

## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("*Agreement*") is entered into this 8 day of February, 200~~8~~<sup>9</sup>, by and between Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB ("*FDIC*") and Novy Investments, Inc. ("*Novy Investments*"), CondoSmart, LLC f/k/a CondoSource, LLC ("*CondoSmart*"), Lester Novy, Joseph H. Harman (solely in Joseph H. Harman's capacity as owner/officer/employee of *CondoSmart*) ("*Harman*"), and Ron Lozoff (solely in Ron Lozoff's capacity as owner/officer/employee of *CondoSmart*) ("*Lozoff*"), (*Novy Investments, CondoSmart, Lester Novy, Harman and Lozoff* shall be referred to collectively as the "*Defendants*") with respect to the claims made in the case captioned *Federal Deposit Insurance Corporation, as Receiver for IndyMac Federal Bank, FSB v. First American Title Insurance Co. et al.*, in the 129th Judicial District Court of Harris County, Texas, Cause No. 2008-22322 (the "*Litigation*").

### RECITALS

WHEREAS, IndyMac Bank, F.S.B ("*IndyMac*") funded mortgage loans secured by properties located in (1) 2400 McCue Condominiums, 2400 McCue Road, Houston, Texas ("*2400 McCue*"); (2) Braeswood Park Condominiums, 2255 Braeswood Park Drive, Houston, Texas ("*Braeswood Park*"); and (3) Reata at River Oaks Condominiums, 3231 Allen Parkway, Houston, Texas ("*Reata at River Oaks*") — *2400 McCue, Braeswood Park, and Reata at River Oaks* shall be collectively referred to as the "*Condo Complexes*;"

WHEREAS, the *Defendants* performed services relating to the marketing and sales of individual condominium units in the *Condo Complexes* that were purchased by individual borrowers in mortgage loans transactions (the "*Subject Transactions*") and financed by mortgage loans funded by *IndyMac*;

WHEREAS, *IndyMac* asserted claims in the *Litigation* against the *Defendants* based on the *Subject Transactions*;

WHEREAS, *FDIC* is entitled to pursue the claims asserted by *IndyMac* in the *Litigation*;

WHEREAS, the *Defendants* expressly deny any liability relating to the asserted claims in the *Litigation*; and

WHEREAS, to avoid any further expense of litigation, the parties voluntarily enter into this *Agreement*.

In consideration of the above and for such other good and valuable consideration, the sum and sufficiency of which is hereby acknowledged and based on the mutual promises and conditions contained herein, the parties agree as follows:

1. **Recitals.** The above Recitals are incorporated herein by reference and made a part of this *Agreement*.

2. **Dismissal and Release.** *FDIC* and the *Defendants*, through counsel, shall execute a dismissal with prejudice and without any costs or attorney's fees to any party regarding all claims in the *Litigation* between the *Defendants* and *FDIC*.

For and in consideration of the total payment of \$70,000 (Seventy Thousand Dollars) by the *Defendants* to be payable to "RJ Landau Partners PLLC, Attorneys for Federal Deposit Insurance Corporation" within fifteen (15) days of the execution of this *Agreement*, and in consideration of the terms and conditions of this *Agreement*, *FDIC* does absolutely and unconditionally release, discharge, and forever hold harmless the *Defendants* and their insurance carriers HCC Specialty Insurance Company and Professional Indemnity Agency, Inc. (solely in their capacity as insurance carriers for the *Defendants*), past or present officers, directors, shareholders, members, insurers, employees, owners, agents, affiliates, predecessors, successors,

fiduciaries, attorneys, and assigns, jointly and severally, from any and all claims, demands, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted in the *Litigation*, as of the date of the execution of this *Agreement*, arising under or through *FDIC* from or related to the events and transactions which were or are the subject matter of the *Litigation*, or otherwise relating to the *Subject Transactions* or any transaction funded by *IndyMac* in the *Condo Complexes*.

3. **Express Reservation from Releases by *FDIC*.** Notwithstanding any other provision, by this *Agreement*, *FDIC* does not release, and expressly preserves fully and to the same extent as if the *Agreement* had not been executed, (a) any claims or causes of action that do not arise from or relate to the facts and circumstances alleged in the *Litigation* or otherwise relate to the *Subject Transactions* or any transaction funded by *IndyMac* in the *Condo Complexes*, or the defense of the same, (b) any claims or causes of action against *Lozoff* that do not arise solely because of *Lozoff's* role as an owner, officer, and/or employee of *CondoSmart*, (c) any claims or causes of action against *Harman* that do not arise solely because of *Harman's* role as an owner, officer, and/or employee of *CondoSmart*; or (d) any action taken by any other federal agency. In addition, this *Agreement* does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office in any federal judicial district.

