Title Insurance Company ("Tigor"), Resource Title received and processed applications for title insurance and issued policies of title insurance as Tigor's agent. On April 9, 2007, Tigor terminated the Agency Agreement and the Illinois Department of Financial and Professional Regulation revoked Resource Title's license to operate as a title agent.

B. Washington Mutual Bank ("Washington Mutual") filed a lawsuit in the Law Division of the Circuit Court of Cook County, Illinois now captioned *The Federal Deposit Insurance Corporation, solely in its capacity as receiver of Washington Mutual Bank v. Resource Title, Inc., et al.*, No. 07-L-8485 (the "Lawsuit"). The Lawsuit was filed against Resource Title, Gaitan, and American Equity Financial Group, Inc. The Lawsuit alleges that, on May 2, 2007, Washington Mutual wired over \$120,000 in loan funds (the "Hernandez Loan") to

Resource Title for a loan closing that Resource Title was not, in fact, handling, and that Resource Title and Gaitan ignored Washington Mutual's subsequent demands to return those funds and instead misappropriated those funds for their own use. The Lawsuit asserts a claim for unjust enrichment against Resource Title and a claim for violation of the Business Corporation Act of 1933 against Gaitan. The claim against American Equity Financial Group, Inc. was previously dismissed pursuant to a settlement (the "American Equity Settlement").

C. On July 1, 2010, the Court in the Lawsuit entered default judgments in favor of the Receiver and against Resource Title and Gaitan (the "Judgments").

(b)(4) D. TIAC issued Abstractors, Title Insurance Agents and Escrow Agents Professional Liability Insurance Policy Number [REDACTED] for the policy period May 2, 2006 through May 2, 2007 (the "2006-07 Policy"). TIAC issued Abstractors, Title Insurance Agents and Escrow Agents Professional Liability Insurance Policy Number [REDACTED] for the policy (b)(6) period May 2, 2007 through May 2, 2008 (the "2007-08 Policy"). On June 24, 2008, TIAC rescinded the 2007-08 Policy based on Resource Title's failure to update its application with material information. TIAC filed a declaratory judgment action in the Chancery Division of the Circuit Court of Cook County, Illinois captioned *Title Industry Assurance Co., R.R.G. v. Resource Title, Inc., et al.*, No. 08-CH-43386 (the "Declaratory Judgment Action"). The Declaratory Judgment Action seeks confirmation of TIAC's rescission of the 2007-08 Policy, a declaratory judgment that no coverage is provided for the Lawsuit, and also a declaratory judgment based on other coverage issues relating to both the 2006-07 and 2007-08 Policies regarding various claims involving Ticor.

E. On April 21, 2010, Resource Title, Gaitan, Weislo, TIAC, and Ticor entered into a settlement with respect to, among other things, those claims in the Declaratory Judgment

Action involving Ticor (the "Ticor Settlement"). Nothing in this Settlement Agreement is intended to expand, limit, amend, or otherwise modify any of the terms of the Ticor Settlement or any of the documents executed in connection with the Ticor Settlement.

F. The Parties desire to settle and compromise the obligations, disputes, and claims asserted, or which could have been asserted, in the Lawsuit or the Declaratory Judgment Action, and which have not previously been resolved by the American Equity Settlement or the Ticor Settlement.

NOW THEREFORE, in consideration of the mutual promises and undertakings set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Receiver, Resource Title, Gaitan, Wcislo, and TIAC hereby agree as follows:

#### **AGREEMENT**

1. This Settlement Agreement represents a compromise and is not to be construed either as an admission of wrongdoing by Resource Title, Wcislo, Gaitan, or the Receiver, or as an admission by TIAC that any coverage is provided to Resource Title, Wcislo, or Gaitan under the 2006-07 or 2007-08 Policies or as an admission by the Receiver that coverage does not exist for Resource Title, Wcislo, or Gaitan under the 2006-07 or 2007-08 Policies. This Settlement Agreement is made solely to resolve and settle the disputes alleged, or which could have been alleged, in the Lawsuit or the Declaratory Judgment Action, and which have not previously been resolved by the American Equity Settlement or the Ticor Settlement.

#### **I. Settlement Payment**

2. Within thirty days after execution of this Settlement Agreement by all of the Parties, TIAC shall cause to be tendered a lump sum payment of \$25,000 to the Receiver (the

"Settlement Payment"). The Receiver agrees to accept \$25,000 as full and final satisfaction of all claims against Resource Title and Gaitan in the Lawsuit, and all claims in the Declaratory Judgment Action.

**II. Agreement Not to Enforce the Judgments**

3. The Receiver agrees to accept the Settlement Payment as full and final satisfaction of the Judgments. The Receiver will take no action to enforce, record, or assign the Judgments, and will not attempt to collect any funds from Resource Title, Gaitan, or TIAC pursuant to the Judgments. Counsel for the Receiver shall execute the Satisfaction of Judgments, which is attached hereto as Exhibit 1. Within 10 days after the receipt of the Settlement Payment by the Receiver, counsel for the Receiver shall file the executed Satisfaction of Judgments with the Court.

**III. Dismissal of the Declaratory Judgment Action**

4. Contemporaneous with the execution of this Settlement Agreement, counsel for TIAC, the Receiver, Wcislo, Gaitan, and Resource Title shall execute the Stipulation of Dismissal of the Declaratory Judgment Action, which is attached hereto as Exhibit 2. Within 10 days after the receipt of the Settlement Payment by the Receiver, counsel for TIAC shall file the executed Stipulation of Dismissal with the Court and cause all remaining claims in the Declaratory Judgment Action to be dismissed, with prejudice and without costs.

**IV. Releases**

5. The Receiver, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, and assigns, unconditionally releases, acquits, extinguishes, and forever discharges any right, cause of action, or claim of any kind or nature whatsoever, known or unknown, against Gaitan and Resource Title, including any of its past, present, or

future parents, subsidiaries, affiliates, predecessors, successors, and assigns, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, in any way relating to: (1) the Hernandez Loan, (2) the claims asserted, or which could have been asserted, in the Lawsuit, and (3) the claims asserted, or which could have been asserted, in the Declaratory Judgment Action. This release includes, but is not limited to, any claim for compensatory or punitive damages, attorneys' fees, costs, interest, and any other legal or equitable remedy, whether based upon common law or any federal, state, or local statute or ordinance.

6. The Receiver, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, and assigns, unconditionally releases, acquits, extinguishes, and forever discharges any right, cause of action, or claim of any kind or nature whatsoever, known or unknown, against TIAC, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, assigns, and members, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, in any way relating to: (1) the Hernandez Loan, (2) the claims asserted, or which could have been asserted, in the Lawsuit, (3) the claims asserted, or which could have been asserted, in the Declaratory Judgment Action, and (4) the 2006-07 and 2007-08 Policies. This release includes, but is not limited to, any claim for compensatory or punitive damages, attorneys' fees, costs, interest, and any other legal or equitable remedy, whether based upon common law or any federal, state, or local statute or ordinance. The release contained herein is not intended to be and is not a general release by the Federal Deposit Insurance Corporation of TIAC since there may be other transactions or business dealings between the Federal Deposit Insurance Corporation and TIAC, known or unknown, arisen or not yet arisen, that do not relate to, connect

with or arise out of the dispute with Resource Title or Gaitan, the 2006-07 Policy, the 2007-08 Policy, the subject matter of the Lawsuit or the subject matter of the Declaratory Judgment Action.

7. Gaitan and Resource Title, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, and assigns, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, unconditionally release, acquit, extinguish, and forever discharge any right, cause of action, or claim of any kind or nature whatsoever, known or unknown, against the Receiver, including any of its past, present, or future parents, subsidiaries, affiliates, predecessors, successors, and assigns, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, in any way relating to: (1) the Hernandez Loan, (2) the claims asserted, or which could have been asserted, in the Lawsuit, and (3) the claims asserted, or which could have been asserted, in the Declaratory Judgment Action. This release includes, but is not limited to, any claim for compensatory or punitive damages, attorneys' fees, costs, interest, and any other legal or equitable remedy, whether based upon common law or any federal, state, or local statute or ordinance.