Nothing in this *Agreement* waives any claim, cause of action, or any rights to contribution or other claims held by *FDIC* existing currently or arising in the future, against any other individual or entity not expressly released by this *Agreement*, including but not limited to any other party in the *Litigation*.

4. **Attorney's Fees and Costs.** Each party shall bear its own attorney's fees and costs with respect to the *Litigation*.

5. **Amendment.** This *Agreement* may not be amended or modified at any time except by any instrument in writing executed by all of the parties.

6. **Execution.** This *Agreement* may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. The parties also agree that, without receiving further consideration, they will sign and deliver such documents and do anything else that is reasonably necessary in the future to make the provisions of this *Agreement* effective.

7. **Integrated Agreement.** This *Agreement* sets forth the entire understanding between the parties concerning the subject matter of this *Agreement* and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this *Agreement* other than those set forth herein.

8. **Governing Law.** This *Agreement* shall be governed by and construed in accordance with Texas law (excluding any conflict of laws rule or principle that might refer the governance or construction of this *Agreement* to the law of another jurisdiction). Nothing in this *Agreement* shall require any unlawful action or inaction by any party hereto.

9. **Severability.** If any portion of this *Agreement* is found to be unenforceable, the parties desire that all other portions that can be separated from the unenforceable portion or appropriately limited in scope shall remain fully valid and enforceable.

10. **Representation.** No representation or warranty has been made by or on behalf of any party to this *Agreement* (or any officer, director, employee or agent thereof) to induce any

other party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein. In entering into this Agreement, the parties hereto represent that they have proceeded with the advice of an attorney of their own choice, that they have read the terms of this Agreement, that the terms of this Agreement have been completely read and explained to the parties by their attorney, and that those terms are fully understood and voluntarily accepted by the parties.

11. Authority. Each person signing this Agreement on behalf of any entity warrants or represents that he/she has the full and complete authority to enter into this Agreement on behalf of that entity.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date indicated by each party's signature.

(b)(6)  
(b)(6)  
Witnesses [Redacted]  
By: [Redacted]  
Name: Jeff Wigginton  
(b)(6)  
By: [Redacted]  
Name: Esmeralda Acevedo

Novy Investments, Inc.  
By: [Redacted] (b)(6)  
Name: LESTER E. NOVY (b)(6)  
Title: PRESIDENT  
Date: 12/25/2009

(b)(6)  
(b)(6)  
(b)(6)  
Witnesses [Redacted]  
By: [Redacted]  
Name: Jeff Wigginton

Lester Novy  
By: [Redacted] (b)(6)  
Name: LESTER NOVY

(b)(6)

By:

Name: Esmeralda Acevedo

Title: \_\_\_\_\_

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

Witnesses

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Ron Lozoff

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Witnesses

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Joseph H Harman

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Witnesses

By:

Name: Jeff Wigginton

By: ESHA S/O

Name: Esmeralda Acevedo

CondoSmart, LLC f/k/a CondoSource, LLC

By:

Name: LESTER NOVY

Title: MEMBER

Date: 12/28/2009

(b)(6)


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

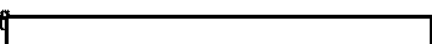
Title: \_\_\_\_\_

Name: \_\_\_\_\_


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

(b)(6)

Witness:  \_\_\_\_\_

Ron Lozoff 

(b)(6)

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

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

(b)(6)

Name: Michaela Perry \_\_\_\_\_

Name: Ron Lozoff \_\_\_\_\_

(b)(6)

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

Title: partner \_\_\_\_\_

Name: Stephanie Drapek \_\_\_\_\_

Date: 1/7/12 \_\_\_\_\_

Witnesses

Joseph H. Harman

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

Name: \_\_\_\_\_

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

Witnesses

CondoSmart, LLC d/k/a CondoSource, LLC

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Witnesses

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Ron Lozoff

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Joseph H. Harman

Witnesses

By: [Redacted]

Name: JAMES J PEARSON

By: [Redacted]

Name: JESSICA A. HOFF

By: CONDO SMART LLC

Name: [Redacted] (b)(6)

Title: Manager

Date: 2/1/2010

Witnesses

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

CondoSmart, LLC f/k/a CondoSource, LLC



Federal Deposit Insurance Corporation, as  
Receiver for IndyMac Federal Bank, FSB

Witnesses

(b)(6)

By:

Name: Linde Folkes

(b)(6)

By:

Name: Ariana Rambajan

(b)(6)

By:

Name: Jack Duncan

Title: Counsel

Date: Feb 8, 2010