8. Gaitan, Weislo, and Resource Title, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, and assigns, unconditionally release, acquit, extinguish, and forever discharge any right, cause of action, or claim of any kind or nature whatsoever, known or unknown, against TIAC, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, assigns, and members, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, in any way relating to: (1) the Hernandez Loan, (2) the claims asserted, or which

could have been asserted, in the Lawsuit, including the manner in which those claims were handled, and (3) the claims asserted, or which could have been asserted, in the Declaratory Judgment Action relating to the Hernandez Loan, the Lawsuit, or Washington Mutual. This release includes, but is not limited to, any claim for compensatory or punitive damages, attorneys' fees, costs, interest, and any other legal or equitable remedy, whether based upon common law or any federal, state, or local statute or ordinance. This Release does not, in any way, affect TIAC's position that the 2007-08 Policy has been rescinded, nor does it alter, modify, or in any way limit any term of either the settlement agreement executed in connection with the Ticor Settlement, or the Confirmation of Rescission and Policy Release executed by TIAC, Resource Title, Wcislo, and Gaitan in connection with the Ticor Settlement.

9. TIAC, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, members, and assigns, unconditionally releases, acquits, extinguishes, and forever discharges any right, cause of action, or claim of any kind or nature whatsoever, known or unknown, against the Receiver, including any of its past, present, or future parents, subsidiaries, affiliates, predecessors, successors, and assigns, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, in any way relating to: (1) the Hernandez Loan, (2) the claims asserted, or which could have been asserted, in the Lawsuit, (3) the claims asserted, or which could have been asserted, in the Declaratory Judgment Action, (4) the 2006-07 and 2007-08 Policies. This release includes, but is not limited to, any claim for compensatory or punitive damages, attorneys' fees, costs, interest, and any other legal or equitable remedy, whether based upon common law or any federal, state, or local statute or ordinance. The release contained herein is not intended to be and is not a general release by TIAC of the Federal Deposit Insurance Corporation since there may be other

transactions or business dealings between TIAC and the Federal Deposit Insurance Corporation, known or unknown, arisen or not yet arisen, that do not relate to, connect with or arise out of the dispute with Resource Title or Gaitan, the 2006-07 Policy, the 2007-08 Policy, the subject matter of the Lawsuit or the subject matter of the Declaratory Judgment Action.

10. TIAC, including any of its past, present and future parents, subsidiaries, affiliates, predecessors, successors, members, and assigns, unconditionally releases, acquits, extinguishes, and forever discharges any right, cause of action, or claim of any kind or nature whatsoever, known or unknown, against Wcislo, Gaitan and Resource Title, including any of its past, present, or future parents, subsidiaries, affiliates, predecessors, successors, and assigns, together with and all of its former and present officers, directors, representatives, agents, attorneys, and employees, in any way relating to: (1) the Hernandez Loan, (2) the claims asserted, or which could have been asserted, in the Lawsuit, and (3) the claims asserted, or which could have been asserted, in the Declaratory Judgment Action relating to the Hernandez Loan, the Lawsuit, or Washington Mutual. This release includes, but is not limited to, any claim for compensatory or punitive damages, attorneys' fees, costs, interest, and any other legal or equitable remedy, whether based upon common law or any federal, state, or local statute or ordinance. This Release does not, in any way, affect TIAC's position that the 2007-08 Policy has been rescinded, nor does it alter, modify, or in any way limit any term of either the settlement agreement executed in connection with the Tigor Settlement, or the Confirmation of Rescission and Policy Release executed by TIAC, Resource Title, Wcislo, and Gaitan in connection with the Tigor Settlement.



V. Additional Provisions

11. The Recitals set forth above are made a part of the Agreement portion of this Settlement Agreement and this Settlement Agreement shall be construed in conformity with the Recitals.

12. This Settlement Agreement shall be binding upon and shall inure to the benefit of, and its provisions shall in all respects apply to, the Parties hereto and their respective heirs, representatives, successors and assigns.

13. If any provision of this Settlement Agreement shall in any way be or become in violation of or prohibited by valid applicable laws, judgments, decrees, or public policy of any applicable jurisdiction, such provision, if severable from other provisions in this Settlement Agreement, shall be, as to the applicable jurisdiction only, ineffective and void solely to the extent of such violation or prohibition, but shall in no way invalidate or otherwise affect any of the remaining provisions of this Settlement Agreement, which shall remain effective.

14. The Parties warrant that the persons executing this Settlement Agreement on their behalf are fully authorized and empowered under their governing instruments and resolutions to enter into the terms and conditions of this Settlement Agreement and to execute the same on behalf of each of the Parties.

15. This Settlement Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. This Settlement Agreement shall become effective upon signature by all of the Parties to this Settlement Agreement.

16. No statements, promises or representations have been made by any Party to any other Party, or are relied upon, and no consideration has been or is offered, promised, expected or held out, other than as stated in this Settlement Agreement. No conditions precedent to the effectiveness of this Settlement Agreement exist which have not been satisfied. There are no other oral or written agreements concerning the matters contained in this Settlement Agreement other than the agreements and documents specifically referenced herein. All prior agreements, discussions and negotiations have been and are merged and integrated into, and superseded by, this Settlement Agreement, except that this Settlement Agreement does not in way modify or supersede any term of the American Equity Settlement or the Ticor Settlement.

17. The Parties acknowledge that they have read and understand this Settlement Agreement and that this Settlement Agreement may not be altered, modified or changed in any manner except by a writing duly executed by all Parties to this Settlement Agreement.

18. This Settlement Agreement shall be governed and construed in accordance with the laws of the State of Illinois. The Parties agree that any action to enforce this Settlement Agreement shall be brought in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division.

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IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as set forth below.

\_\_\_\_\_  
FOR THE FDIC, SOLELY IN ITS CAPACITY AS  
RECEIVER FOR WASHINGTON MUTUAL  
BANK

ITS: \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public  
My commission expires:



\_\_\_\_\_  
FOR TITLE INDUSTRY ASSURANCE  
COMPANY, R.R.G.

ITS: EUR

Subscribed and sworn to before me this  
2nd day of November, 2010.



\_\_\_\_\_  
Notary Public  
My commission expires:

**JUDY M. HILTON**  
**NOTARY PUBLIC**  
**DISTRICT OF COLUMBIA**  
My Commission Expires June 30, 2012

\_\_\_\_\_  
FOR RESOURCE TITLE, INC.

ITS: \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public  
My commission expires:

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as set forth below.

\_\_\_\_\_  
FOR THE FDIC, SOLELY IN ITS CAPACITY AS  
RECEIVER FOR WASHINGTON MUTUAL  
BANK

ITS: \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public  
My commission expires:

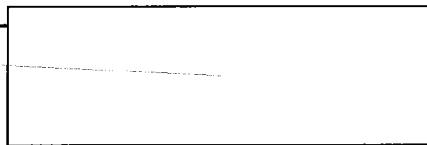
\_\_\_\_\_  
FOR TITLE INDUSTRY ASSURANCE  
COMPANY, R.R.G.

ITS: \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010.

(b)(6)

\_\_\_\_\_  
Notary Public  
My commission expires:



\_\_\_\_\_  
FOR RESOURCE TITLE, INC.

ITS: \_\_\_\_\_

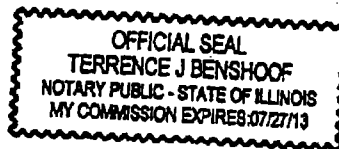
Subscribed and sworn to before me this  
6<sup>th</sup> day of NOVEMBER, 2010.

(b)(6)

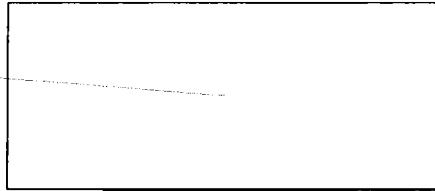
\_\_\_\_\_  
Notary Public  
My commission expires: 7/27/13



(b)(6)



(b)(6)



PAWEL "PAUL" WCISLO

Subscribed and sworn to before me this  
6<sup>th</sup> day of NOVEMBER, 2010.

(b)(6)



Notary Public



My commission expires: 7/27/13

(b)(6)



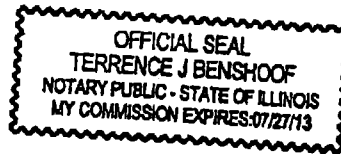
CESAR GAITAN

Subscribed and sworn to before me this  
6<sup>th</sup> day of NOVEMBER, 2010.

(b)(6)



Notary Public



My commission expires: 7/27/13